

(2005) 08 AP CK 0109
In the Andhra Pradesh High Court
Case No : CRP No. 2810 of 2005

Murahadi Syyadisyed Sha Syed Mohiddinsha Oulya APPELLANT
Rahamtulla Alyhi Darga Committee

Vs

Gutam Shajad @ Shahjahan and Others RESPONDENT

Date of Decision : 17-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2)

Citation : (2006) 1 ALD 393

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : P. Vinod Kumar, for the Appellant; P. Ganga Rami Reddy, for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—In a suit filed by the revision petitioner against respondents 1 and 2, respondents 3 to 5 filed a petition under Order 1 Rule 10 of the CPC seeking leave of the Court to implead them as defendants 3 to 5 in the suit. In spite of opposition of the revision petitioner, the trial Court, by the order under revision, allowed the said petition and permitted respondents 3 to 5 to come on record as defendants 3 to 5. Hence this revision by the plaintiff in the suit.

2. The main contention of the learned Counsel for the revision petitioner is that since the suit for injunction is filed against respondents 1 and 2 only, respondents 3 to 5, who seek to come on record as defendants are not either necessary nor proper parties to the suit and so the trial Court was in error in allowing the petition. He placed strong reliance on A. Peter Son Israel v. V. Jayaprada and Ors. 2003 (1) An.W.R. 403 : 2003 (6) ALD 102, in support of his contention that the trial Court erred in allowing the petition filed by respondents 3 to 5.

3. The contention of the learned Counsel for respondents 3 to 5 is that the

"Darga" in respect of which the suit is filed, is a public place of worship and that some persons mischievously got registered the petitioner society and filed the suit against two aged persons and that respondents 3 to 5 who have been worshipping in the said Darga from a long time want to come on record to establish that the Darga in respect of which the suit is filed is a public place of worship and is not a private Darga and so, respondents 3 to 5 are proper if not necessary parties to the suit, as their right to worship in the Darga may be in a jeopardy if an injunction were to be granted against respondents 1 and 2 who due to their old age may not be able to defend the suit properly and so the order under revision needs no interference.

4. Revision petitioner filed the suit against respondents 1 and 2 seeking an injunction restraining them and their men, relatives etc., from interfering with its peaceful possession and enjoyment of plaint schedule Darga at Ranganayakulapet, Nellore. The allegations in the plaint show that the plaintiff (revision petitioner) society came into existence i.e. registered on 19-6-2002. The suit was filed on 26-6-2002 i.e., about one week after registration of the revision petitioner society. The averments in the plaint show that even though the Darga was in existence from more than 250 years prior to filing of the suit, a committee with the family members of one family was formed and registered in 1975 and that the revision petitioner society was formed with eight members i.e. four members from among the family and four from outside the family and that respondents 1 and 2, who have no right over the Darga are trying to interfere with their possession and so they "their men and relatives etc." may be restrained from interfering with its peaceful possession and enjoyment of the Darga.

5. Alleging that they have been worshipping in the Darga from their childhood and that it is not a private Darga but is a public place of worship and that respondents 1 and 2, due to their old age, cannot resist the suit properly, respondents 3 to 5 filed the petition to add them as defendants 3 to 5 in the suit contending that their presence would help the Court in resolving the disputes in the suit properly.

6. Since the issue to be decided in the suit is whether the Darga, in respect of which the suit is filed, is a public or private darga and since the injunction sought against respondents 1 and 2 is to restrain them and "their men, relatives etc." from interfering with the peaceful possession and enjoyment of the revision petitioner over the said Darga and since respondents 3 to 5 claim that they have been worshipping in the said Darga from their childhood and that it is a public place of worship, in my considered opinion, the trial Court did not commit an error in allowing the petition of respondents 3 to 5 to come on record as defendants 3 to 5, in spite of the fact that revision petitioner (plaintiff), as Dominus Litus, can choose the defendants and cannot be compelled to fight litigation against persons with whom he does not wish to fight, because the Court under Rule 10(2) of Order 1 C.P.C. has ample power to direct impleadment of a

party, if and when it feels that their presence is necessary for determination of the real matter in dispute. As stated earlier the claim in the suit relates, to the nature of the Darga i.e. whether it is a private or a public place of worship. So, persons trying to establish that it is a public place of worship, disputing the contention of the plaintiff that it is a private place of worship, can be brought on record to determine the question relating to the nature of the Darga i.e., whether it is a private or a public place of worship.

7. The facts in A. Peter Son Israel case (supra), relied on by the learned Counsel for revision petitioner are different from the facts of this case. In that case, in a suit for partition, which was pending from 19 years, petition to come on record was filed by a party, claiming to be a shareholder, after the suit was posted for arguments. In the facts and circumstances of that case, that petition was dismissed by the trial Court holding that that petition was filed only with a view to drag on the proceedings and that decision of the trial Court was upheld in the revision. So the said decision is of no help in deciding this petition.

8. In view thereof, I find no ground to interfere in the order under revision.

9. Hence, the revision petition is dismissed with costs.