

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION No.796 of 2022

Between:

M/s. Akshara Brahma Mines and Development,
A registered partnership firm,
Rep. by its Partner Chellaiah Ramanand,
S/o Late Chellaiah, Hindu, a
ged 49 years, Managing Partner,
20, 2/1 (p) & 4, Palavalasa village,
Bhaminimandal, Srikakulam District
and two others.

... Petitioners/Plaintiffs

Versus

Kampa Hanoku, S/o Late Mohan Rao,
Hindu, aged 50 years, Business,
R/o D.No.9-6-75/9, Pent House,
Anand Residence, Opp: Sivaji Park,
Sivaji Palem, Visakhapatnam – 17
Visakhapatnam District and five others.

... Respondents/third party/defendants

DATE OF ORDER PRONOUNCED : **28.04.2023**

SUBMITTED FOR APPROVAL :

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

1. Whether Reporters of Local Newspapers
may be allowed to see the order? : Yes/No
2. Whether the copy of order may be
marked to Law Reporters/Journals? : Yes/No
3. Whether His Lordship wish to
see the fair copy of the order? : Yes/No

SUBBA REDDY SATTI, J

*** HONOURABLE SRI JUSTICE SUBBA REDDY SATTI**

+ CIVIL REVISION PETITION No.796 of 2022

% 28.04.2023

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... Respondents/third party/defendants

! Counsel for Petitioners : Sri A.S.C. Bose

^ Counsel for Respondents : Smt. Nimmagadda Revathi
Sri K. Rathanga Pani Reddy

< Gist:

> Head Note:

? Cases referred:

- 1) 1992 (2) SCC 524
- 2) 1999 (2) SCC 577
- 3) 1995 (3) SCC 147
- 4) 1996(5) SCC 379

This Court made the following:

HON'BLE SRI JUSTICE SUBBA REDDY SATTI

CIVIL REVISION PETITION No.796 2022

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... Respondents/third party/defendants

Counsel for the petitioners : Sri A.S.C. Bose
Counsel for respondents : Smt. Nimmagadda Revathi
Sri K. Rathanga Pani Reddy

ORDER

Plaintiffs in the suit filed the above revision against order dated 20.10.2021 in I.A.No.92 of 2021 in O.S.No.45 of 2019 on the file of learned Principal Senior Civil Judge, Srikakulam.

2. Plaintiff filed O.S.No.45 of 2019 against five defendants seeking perpetual injunction restraining the defendants, their men, etc. from interfering with the peaceful possession of the plaintiffs' possession over the suit schedule property and for mandatory injunction directing the defendants to restore machinery back in the plaint schedule property.

3. In the plaint, it was contended, *inter alia*, that plaintiff No.1, partnership firm was registered on 08.02.2016. It is engaged in the business of quarrying of colour granite, which is marketed in domestic and international markets. Director, Mines and Geology, Government of Andhra Pradesh awarded mining rights vide proceedings No.52065/R1-1/2011 dated 22.02.2014 in favour of Nibran Nimmala. Lease agreement was entered into vide lease agreement, dated 04.02.2014 for the purpose of quarrying colour granites in an extent of 3.22 hectares or Ac.7.9534 cents, forming part of survey Nos.20, 21, 22/1, 22/2, 23, 23/19, 23/423/2 situated at Palasavalasa village, Bamini Mandal, Srikakulam District for a period of 20 years w.e.f. 04.04.2014 to 03.04.2034. Said Nibran Nimmala entered into 'raising and selling agreement' with M/s. PVR Enterprises, plaintiff No.3, represented by its Managing Partner i.e. plaintiff No.2, on 28.03.2014. Plaintiff No.3 invested crores of rupees and also purchased heavy machinery.

b) Plaintiff No.3 is responsible for entire business of day to day activities by appointing skilled and unskilled workers, accounting, transportation, etc. Plaintiff No.2 and Nibran Nimmala entered into partnership agreement, dated 08.01.2016 agreeing for investment and profit sharing at the rate of 95% : 5% and got registered partnership deed in the

name and style of plaintiff No.1, authorizing plaintiff No.2 as its authorized signatory.

c) Defendants, who have no manner of right, title, interest much less possession, are interfering with day to day mining/quarrying activities being conducted by the plaintiff and his authorized persons in the area allocated. Defendant Nos.4 and 5, at the instigation of defendants No.1 to 3 trespassed into suit schedule premises and removed excavation machines mentioned in 'B' schedule property, by threatening the employees. Police complaint was lodged on 25.06.2019. However, no action was initiated. With the above averments, in brief, the suit was filed seeking perpetual injunction and mandatory injunction.

4. Defendant No.1 filed written statement and the same was adopted by defendant Nos.2 to 5. In the written statement, it was contended, *inter alia*, that Nibran Nimmala executed 'raising and selling agreement' on 22.08.2013 in favour of K. Hanoku for a period of 20 years for doing business in the suit schedule property. On 04.08.2014, Motaka India and N. Kora also executed lease agreement in favour of K. Hanoku in respect of Ac.3-00 cents in survey No.23/1, which is remaining part of suit schedule property. K. Hanoku and Nibran Nimmala entered into raising and selling agreement with plaintiffs on 28.03.2014

for a period of twenty years. Suppressing all these facts, the above suit is filed for injunction.

5. Plaintiffs along with the suit filed I.A.No.248 of 2019. Court below granted order of status quo. As the matter stood thus, third party i.e. respondent No.1 herein, filed petition I.A.No.92 of 2021 under Order I Rule 10(4) of CPC read with Rule 28 of Civil Rules of Practice to implead him in the suit as defendant No.6.

6. In the affidavit filed in support of the petition, it was contended about granting of lease in favour of Nibran Nimmala in respect of suit schedule property for a period of 20 years. It was further pleaded about execution of 'raising and selling agreement', dated 22.08.2013 in favour of deponent, K. Hanoku by Nibran Nimmala in respect of suit schedule property and also with regard to execution of 'raising and selling agreement', dated 28.03.2014, by deponent and Nibran Nimmala as first party in favour of plaintiff Nos.2 and 3 as second party, for a period of 20 years, for doing joint business. Plaintiff Nos.2 and 3 are residents of Chennai and hence, they entrusted the same to the petitioner to do business in the suit schedule property with the help of defendants Nos.1 and 3 to 5. However, plaintiff Nos.2 and 3 violated terms and conditions of raising and selling agreement, dated 28.03.2014. They colluded with Nibran

Nimmala and got executed a partnership deed, dated 08.01.2016 with plaintiff Nos.2 and 3. Suit, for perpetual injunction, was filed with false averments by suppressing real facts. I.A.No. 248 of 2019 was filed and the Court below granted order of status quo. Petitioner/deponent in the present application is proper and necessary party to the suit and hence, he filed application seeking impleadment.

7. Respondent Nos.1 to 3 (plaintiffs) filed counter and opposed the application.

8. Trial Court by order, dated 20.10.2021 allowed the application. Aggrieved by the same, above revision is filed.

9. Heard Sri A.S.C. Bose, learned counsel for the petitioner and Ms. Rachana, learned counsel representing Smt. Nimmagadda Revathi, learned counsel for respondent No.1.

10. Learned counsel for the petitioners would contend that the suit is filed for perpetual injunction. Plaintiff being the author and 'Dominus litis' can proceed against a person against whom he has grievance. He would submit that proposed party is not necessary party to the suit and if he has any grievance, he has other remedies under law. He would also contend that impleaded defendant is claiming rights under an agreement, dated 22.08.2013 and said document has no legality in the eye

of law. He would also contend that the suit was filed basing on partnership deed, which came into existence w.e.f. 08.01.2016.

11. On the other hand, learned counsel for respondent No.1, while supporting order of lower Court would further contend that the proposed party is proper and necessary party for effective disposal of the suit.

12. The point for consideration is whether the proposed party is proper and necessary party though suit is filed for injunction simplicitor?

13. To consider the question, it would be appropriate to refer to the provisions of Order 1 Rule 10(2) of CPC, 1908, which deals with power of the Court to strike out or add parties. Order I Rule 10 (2) of CPC is extracted hereunder:

“10 (2) Court may strike out or add parties -The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name, of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

14. The object of sub-rule (2) of Rule 10 of Order I of CPC is to bring before the Court all persons, who are parties to the dispute relating to subject matter so that dispute may be determined without delay, inconvenience and expenses of separate actions. The Court may be in a position to adjudicate upon and settle all the questions involved in the suit between the parties. The ambit, scope and effect of sub-rule (2) of rule 10 of Order I of CPC have been considered in numerous cases. If the Court is satisfied that the parties are to be impleaded as proper and necessary for adjudication of all the issues and such party has direct interest in the subject matter of the litigation, invariably it is required to implead such a person as a party to the proceedings.

15. The expression 'settle all the disputes involved in the suit' used in sub-rule (2) of Rule 10 of Order I needs a liberal and wide interpretation, so as to adjudicate all the questions pertaining to subject matter thereof. Such wide interpretation warranted by the language employed would certainly enable the Court to avoid conflicting decisions on the same questions and at the same time, finally and effectually put an end to litigation.

16. Crucial test for impleading any party, whether as plaintiff or defendant, is whether presence of such party is necessary or proper without whom there can be no effect or final adjudication

of all the issues involved in the suit with regard to the same subject matter.

17. In the case on hand, O.S.No.45 of 2019 is filed for injunction simplicitor. It was averred in the plaint as referred to supra regarding excavation/mining of colour granite. In a suit for perpetual injunction, where the subject matter is immovable property, it is needless to say that Court cannot inquire into the title of the party but title can be incidentally gone into to prove nature of possession. It is also true that a decree for perpetual injunction is normally a personal action and decree is personam. Such injunction, therefore, do not bind third parties. This is the reason why Courts normally do not permit impleadment of parties in injunction suits. There is no abstract principle that in a suit for perpetual injunction third party cannot be impleaded. If third party has any apprehension that he will be deprived of the property, he can always file a separate suit against person, who, in his decision is likely to evict him under the guise of an order or decree for injunction. Court while dealing with an application seeking impleadment, in a suit for injunction, had to consider the facts of each case and pass appropriate orders.

18. However, by virtue of sub-rule (2) of Rule 10 of Order I, the Court at any stage of the proceedings may order of the

parties even though plaintiff is not interested to implead such person as party to the proceeding. The question of impleadment of a party to the proceeding have to be determined that whether the adding of the party is to avoid multiplicity of proceedings and to end the litigation between the parties. The language in the rule indicates that the plaintiff/ petitioner is prevented from contending that person cannot be impleaded as defendant/ respondent in a case where presence of parties is necessary to enable the court to deal with the subject in effective manner to avoid multiplicity actions.

19. In **Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay and Others**¹, the Hon'ble Apex Court held as under :

“...If the inter-vener has a cause of action against the plaintiff relating to the subject matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.

...

The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness.

¹ 1992 (2) SCC 524

20. In **Savitri Devi v. District Judge, Gorakhpur and others²**, while considering the impleadment petition in the suit seeking decree for maintenance and creation of charge over ancestral property, the Hon'ble Apex Court held that purchaser of the suit property, even contrary to the interim injunction order of the Court, are necessary parties as it would avoid multiplicity of the proceedings. Avoidance of multiplicity of proceedings is also one of the objects of Order I Rule 10 CPC.

21. In **Anil Kumar Singh vs. Shivnath Mishra alias Gadasa Guru³**, the Hon'ble Apex Court while dealing with Order I Rule 10, held that the object of the rule is to bring on record all the persons, who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence at the same time, without any protraction, inconvenience and to avoid multiplicity of proceedings. A party may be added as party to the suit though no relief can be claimed against him or her, provided his or her presence is necessary for a complete and final decision in question involved in the suit. Such a person is indeed proper and distinguished from necessary party.

² 1999 (2) SCC 577

³ 1995 (3) SCC 147

22. In **Aliji Momonji & Co. v. Lalji Mavji and Others**⁴, the Hon'ble Apex Court, while considering the ambit, scope and effect of Order I Rule 10 of CPC came to the conclusion that where respondent is necessary for complete and final adjudication of dispute, though no relief is sought against him, yet he is proper party to the matter.

23. In the ultimate analysis, the Court is required to see whether person, who claims to be impleaded, has direct interest in the subject matter of the dispute and whether his/her presence would help the Court for final and complete adjudication of dispute. The court should keep in mind that if such party is not added to the proceedings that would lead to multiplicity of proceedings.

24. In the case on hand, as extracted supra, suit is filed for permanent injunction and mandatory injunction. Plaintiffs pleaded lease agreement in favour of Nibran Nimmala by Assistant Director Mines and Geology, for a period of 20 years. In the plaint, it was further averred about 'raising and selling agreement' in between plaintiff No.3 and Nibran Nimmala. The impleaded party, in the affidavit filed in support of the petition, averred about execution of his agreement with Nibran Nimmala and further their execution of agreement, dated 28.03.2014 in

⁴ 1996 (5) SCC 379

favour of PVR Enterprises for 20 years. Defendant Nos.1 to 5 also pleaded in the written statement about interest of impleading petitioner in the suit schedule property.

25. Whether the impleading petitioner had any right or interest in the suit schedule property, in view of the averments, is also to be determined while adjudicating the dispute. Having regard to the averments on which petitioner filed seeking impleadment, it cannot be said that he has no direct interest in the subject matter. The question as to what extent he has interest will be decided in the suit. Besides, the plaintiffs do not suffer any disadvantage due to impleadment of the proposed party. In fact, impleadment of the party in the suit would indeed avoid multiplicity of proceedings. If the plaintiff succeeds in convincing the Court for grant of decree of injunction in the presence of proposed parties, such decree would binds implead petitioner and other defendants.

26. Trial Court considered all these aspects and passed a reasoned order and allowed the application. On careful analysis of facts and circumstances of the case, this Court is of the opinion that since trial Court exercised jurisdiction vested with it and passed a reasoned order, interference of this Court by exercising power under Article 227 of the Constitution of India,

is not called for. There are no merits in the revision and revision is liable to be dismissed.

Accordingly, Civil Revision Petition is dismissed. No costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

Date : 28.04.2023
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SUBBA REDDY SATTI, J

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