N.Anantha Reddy vs Anshu Kathuria & Ors on 2 December, 2013

Equivalent citations: 2014 AIR SCW 1058, 2013 (15) SCC 534, 2014 (2) AIR BOM R 527, (2014) 1 ORISSA LR 642, (2013) 14 SCALE 585, (2014) 1 WLC(SC)CVL 170, (2014) 1 ALL WC 775, (2014) 1 ORISSA LR 364, (2014) 123 REVDEC 344, (2014) 1 SIM LC 367, (2014) 117 CUT LT 954, (2014) 5 ANDHLD 141, (2014) 1 CLR 191 (SC), AIR 2014 SC (CIV) 735, (2014) 1 ALL RENTCAS 104, (2014) 1 MAD LW 116, 2014 (105) ALR SOC 3 (SC), 2014 (137) AIC (SOC) 9 (SC), 2014 (3) KCCR SN 168 (SC)

Author: R.M. Lodha

Bench: R.M. Lodha, Shiva Kirti Singh

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10779-10780 OF 2013
(arising out of S.L.P. (Civil) Nos. 13098-13099/2012)

N.ANANTHA REDDY Petitioner(s)

VERSUS

ANSHU KATHURIA & ORS. Respondent(s)

J U D G M E N T

R.M. Lodha, J. :

Leave granted.

2. The respondent No. 1 herein filed a suit for declaration and perpetual injunction against the Greater Hyderabad Municipal Corporation (respondent No. 2 herein) and the Assistant City Planner (respondent No. 3 herein). In the suit, the respondent No. 1 (plaintiff) prayed that notice dated 23.12.2009 issued under Section 452 of the Greater Hyderabad Municipal Corporation Act, 1955 be declared as illegal, void and not legally tenable. It was further prayed that the defendants (respondent Nos. 2 and 3 herein) have no right to interfere with the construction being put up by the plaintiff. The plaintiff also prayed for perpetual injunction restraining the two defendants, their officers/officials/servants from interfering with the suit scheduled property and by directing them not to demolish or cause any damage to the suit schedule property.

3. The appellant, who is plaintiff's neighbour, made applications for his impleadment in the suit and the application for interim relief. The applicant did not claim any right, title or interest in the suit schedule property but claimed that there is infringement of his right of light and air if the construction by the plaintiff is commenced and completed and, therefore, he is a proper party in the matter.

4. The trial court heard the plaintiff and the proposed party and by order dated 20.07.2010 allowed the said applications. The trial court, while allowing the said applications made by the present appellant, observed as follows :-

> "The claim of petitioner is that, though he is not claiming right over the property of plaintiff, his grievance is only about the construction being made by the plaintiff because it is effecting his right for light and air. The objection of the plaintiff is that because he is challenging the notice issued by the Municipality in respect of the construction, since the petitioner is not having any right over the suit property, he is not necessary party. I have considered other submissions also made and the citations relied by the either side. Under Order 1 Rule 10 a party would become necessary party or proper party if he is having only over the subject matter to be adjudication under the suit and then can be impleaded. In this case though the third party petitioner is not claiming any title over the property. Even if the pleadings of the plaintiff have to be considered, the title of the plaintiff over the suit property is not in dispute. What is in dispute among the plaintiff and the defendants already on record is about the construction being made by the plaintiff. Because the defendants already on record have said to have issued notice to the plaintiff stating that the construction is illegal. Challenging the said notice the present suit is filed. The present suit is filed after withdrawing the previous suit for injunction filed against Municipality said to be filed before issuance of the notice under Section 452 of Municipal Act. In that case the petitioner had already been impleaded on his application as he was expressing the grievance of the infringement of his right for light and air in view of the construction of the plaintiff. Having considered the decisions relied by either party to

> my considered opinion, the decision relied by the third party petitioner is that similar facts as of the present case on hand wherein the Court held that though the said third party is not a necessary party, but he is proper party in respect of his grievance to the suit proceedings there in and ordered his impleading in the suit. The facts in the decisions relied by the Learned Counsel for plaintiff are not similar to the facts on hand. Therefore by following the decisions relied by Learned Counsel for third party petitioner in 2005 (6) ALD NOC 223 (Between : Neelam Ajit Vs. S. Suresh Reddy and another), I hold that the third party petitioner can be impleaded in the suit and as well as the application for injunction as Defendant No. 3 and Respondent No. 3 respectively."

5. The above order of the trial court was challenged by the respondent No. 1 (plaintiff) before the High Court. The High Court, after hearing the parties, by its order dated 08.06.2011 dismissed the Civil Revision Petitions filed by the respondent No. 1 herein by observing as follows :

> "4. It is to be noted that the vendor of the plaintiff and the vendor of the first respondent herein are neighbours, having purchased common property and dividing the same into two portions and one portion comprising an extent of 790 sq. yards was purchased by the first respondent and the other portion comprising of 580 sq. yards was purchased by the vendor of the plaintiff. It is further stated that both the parties made constructions in their respective plots and allegations and counter allegations were made against one another alleging deviations from the sanctioned plan and violation of the building rules.
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> 5. It is not disputed that previously in the similar circumstances, this Court by common order dated 25.10.2010 in CRP Nos. 2870 and 3882 of 2010, dismissed the said revision petitions and confirmed the orders passed by the trial court, permitting the first respondent to come on record as defendant in the said suit OS No. 960 of 2010 and copy of the said order is placed on record. The issue raised in the present revision petitions virtually covered by the said earlier order dated 25.10.2010 in CRP Nos. 2870 and 3882 of 2010 and adopting the reasons mentioned therein, the present revision petitions are also dismissed."

6. The respondent No. 1 then made applications for review of the order of the High Court dated 08.06.2011.

7. The High Court by the impugned order recalled its earlier order dated 08.06.2011 and directed the trial court to consider the applications for impleadment afresh.

8. While recalling the order dated 08.06.2011, the High Court observed thus :

> "11. During enquiry of the review applications, the petitioner filed several documents including the sale deeds and the sanctioned plan and also photographs in support of his contention that while making the construction he has left the space towards set

backs as required under the rules and the construction is in accordance with the sanctioned plan and the question of petitioner's construction causing obstruction to the free flow of light and air to the first respondent's six storied building does not arise. The said documents were not filed before the trial Court and hence, there was no occasion for the trial Court to refer to the same in the impugned order. The trial court ordered impleadment of the first respondent herein mainly on the ground that in the earlier suit, which was filed by the plaintiff against the municipality for mere injunction, the first respondent was impleaded on his application. It is stated that the earlier suit was withdrawn and subsequently, plaintiff filed the present suit for declaration that the notice issued under section 452 of the Municipal Corporation Act is illegal. Admittedly, no relief is sought in the present suit against the first respondent. The question as to whether or not the first respondent herein would be a proper and necessary party having regard to the nature of the relief prayed for in the present suit is a matter to be considered independently, irrespective of impleadment of the first respondent herein in the earlier suit, which was filed only for injunction. The trial court has to consider the question as to whether or not the first respondent is a proper and necessary party to the present suit in the light of the documents now sought to be filed by the petitioner. Order 1 Rule 10 CPC contemplates the impleadment of proper and necessary party, whose presence before the Court is necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. The question as to whether or not the first respondent is a proper and necessary party, who can be impleaded in terms of Order 1 Rule 10 CPC has to be considered keeping in view the relief prayed for in the present suit and the dispute that is required to be settled pertaining to the impugned notice issued by the Municipal Corporation. The impugned order passed by the trial court permitted impleadment of the first respondent on the premise that he was previously impleaded in another suit, which was filed for injunction is therefore held unsustainable and the same is accordingly set aside."

9. A careful look at the impugned order would show that the High Court had a fresh look at the question whether the appellant could be impleaded in the suit filed by the respondent No. 1 and, in the light of the view which it took, it recalled its earlier order dated 08.06.2011. The course followed by the High Court is clearly flawed. The High Court exceeded its review jurisdiction by reconsidering the merits of the order dated 08.06.2011. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits.

10. The order passed by the High Court on 08.06.2011, on a careful reading, shows that the High Court instead of repeating the reasons which it had given in other revision petitions being CRP Nos. 2870 and 3882 of 2010, while it was fully conscious of the fact that those civil revisions arose from a different suit followed its order in CRP Nos. 2870 and 3882 of 2010. The High Court was fully conscious of the factual and legal position while it was considering the civil revision petitions filed

by the present respondent No. 1. In the order upon which reliance was placed by the High Court while dismissing the civil revision petitions, the High Court had noted thus :-

> "No doubt, no relief is sought for against the proposed party in the suit. The object of Order 1 Rule 10(2) C.P.C. to implead a third party to the suit is that the dispute in the suit would be resolved in the presence of all, in order to avoid multiplicity of proceedings. There must be some semblance of right to the proposed party. If the petitioner violates the building plan without leaving set backs, cellar etc., then certainly it would cause inconvenience to the neighbours. The proposed party is one of the neighbours. Therefore, to safeguard his interest, in view of the fact that he has got some semblance of right, though no relief is claimed against him, he would be necessary and proper party to come on record. That is why the trial Court rightly impleaded him as a party to the suit and I.A. and there are no grounds to interfere with the same. The revision is devoid of merits and is liable to be dismissed."

11 . In our view, the High Court was not at all justified to review the order dated 08.06.2011.

12. The impugned order dated 13.12.2011 is, accordingly, set aside. Appeals are allowed as above. No costs.

.....J.
(R.M. LODHA)

NEW DELHI; .....J.
DECEMBER 2, 2013 (SHIVA KIRTI SINGH)