

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.1041 of 2020

Between:

B. Vijaya Kumar S/o. Pentaiah,
Aged 62 years, Pensioner,
R/o.H.No.10-3-2/18, Sripuri Colony,
East Marredpally, Secunderabad-26.

...Petitioner

And

1. Dr. Sreedhar Pulipati S/o.Dr. P. Chandra Sekhar,
Aged 46 years, Occ: Doctor, R/o.H.No.10-3-54/32/B,
2nd Floor, Radhanand Nivas, Street No.4,
East Marredpally, Secunderabad-26 and others.

...Respondents

Date of Judgment : 26.02.2021

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : **Yes**
3. Whether His Lordships wishes to see the fair copy
Of the Judgment? : Yes/No

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**Civil Revision Petition No.1041 of 2020**

% 26.02.2021

Between:

B. Vijaya Kumar S/o. Pentaiah,
Aged 62 years, Pensioner,
R/o.H.No.10-3-2/18, Sripuri Colony,
East Marredpally, Secunderabad-26.

...Petitioner

And

\$ 1. Dr. Sreedhar Pulipati S/o.Dr. P. Chandra Sekhar,
Aged 46 years, Occ: Doctor, R/o.H.No.10-3-54/32/B,
2nd Floor, Radhanand Nivas, Street No.4,
East Marredpally, Secunderabad-26 and others.

...Respondents

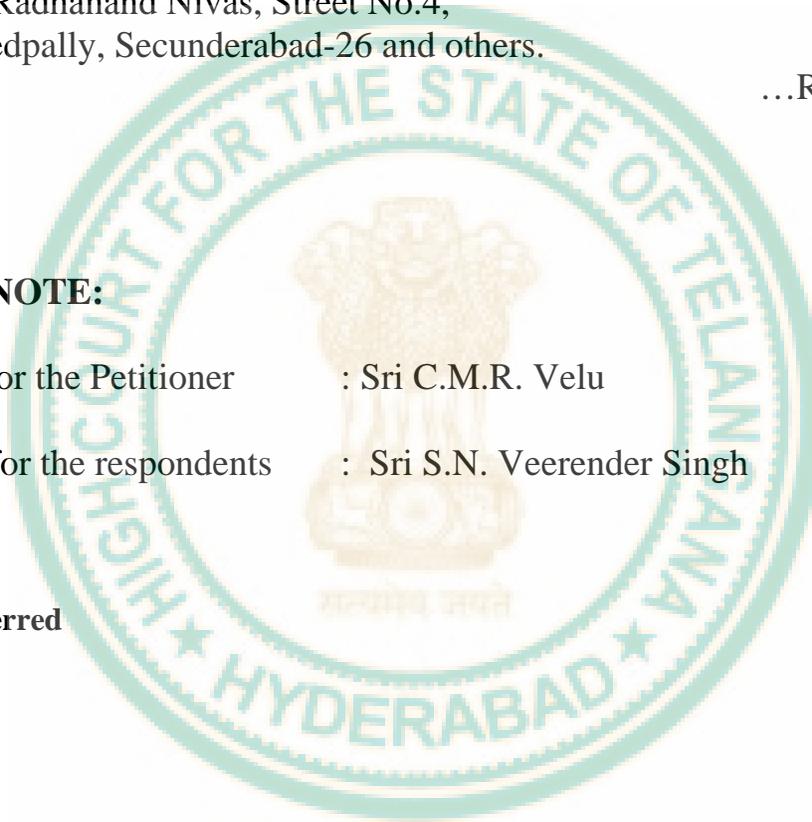
< **GIST:**> **HEAD NOTE:**

!Counsel for the Petitioner : Sri C.M.R. Velu

^Counsel for the respondents : Sri S.N. Veerender Singh

? **Cases referred**

Nil



HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**CIVIL REVISION PETITION No.1041 OF 2020****ORDER:**

This Revision is filed challenging the order dated 21.08.2020 in I.A. No.861 of 2019 in O.S No.569 of 2019 passed by the I-Junior Civil Judge, City Civil Courts, Secunderabad.

2. The petitioner herein is a third party to the suit. The respondents No.1 and 2 had filed the said suit against the Greater Hyderabad Municipal Corporation (GHMC) - 3rd respondent, for permanent injunction restraining the latter from visiting or interfering with the peaceful possession and enjoyment of the suit schedule property.

3. It is the contention of the respondents No.1 and 2 that they had started construction in December 2016, after obtaining a sanctioned plan on 10.11.2016 from the 3rd respondent and an occupancy certificate was also issued to them on 17.08.2019. It is contended that when the respondents No.1 and 2 were making interior work and designing in the suit schedule property without any interference, the officials of the GHMC visited the site and stopped the work and are trying to interfere with the peaceful possession and enjoyment of the respondents No.1 and 2 over the suit schedule property.

4. The petitioner herein filed I.A .No.861 of 2019 under Order I, Rule – 10 CPC to implead him in the said suit, contending that he is the immediate neighbor of the respondents No.1 and 2, and the respondent Nos.1 and 2, having obtained permission for G + 3 floors from the GHMC, are in fact constructing an illegal/unauthorized 4th floor as well. According to him, the

4th floor is constructed after GHMC issued the occupancy certificate to respondent Nos.1 and 2 and that there is no permission from GHMC to erect the 4th floor. He also contended that he filed WP No.21790 of 2019 before this Court challenging the inaction of the GHMC, and on 30.09.2029, this Court had disposed of the said Writ Petition directing the Corporation to take action against the illegal construction of 4th floor. He also contended that the respondents No.1 and 2 had concealed the very fact that they were making construction of the 4th floor by wrongly stating that they were doing only interior works and therefore, since he is a neighbor and his easementary rights are affected and there would also be traffic congestion in the locality, he is entitled to be impleaded as a party in the suit.

5. Counter affidavit is filed by respondents No.1 and 2 opposing the application. They contended that the petitioner is a chronic litigant, though he is a neighbour and with a personal vengeance only, he has filed this implead application to harass the respondents No.1 and 2. It is contended that the petitioner has no *locus standi* to get himself impleaded in the suit since he has no title to the subject property, which belongs to the respondents No.1 and 2. It is contended that he is neither a necessary nor a proper party. Several decisions are cited in the counter affidavit why the petitioner should not be impleaded in the suit.

6. By order dated 21.08.2020, the Court below dismissed I.A. No.861 of 2019 accepting the objections of respondents No.1 and 2. It observed that the petitioner is not a necessary or a property party for adjudication of the dispute in the main suit and the decisions cited by the petitioner are not applicable to the facts of the case. It is also held that a neighbor has no right to get impleaded in the suit since the main suit itself is having limited scope and the respondents No.1 and 2, being plaintiffs, are masters of their suit /

dominus litus and it would widen the scope of the main suit proceedings. It is observed that the petitioner can as well file an independent suit if he is otherwise affected.

7. Assailing the same, the present Revision is filed.

8. Sri C.M.R. Velu, learned counsel for the petitioner, contended that the Court below erred in dismissing the implead application of the petitioner; that the petitioner being a neighbor can always complain of violation of his easementary rights as he is the affected party and he is entitled to be impleaded in the suit. He placed reliance on the decision of the Supreme Court in **N. Anantha Reddy v. Anshu Kathuria & ors., (Civil Appeal Nos.10779-10780 of 2013)**.

9. Sri S.N. Veerender Singh, learned counsel for the respondents No.1 and 2 refuted the said contentions and relied upon the order dated 22.06.2015 in CRP Nos.1208, 1209 and 1210 of 2009 passed by me.

10. I have noted the contents of both sides.

11. The fact that the petitioner is a neighbor of respondent Nos.1 and 2 is not disputed by respondent Nos.1 and 2.

12. But, it is alleged that he is a chronic litigant and out of personal vengeance only, he has filed the implead application.

13. The question to be considered is whether the petitioner is a necessary party in the suit filed by the respondent Nos.1 and 2 against the 3rd respondent.

14. No doubt, in the order passed by me on 22.06.2015 in CRP Nos.1208, 1209 and 1210 of 2009 in somewhat similar situation, I have taken a view that in a suit of this nature, a neighbor, who is affected, need not be impleaded and he should file a separate suit, if he is so advised.

15. But, my attention at that time was not drawn to the decision of the Supreme Court in **N. Anantha Reddy**'s case (supra). In that judgment also a similar situation arose like in the instant case. The 1st respondent-plaintiff in that case had filed a suit for declaration and perpetual injunction against GHMC and its Assistant City Planner contending that the notice dated 23.12.2009 issued under Section 452 of the GHMC Act, 1955, be declared as illegal, void and not legally tenable and the Corporation officials have no right to interfere with the construction being put up by the plaintiff.

The appellant, who was plaintiff's neighbour, filed an application for impleadment and also for interim relief.

While he did not claim right, title, interest in the property, he however, claimed infringement of his right of light and air if the construction by the plaintiff is commenced and completed and that, therefore, he was a proper party in the matter.

The trial Court allowed application and the said order was also confirmed by the High Court. Thereafter, the plaintiff – 1st respondent sought review of the said order and the High Court allowed the said review petition and directed to consider the application for impleadment afresh.

The Supreme Court found fault with the High Court for doing so and observed that the High Court exceeded its review jurisdiction by considering the merits of the order dated 08.06.2011 passed by it and the scope of the review jurisdiction is very limited.

It approved the observations made in the earlier order of the High Court on 08.06.2011 wherein the High Court had observed that even if no relief is sought against the proposed party in the suit, the object of Order-I Rule 10 (2) CPC is to implead a third party to the suit if the dispute in the

suit would be resolved in the presence of all and multiplicity of proceedings will be avoided. It held that if the plaintiff violated the building plan without leaving setbacks, cellar etc., certainly it would cause inconvenience to the neighbours, and proposed party, being one of the neighbours, to safeguard his interest, as he has got some semblance of right, though no relief is claimed against him, would necessary and proper party to the suit and is entitled to be impleaded as a party in the suit.

16. Since in the instant case, the similar situation exists and since the decision of the Supreme Court is binding on me, I am of the opinion that the petitioner is a necessary party having regard to his pleas, and that he ought to be impleaded as 2nd defendant in the suit.

17. Consequently, the order passed by the Court below on 21.08.2020 in I.A No.861 of 2019 in O.S. No.569 of 2019 is set aside and the said application is allowed.

18. Accordingly, the Civil Revision Petition is allowed; order dated 21.08.2020 in I.A. No.861 of 2019 in O.S. No.569 of 2019 passed by the I-Junior Civil Judge, City Civil Courts, Secunderabad, is set aside and the said I.A. is allowed; and the petitioner herein is impleaded as 2nd defendant in the suit. The Court below shall given an opportunity to the petitioner to file written statement, frame proper issues and then proceed to decide the suit in accordance with law. No costs.

19. Pending miscellaneous petitions, if any, shall also stand closed.

M.S. RAMACHANDRA RAO, J

February 26, 2021

Note:

L.R. copy to be marked.

B/O.KTL