
(2003) 12 AP CK 0085
In the Andhra Pradesh High Court
Case No : CRP No. 3421 of 2003

D.N. Elumalai and Others

APPELLANT

Vs

M. Chinnaiah and Others

RESPONDENT

Date of Decision : 09-12-2003

Acts Referred:

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

Citation : AIR 2004 AP 230 : (2004) 1 ALD 873

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : V. Jagapathi, for the Appellant; M.P. Chandramouli, for Respondent Nos. 1 to 30 and Government Pleader for Land Ceiling for Respondent Nos. 31 to 33, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri Jagapathi, learned Counsel representing the revision petitioners, the learned Government Pleader for Land Ceiling, representing R31 to R33 and Sri M.P. Chandra Mouli, learned Counsel representing R10 to R30.

2. The civil revision petition is preferred by the revision petitioners-plaintiffs as against an order dated 30-6-2003, made in I.A. No. 48 of 2003 in O.S.25 of 2002, on the file of the Senior Civil Judge, Puttur. The petitioners-plaintiffs filed the suit praying for the relief of permanent injunction restraining the defendants, their men, agents and others representing them personally and in a representative capacity on behalf of the entire general public of Kalyanapuram Village, Kalyanapuram S.T. Colony and Aretammagutta from in any way using the plaint schedule property as burial ground by interfering with the plaintiffs peaceful possession and enjoyment of the plaint schedule property. It is also brought to my notice that originally the suit was instituted as against Defendants 1 to 9 only and subsequent thereto since the other parties-Defendants 10 to 30 entertained a doubt that the matter may not be represented properly and

inasmuch as there is likelihood of collusion, they moved an application I.A. No. 395 of 2002, and the said defendants were added as parties by order dated 26-9-2002. The revision petitioners-petitioners-plaintiffs moved the application in I.A.48 of 2003 in O.S.25 of 2002 on the file of Senior Civil Judge, Puttur under Order 1 Rule 10, read with Section 151 of the CPC praying the Court to permit the petitioners to bring on record as proposed parties-Defendants 31 to 33 viz., the Government of Andhra Pradesh represented by District Collector, Chittoor, the Revenue Divisional Officer, Chittoor and the Mandal Revenue Officer, Puttur on the ground that they are necessary parties to be on record for the purpose of proper and effective adjudication of the matters in controversy. The learned Senior Civil Judge, Puttur by order dated 30-6-2003 had dismissed the said application and aggrieved by the same, the present civil revision petition is preferred.

3. Sri Jagapathi, the learned Counsel representing the petitioners made the following submissions:

4. The learned Counsel had taken this Court through the averments made in the plaint, the relief prayed for and also the cause of action which had been specified in para 12 of the Plaint. The learned Counsel also maintained that this action is definitely a mala fide action for extraneous reasons, and for political considerations, though temporary injunction was made absolute which became final as against the private parties, the proposed parties are interfering with the possession in an indirect way and hence, the temporary injunction already granted by the Court is not being effectively implemented and to the limited extent atleast, these parties are to be brought on record. The learned Counsel also would maintain that no doubt certain allegations relating to the proposed acquisition also had been made which may not be germane to the present litigation. The Counsel also had clarified that the Government is at liberty to proceed with the land acquisition proceedings in accordance with the provisions of the Land Acquisition Act. But, however, till then resorting to these methods would be definitely impermissible in law and in this view of the matter these parties are necessary parties. The Counsel also submitted that at any rate by impleading these parties, no prejudice would be caused to the contesting respondents.

5. On the other hand, the learned Government Pleader for Land Ceiling representing the proposed parties had drawn the attention of this Court to the counter filed by the proposed parties-Government before the learned Senior Civil Judge, Puttur. The learned Counsel contended that this is a suit for permanent injunction simplicitor and there is no cause of action as against the Government. In fact, the Government is never interested in interfering with the possession of the petitioners-plaintiffs. The learned Counsel also contended that the very fact that there is a proposal to acquire the property would definitely go to show that there is no dispute or controversy relating to the title of the property. In this view of the matter, since the cause of action is totally different, there is no point

in allowing the proposed parties to come on record and hence, the learned Senior Civil Judge, Puttur is well justified in dismissing the said application.

6. Sri M.P. Chandra Mouli, the learned Counsel representing the contesting parties-respondents 10 to 30 virtually had supported the stand taken by the Government and also while elaborating his submissions contended that from the very nature of the suit instituted, it is clear that keeping in view the public interest there is a proposal to acquire the land for the purpose of burial ground and nothing more. The learned Counsel also would maintain that this is a peculiar case where an application had been thought of by the petitioners-plaintiffs to bring on record the revenue authorities with the sole object of defeating the proposed acquisition. The learned Counsel would also maintain that in fact such suit cannot be maintained in view of the specific provisions of the Land Acquisition Act and such a suit definitely would not be protected by Section 9 of the CPC (for short "C.P.C"). Apart from this aspect of the matter, the learned Counsel also pointed out that a clear finding had been recorded by the learned Senior Civil Judge, Puttur that there is no cause of action at all as against the proposed parties and inasmuch as it is a suit for injunction simplicitor, there is no point in bringing these parties on record especially when specific stand had been taken by the Government that they are not disputing the title of the petitioners-plaintiffs and on the other hand there is likelihood of acquisition of property keeping the public interest in view. The learned Counsel also had advanced yet another contention that even as per the averments made in the affidavit filed in support of the application to implead the parties, notice was issued on 31-1-2003 and the application was moved on 25-2-2003. Even in this view of the matter, the formalities relating to Section 80 of C.P.C. had also not been complied with. The Counsel concluded that in any view of the matter inasmuch as the cause of action itself is totally different, there is no point in allowing these parties to come on record.

7. Heard the learned Counsel and perused the material available on record.

8. It is made clear at the outset that this Court is not inclined to go into the merits and demerits of several contentions raised by the respective parties, which may have to be decided ultimately at the time of final disposal of the suit. I.A. No. 48 of 2003 in O.S.25 of 2002 on the file of Senior Civil Judge, Puttur is filed to implead Defendants 31 to 33 as proposed parties. It is a suit instituted by the petitioners/plaintiffs as against Defendants 1 to 30 in their representative capacity as revealed from the records. However, there is some controversy relating to this aspect. It is no doubt brought to my notice that originally the suit was instituted as against Defendants 1 to 9 only in their representative capacity and subsequent thereto the other parties were brought on record.

9. In a decisioan in The Chairman, Tamil Nadu Housing Board, Madras Vs. T.N. Ganapathy, , the Apex Court, while dealing with the nature of the representative suit, held as under:

The provisions of Order 1 Rule 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provisions is that the persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievance which they seek to get redressed. The object for which Order 1 Rule 8 is enacted is really to facilitate the decision of questions, in which a large number of persons are interested, without recourse to the ordinary procedure. The provision must, therefore, receive an interpretation which will subserve the object for its enactment. There are no words in the Rule to limit its scope to any particular category of suits or to exclude a suit in regard to a claim for money or for injunction.

10. In a decision in *Nandaramdas v. Zulika Bibi*, AIR 1943 Mad. 531, while explaining the object of the provisions of Order 1 Rule 8 of C.P.C., a Division Bench of Madras High Court held as under:

The provisions of Order 1, Rule 8 are designed to save time and expense and to ensure a convenient trial of questions in which a large body of persons are interested, while avoiding at the same time a multiplicity of suits and consequent harassment to parties. Much of the benefit intended by the rule and the simplicity of procedure secured by it would be lost by construing it to mean that the entire body of persons interested in the litigation are or should be deemed to be actually parties to it.

11. In a decision in *Kodia Goundar and Another Vs. Velandi Goundar and Others*, , while dealing with the aspect held as under:

Order 1 Rule 8, Sub-rule (2) provides that "any person on whose behalf or for whose benefit a suit is instituted or defended under Sub-rule (1) may apply to the Court to be made a party to such suit"". A "party" to such a suit is therefore one who is impleaded as a party or one who on an application under Order 1 Rule 8, Sub-rule (2) is brought on record, that is, one who is "eo nomine" made a party. The others who are not brought on record can be only deemed to be parties and will not be parties as such. Section 47, Civil Procedure Code, cannot therefore be a bar to a fresh suit against such other persons.

12. Reliance also was placed on a decision in *The Saraswathi Nagar Residents Welfare Society Vs. Arjundas and Municipal Council*, , in relation to the nature of the representative suit and the ambit thereof.

13. In the affidavit filed in support of the application, the 1st revision petitioner swearing to the affidavit had stated that they have issued notice to the District Collector, Revenue Divisional Officer, Chittoor and Mandal Revenue Officer, Puttur on 31-1-2003 and the copy of the notice was also filed along with the application, It was also further stated that the defendants with the aid of political leaders are making attempts to influence the Government through the District Collector and other revenue officials to acquire the schedule property with an intention to cause loss and hardship on the pretext of requiring the property for a

burial ground. It is further stated that there is already burial ground and other places for the said purpose and if any part of the suit property is acquired, the petitioners would be put to serious loss and hardship. It was further stated that the plaint schedule property is converted into house sites and there is every possibility of purchasers not purchasing the said property if it is used for burial ground. In such circumstances, an application was moved to implead the said parties on the ground that they are necessary parties to the suit. Counter was filed by the Government denying that with the aid of political leaders they are attempting to acquire the schedule property with an intention to cause loss and hardship to the petitioners for burial ground purpose. The fact that the petitioners had issued notice to the Government not to initiate acquisition proceedings pertaining to the suit property was admitted. But, however, it was stated that inasmuch as this is a suit for mere permanent injunction and inasmuch as there is no cause of action as against the Government, these parties need not be impleaded as defendants to the said suit. Respondent No. 23 also had filed a counter in detail which was adopted by the other contesting respondents by filing a memo of adoption. The allegations in detail had been narrated taking a stand that the 1st petitioner is the Sarpanch of Puttur Town and had managed the revenue officials and had created the documents in their favour. Ultimately these parties also had taken a stand that the Government is neither a necessary nor a proper party to be impleaded to the present suit. I had carefully gone through the impugned order questioned in the present revision petition. The learned Senior Civil Judge, Puttur dismissed the application mainly on the ground that this is a different cause of action and the proposed parties are not necessary parties. There is no controversy between the parties relating to the title to the property. A careful reading of the averments made in the plaint in general and also Para 12 relating to the cause of action, in particular it is clear that the petitioners are more aggrieved of the proposed action of the Government to acquire some land for the purpose of burial ground. It is needless to say that the nature of litigation relating to an acquisition which would be initiated by the Government would be totally different and it is no way concerned with the present litigation filed by the petitioners-plaintiffs as against the defendants suing them in their representative capacity. It is also pertinent to note that the villagers against whom the suit was instituted in a representative capacity would not stand on the same footing, since the revenue authorities definitely stand on a different footing and even as per the averments made, it is clear that the petitioners are more aggrieved of the proposed apprehended acquisition by the Government. It is needless to say that just on the ground of apprehension or on the ground that no prejudice would be caused if the parties are impleaded, an application to implead the parties cannot be granted.

14. The Apex Court in a decision in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, , held as under:

It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a

desirable consequence of the rule rather than its main objective. 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. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck and Sons Ltd* (1956) 1 All ER 273: (1956) 1 QB 357, wherein after quoting the observations of Wynn-Parry, J., in *Dollfus Miegiet Compagnie S.A. v. Bank of England* (1950) 2 All ER 605, that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Deblin, J. has stated:

"The test is "May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights."

15. In the present case the very cause of action on the basis of which the application is thought of is apprehended action of the Government to initiate land acquisition proceedings. It is needless to say that the remedy, if any, to question the said proceedings would be elsewhere definitely not before the Civil Court. In such a case, when specific stand was taken by the Government that the petitioners are the owners of the property and it may be that in public interest they may acquire the property, there is no point in impleading such parties as parties to this litigation, since the nature of lis-controversy in relation thereto is totally different and cause of action is also totally different. Hence, I am well satisfied that the learned Senior Civil Judge, Puttur had not committed any illegality warranting interference under Article 227 of the Constitution of India.

16. In the light of the same, the CRP shall stand dismissed being devoid of merits. No costs.