
(2006) 06 AP CK 0081

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 604 of 2005

D. Sreenivasulu Reddy and Others

APPELLANT

Vs

Vakati Bhaskar Reddy and Others

RESPONDENT

Date of Decision : 21-06-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)
Constitution of India, 1950 — Article 227

Citation : (2006) 06 AP CK 0081

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : P. Krishna Reddy, for the Appellant; K. Narsi Reddy, representing P. Ganga Rami Reddy, for the Respondents 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The respondents 1 to 4 herein filed a suit being O.S. No. 61 of 2002 for mandatory injunction on the file of the Court of the Junior Civil Judge, Sullurpet, Nellore District. The respondents 5 to 10 were arrayed as defendants. They sought for a direction to the defendants to provide pipe culverts across the road to draw water from Kuchiwada irrigation tank. The petitioners herein, who allegedly owned lands on the northern side of the road, filed application being I.A. No. 403 of 2004 under Order I Rule 10(2) of Code of Civil Procedure, 1908 (CPC) to get implead in the suit as necessary and proper parties. The application was dismissed on 20.1.2005. Aggrieved by the same, the present civil revision petition is filed under Article 227 of Constitution of India. Learned Counsel for the petitioners raised two grounds. First, she would urge that the impugned order cannot be sustained, as no proper reasons are recorded by the trial Judge. Secondly, she would urge that when Order I Rule 10(2) CPC enables the Court to implead necessary and proper parties at any stage of the suit, the trial Judge committed an error in dismissing the application on the ground that it is belated. Per contra, learned Counsel for the respondents submits that the petitioners have already filed W.P. No. 26316 of 2000, which is pending, and if the petitioners

succeed therein in preventing the officials of the irrigation department from constructing pipe culverts, their application before the lower Court is not necessary.

2. The case of the petitioners before the lower Court as disclosed in their affidavit in I.A. No. 403 of 2004 is this. They own lands on the northern side of the road and the respondents 1 to 4 (plaintiffs) own lands on the southern side of the road who already have a drainage channel to let off floodwater into Swarnamukhi River. They also allege that the ryots of Kuchiwada approached the authorities not to provide any pipe culverts across the road, as the lands will get submerged. Considering this, the authorities came took decision against providing pipe culverts across the road. They allege that if the suit is decreed they would be directly affected and, therefore, they are proper and necessary parties to the suit. The plaintiffs did not file any counter affidavit opposing the application. The trial Court dismissed the petitioners' application observing as under.

3. Perused. Admittedly the petition was filed at a belated stage that too when the suit is at the fag end of trial for evidence of D6. All these years the petitioners kept quiet without making any effort to come on record. As such the petition is smack and lack of bona fides as such liable for dismissal. Hence the petition is dismissed

4. As seen from the above, the only reason given for rejecting the application of the petitioners is that the petitioners approached at belated stage to get impleaded in the matter. This is certainly an error apparent on the face of record. Subrule (2) of Rule 10 of Order I of CPC reads as under.

5. 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.

6. Subrule (2) enables the Court to strike out name of any party improperly joined or to add any person as a party, who ought to have been joined as plaintiff or defendant. Thus the rule enables the trial Court to remove the defect of inadequate or improper joining of parties. Its object is the final determination of all the issues and controversies that arise in the suit which can only be possible by the presence of all the parties who are likely to be affected by adjudication of the issues by the Court. For this reason, the Indian Parliament enacted the provision in such a manner that the Court may "at any stage of the proceedings" strike out or add a party to the suit. The phrase "at any stage of the suit" has fallen for consideration on number occasions before various High Courts and the

Supreme Court. The High Court of Allahabad in *Capt. S.V. Daniels Vs. Gregory Warden Friendly Trust*, *Bajirao Domaji Shreerang and Others Vs. Kashirao Ajabrao Deshmukh*, *Mahabir Prosad Lohia Vs. Karam Chand Thapar and Bros. Ltd.*, *Gurmauj Saran Baluja Vs. Mrs. Joyce C. Salim and Others*, and *Jhampuri Bewa Vs. The State of Orissa and Others*, have taken a view that Sub-rule (2) of Rule 10 of Order I of CPC enables the Court to strike out or add parties at any stage of the proceedings and as long as the suit is pending, powers available to the Court. In *Razia Begum v Anwar Begum* AIR 1958 AP 195, this Court rules that, "Order I Rule 10 allows the addition of a party at any stage of the suit and that there is no limitation on the power of the Court to add parties even before the issues are framed". In *S.A. Khan v Special Dy. Collector* AIR 1973 AP 298 a Division Bench of this Court relying on the decision of the Madras High Court in *Lingammal v China Venkatammal* ILR (1883) 6 Mad 227 laid down as under.

7. The scope and application of Order I Rule 10, CPC is very well settled. The very intendment and purpose of Order I, Rule 10(2), CPC is to add parties, necessary or proper, to enable the Court to effectually and completely adjudicate all the questions that are involved in a case. The use of the words "at any stage of the proceedings" in Sub-rule (2) of Rule 10 in Order I manifests that the power vested in the Court under that provision can be exercised only when the proceedings before it are alive and still pending. In other words, the application of Order I, Rule 10(2) should be confined only to cases where any proceedings are pending before the Court. The very purpose and object of this provision being to make any party a defendant or respondent, or plaintiff or appellant in a proceeding, in order to enable the Court to make an effective and complete adjudication of the questions involved in the case, when once the adjudication itself of all the disputes in the case is over, this provision cannot be made use of by any party.

8. In *P. Rojamani v. M.R.O.* 1997(5) ALT 773, this Court again reiterated the settled position as under.

Order I Rule 10(1) of the CPC provides that where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may, at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just. Likewise, Sub-rule (2) of Rule 10 of Order I provides for striking down unnecessary parties to the suit. What all required is that the Court shall satisfy itself, that in order to determine the real matter in dispute, a person shall be interested party in the matter for resolving the dispute and permit such person to be impleaded as one of the parties to the dispute. This provision enables an interested person to get himself/herself impleaded in a pending proceedings at any stage of the proceedings before the Court where the dispute is pending for adjudication.

9. In a recent judgment reported as Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, the Supreme Court of India considering the scope of Rule 10 of Order I of CPC and laid down as under.

The object of Order I Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the court at any stage of the proceedings. Under this rule, a person may be added as a party to a suit in the following two cases:

(1) when he ought to have been joined as plaintiff or defendant, and is not joined so, or

(2) when, without his presence, the questions in the suit cannot be completely decided.

10. The power of a court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will necessarily include an enforceable legal right.

11. It may therefore be taken as well settled that as long as the suit is pending either at the trial stage or at the appellate stage, Order I Rule 10(2) of CPC enables the Court to implead any party who in its opinion is a necessary party, to adjudicate effectually and completely upon all questions involved in the suit. The question of limitation does not arise. Indeed in appropriate cases a party can be impleaded even at the appellate stage, but who is necessary party and who is proper party depends upon each case and it is left to the discretion of the Court to decide such questions having regard to the pleadings and the nature of interest claimed by the person, who wants to come on record. However, it may also be noted that when a party to the proceedings dies, the legal representatives of such party are to be brought on record to represent the estate of the deceased party. In such a situation, different provisions would apply and the question of limitation can certainly be a contentious issue.

12. In the case on hand the respondents 1 to 4/plaintiffs allegedly filed the suit in a representative capacity. The bone of contention is whether the irrigation department should construct pipe culvert from Kuchiwada irrigation tank on the northern side of the road for irrigating the lands of the plaintiffs on the southern side of the road. It stands to reason that all the ryots whose lands are situated on the southern side or northern side of the road are certainly interested in such work. Therefore this Court is convinced that the trial Court has committed a grave error apparent on the face of record requiring correction.

13. Accordingly, the civil revision petition is allowed. I.A. No. 403 of 2004, therefore, stands allowed and the petitioners herein be impleaded as defendants 7 to 10 in O.S. No. 61 of 2002 on the file of the Court of Junior Civil Judge, Sullurpet, Nellore District, before proceeding further in the trial in accordance

with law. There shall be no order as to costs.