

(1990) 11 AHC CK 0004

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 31014 of 1990

Anurag Sharma

APPELLANT

Vs

Xth Additional District Judge and Others

RESPONDENT

Date of Decision : 20-11-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Uttar Pradesh Co-operative Societies Act, 1965 — Section 70

Citation : (1991) 1 AWC 232

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : Vishnu Sahai and B. Dayal, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Petitioner, who claims to have purchased a piece of land from the Co operative Society, has filed a suit in the trial court for a declaration that the sale deed executed in his favour is valid and for permanent injunction so as to restrain the Defendants from interfering with his possession. In the suit filed by the Petitioner some persons, who are not even members of the Cooperative society, have also been impleaded as Defendants, as according to the Petitioner, they intend to interfere with the peaceful possession of the Petitioner. During the pendency of the suit in the trial Court Respondents 7 and 8 filed application for impleadment on the ground that there is a temple on the land in dispute and the relief as claimed by the Petitioner, if granted, temple will be demolished and that will interfere with their right of worship. This application was rejected by the trial court. Against this order, Respondents 7 and 8 filed a revision before the learned District Judge, which has been allowed. It is against this order of the learned District Judge that this writ petition has been filed.

2. Learned Counsel for the Petitioner has contended that by impleadment, the nature of the suit is likely to be changed, which cannot be permitted under law. Another submission of the learned Counsel for the Petitioner is that as the

Petitioner has purchased the land from the cooperative society the proper remedy for the Petitioner is to approach the Prescribed Authority u/s 70 for arbitration under U.P. Cooperative Societies Act.

3. Under Order 1 Rule 10 CPC the Court can implead both necessary and proper parties As laid down by Hon"ble Supreme Court in Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, ;

A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

A person may not be impleaded as a party if he may be incidentally affected by the judgment, but a person who will be directly effected in enjoyment of his rights or a person whose presence may be necessary for deciding the controversy, can be impleaded.

4. In the instant case the courts below appointed a Commissioner to make local inspection, who has submitted his report in which it has been stated that on the land in dispute there is a public temple with several idols installed in it The case of the interveners interalia is that the Plaintiff has filed the suit impleading their own man as Defendant so as to grab the temple and its property, that they are devotees of the temple and if temple is abolished or there is interference with the worship, their right of worship will be seriously effected. It is not necessary, at this stage of impleadment, to decide finally whether the allegations made by interveners or by the Plaintiff-Petitioner, are correct or not. From the perusal of report of the Commissioner and on the basis of finding recorded by the learned District Judge it is prima facie clear that there is some temple over the property in dispute. It is thus obvious that the interveners are both necessary and proper parties and have been rightly impleaded by the courts below.

5. In this connection learned Counsel for the Petitioner has argued that the interveners have a right to file a fresh suit for redress of their grievance against the Petitioner and as such their application for impleadment may be rejected It is not possible for me to agree with the submission of the learned Counsel, ft is one of the well settled principles that multifarious ness of proceedings should be avoided. A person who is necessary or proper party in a suit, should not be refused impleadment on the ground that he has an alternative remedy of filing a suit.

6. The plea of the Petitioner that: if interveners are impleaded the nature of the suit will be changed, is also not sustainable. Nature of the suit is to be determined by the relief claimed by Petitioner in the suit The relief claimed by the Petitioner in the suit is for declaring the sale deed in respect of land in dispute, executed by Cooperative Society in his favour is valid and that Defendant should not interfere with his peaceful possession. Those reliefs inspite of impleadment remain intact. The Petitioner, in order to get that relief, has to

prove his case in this connection learned District Judge has observed that the Petitioner has himself impleaded some persons who are not members of the Cooperative society In view of the aforesaid position it is not proper for the Petitioner to raise grievance against impleadment of these two interveners. In this connection decision of Delhi High Court in Raj K. Mehta v. Bujali Bahadur AIR 1981 Delhi 237 relied upon by learned Counsel cannot help the Petitioner, because in that case suit was filed for specific performance of contract to sell the property, and strangers to the contract are neither necessary nor proper parties. The submission of learned Counsel for the Petitioner that interveners, instead of getting them selves impleaded in the suit, filed by the Petitioner, should apply for arbitration u/s 70 of the U.P. Cooperative Societies Act, is also not sustainable. u/s 70 of the U.P. Cooperative Societies Act only a dispute relating to constitution, management or business of a cooperative society amongst members, past members and persons claiming through members, between members and the society, between different societies and between society and it's committee or officer, can be settled. Interveners are not the members of the Cooperative Society and the dispute which is being raised by interveners does not concern the constitution, management or business of the Cooperative Society.

7. The allegations of the interveners are that the Plaintiff-Petitioner has filed the suit by impleading his own man as Defendant. It is always desirable that in a suit controversy should be finally settled and possibility of obtaining collusive decree should, as far as possible, excluded by impleading the persons whose claims appear to be just and proper.

8. In my opinion the court below was fully justified to implead the interveners.

9. This writ petition lacks merit and dismissed.