
(1997) 09 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Review Petition No. 86 of 1996

Baijnath and Another

APPELLANT

Vs

Smt. Ganga Devi and Another

RESPONDENT

Date of Decision : 29-09-1997

Acts Referred:

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

Citation : AIR 1998 Raj 125 : (1999) 4 CivCC 684 : (1997) 3 WLC 715

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : Ashok Mishra, for the Appellant; D.K. Garg, for the Respondent

Final Decision : Dismissed

Judgement

Arun Madan, J.—This review petition has been preferred to this Court against the order dated 11-7-96 passed by this Court in S.B. Civil Revision Petition No. 576/96 whereby, this Court had allowed the application for impleadment of the petitioner Smt. Ganga Devi (non-petitioner No. 1 herein). Before dealing with the contention advanced by the learned Counsel for the petitioners I deem it proper to briefly refer to the background of the case in the context of which S.B.Civil Revision Petition No. 576/96 was preferred to this Court, as under :--

2. In the said revision petition, the petitioner Smt. Ganga Devi had challenged the order dated 24-1-96 passed by Civil Judge (Senior Division) and ACJM. Sambhar Lake District Jaipur in Civil Suit No. 76-76 whereby, the petitioner's application for impleadment as a party to the said suit under Order I, Rule 10, CPC was rejected by the trial Court. The grievance of the petitioner in the aforesaid revision petition was that the suit was filed against Ramdayal (since deceased) and Omprakash by the non-petitioners Baijnath and Smt. Ramjiwani (petitioners in the review petition) wherein they sought the relief of possession, damages and declaration to the effect that the sale deed of the property in question in favour of Ramdayal was not lawfully executed under the sale deed and hence, the said sale deed be declared null and void and inconsequential.

During the pendency of the said suit, Ramdayal died. However, the plaintiff non-petitioners namely; Bajinath son of late Shri Dulichand and Smt. Ramjiwani wife of late Shri Dulichand had purposely not impleaded Smt. Ganga Devi who was daughter of late Shri Ramdayal and was a necessary party to the said suit. Admittedly, late Shri Ramdayal and his son Omprakash defendant non-petitioner No. 3 in revision petition were in possession of the disputed shop premises at the time of institution of the suit. After the demise of Ramdayal, the suit continued against sole defendant Omprakash. During the course of hearing of revision petition, it was pointed by the learned Counsel for petitioner Ganga Devi that Smt. Ganga Devi being the daughter of deceased Ramdayal was a necessary party to the suit and non-impleadment of the said applicant-petitioner has seriously prejudiced her rights since it was incumbent upon the non-petitioners i.e. Bajinath and Smt. Ramjiwani plaintiffs in the suit that they ought to have impleaded her as a necessary party being the legal heir of deceased Ramdayal by moving a proper application for her substitution in accordance with Order 22, Rule 2, CPC. Since, this had not been done deliberately, the petitioner Smt. Ganga Devi who was entitled to be brought on the record of the suit and should have been given an opportunity to contest the suit with a view to protect her rights, title and interest in the shop premises in question which was in possession of her father Ramdayal. After hearing the learned Counsel for the parties, this Court was of the opinion that the trial Court had materially erred in not impleading Smt. Ganga Devi as a necessary party to the suit and since no prejudice would have ensued to either parties to the suit if the petitioner was impleaded and thereafter the rights could be determined on the basis of the evidence to be led by the parties which aspect the trial Court had not taken into consideration while deciding the suit. I was further of the view that the trial Court could not go into the question of possession without impleading the necessary party to the suit. With the above discussion, this Court vide order dated 11-7-96 allowed the revision and quashed and set aside the impugned order dated 24-1-96 passed by the trial-Court with a direction to the trial Court to implead the petitioner Smt. Ganga Devi as a necessary party to the suit and the parties were also directed to appear before the trial Court on 22-7-1996.

3. Thereafter, being aggrieved by the aforesaid order, the petitioners-Bajinath and Smt. Ramjiwani who were plaintiff-non-petitioners in the revision petition have come up in review petition before this Court which is now being disposed of by this order.

4. During the course of hearing, Mr. Ashok Mishra, learned Counsel for the petitioners has vehemently contended at the bar that the petitioners Bajinath and Smt. Ramjiwani are the legal heirs of late Shri Dulichand who had filed a civil suit in the Court of Munsiff-cum-judicial Magistrate Sambhar Lake, Jaipur which has since been transferred to the Court of Civil Judge (senior Division) and ACJM, Sambhar Lake, Jaipur against Ramdayal and non-petitioner Smt. Ganga Devi. In the said suit the plaintiffs i.e. the petitioners have already led their evidence before the trial Court. On behalf of non-petitioner No. 2 two witnesses have

already been examined by the trial Court and since there was a failure on the part of the non-petitioner No. 2 i.e. Omprakash in leading remaining evidence, the trial Court vide its order dated 21-5-96 had closed the evidence of non-petitioner No. 2.

5. The aforesaid suit giving rise to the revision petition was filed by late Ramdayal for delivery of possession of the shop premises in question in the trial Court and after the evidence of the parties had been concluded, the suit was fixed for evidence of the defendant-Omprakash. At that stage an application for impleadment of Smt. Ganga Devi wife of Ramswaroop had been submitted by the non-petitioner No. 1 in the trial Court on 24-1-1996. It was alleged in the application filed by Smt. Ganga Devi that she was daughter of late Ramdayal besides her, there were other legal heirs of late Ramdayal and in the absence of the Division of the property by mites and bounds of late Ramdayal, therefore, Smt. Ganga Devi, non-petitioner No. 1 having her rights, title and interest in the said property should have been allowed to be impleaded as a necessary party to the suit. The petitioners submitted an application in this regard before the trial Court on 5-4-96 which was rejected by the trial Court vide order dated 24-1 -96 against which the aforesaid revision petition was preferred to this Court and the said revision petition was allowed vide order dated 11-7-96 as referred to above and against which the present review petition has been submitted by the petitioners-Bajinath and Smt. Ramjiwani. During the course of hearing, the learned Counsel for the petitioners has contended that:--

(A) That the non-petitioner No. 1 had suppressed some material facts which could not be brought to the notice of this Court at the time of hearing of revision petition. His argument against the impleadment of Smt. Ganga Devi is to the effect that if she is allowed to be impleaded as a party to the suit, it will prolong the hearing of the suit and will seriously prejudice their interest and hence, the order dated 11-7-96 passed by this Court should be recalled and reviewed.

(B) That it is for the petitioners who had filed the civil suit before the trial Court to select and choose parties for seeking relief against them. Learned Counsel for the petitioner has further contended that it is a well settled law that the plaintiff is the dominus litis and hence it is for him to implead or not impleaded any party to his/ her suit and since the petitioners had already submitted an application on 5-4-1994 vide Annexure 2 that they do not want to implead any other party to the suit and, therefore, the name of later Shri Ramdayal was requested to be struck down. Counsel further states that this Court while allowing the revision petition has failed to take this aspect of the matter into consideration and hence the impugned order dated 11-7--96 deserves to be recalled and reviewed.

(C) That since the petitioners have already concluded their evidence; two witnesses of non-petitioner No. 2 have already been examined before the trial Court on account of failure to lead evidence by the non-petitioner No. 2, the trial Court had already closed the evidence of the said party vide order dated 30-5-96 and the suit is at the final stage and nothing further is to be done in the suit.

(D) That this Court while passing the order dated 11-7-96 has not examined the matter in the light of above background since allowing the application for impleadment of the party will tantamount to allowing the suit for fresh trial and will further prolong and delay the matter.

(E) That the suit was filed by the petitioners-plaintiffs for effecting the delivery of possession of the shop in question and since no declaratory relief has been sought in the suit, the question of title and ownership is not involved in the suit which relates only with respect to delivery of possession of the shop in question and if any person wants to get his/her rights settled with respect to the suit property, he/she can file a fresh suit. Further, since the non-petitioner No. 1. Smt. Ganga Devi had already been married and does not reside at Kishangarh Renwal but resides in her-in law's house at Sikar, she has no right, title or interest to the property in question notwithstanding the relevant provisions with regard to inheritance of the legal heirs to estate of the deceased in proportion to their respective shares under Hindu Succession Act, 1956 which protects the rights and interest even of the married daughters besides the married sons of the deceased. Counsel states that this material aspect of the matter has been overlooked by this Court besides the above contention and, therefore, the, order dated 11-7-96 deserves to be recalled and reviewed.

6. The aforesaid contentions of Mr.Ashok Mishra, learned Counsel for the petitioners have been strongly controverted by Mr. D.K. Garg, learned Counsel for the respondents. I have heard learned Counsel for the parties at length and also perused the impugned order dated 11-7-1996 passed by this Court as well as the legal position on the subject. Prima facie, I am of the considered opinion that the petitioners have no right to challenge the locus standi or legal right, title and interest of Smt. Ganga Devi with respect to the shop premises in question at this stage since she was a material party to be impleaded in the suit and had prayed for protecting her rights, title and interest to the property since otherwise, the plaintiffs in the suit had deliberately with some ulterior motives had omitted to implead as she was a necessary party to have been impleaded in the suit. It is settled law that no prejudice would be caused to the plaintiff as a result of impleadment of a party defendant who is a necessary party to be impleaded though not impleaded in the said suit but if the party is left out from the array of parties in [he suit deliberately, it will cause a greater harm and prejudice to the interest of a party who has been ordered to be impleaded in the array of parties then by impleading such a party to the proceedings because in that event affected party will have full opportunity to establish her claim with respect of suit property and this is in my view is very necessary to be done in the suit. I am further of the view that very purpose of Order 1, Rule 10, CPC will stand frustrated if the parties who are necessary parties to be impleaded are deliberately left out by the plaintiff by not impleading there in the suit because the consequences of non-impleadment are more vital which will prejudicially affect the interest of the aggrieved party than then by impleading such party to the suit by way of an application .under Order 1, Rule 10, CPC which the trial

Court should not overlook in the interest of affected parties. Moreover, Smt. Ganga Devi who is non-petitioner No. 2 in this review petition and was the petitioner in SB Civil Revision Petition No, 576/96 had stated through her counsel that she has a right, title and interest to the property which she wanted to establish by leading positive evidence on the record of the trial Court. Hindu Succession Act. 1956 also protects the interest of the married daughters who are legal heirs of the deceased inasmuch as, the interest of married sons of the deceased who both have a legal right to protect their interest. Hence, I am of the view that a great prejudice would be caused to such applicant/s if they are not being impleaded through necessary party to the proceedings. Moreover, the law is so settled that the impleadment can be allowed even at the appellate stage and in this case admittedly the suit is still pending adjudication before the concerned Civil Court and not yet heard and finally decided.

7. During the course of hearing, learned Counsel for the petitioners have placed reliance upon the Division Bench's judgment of Madhya Pradesh High Court in the matter of Mujtabai Begum and Another Vs. Mehbub Rehman and Others, judgment of Apex Court in the matter of Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, judgment of this Court in the matter of Vimla Devi Vs. Nand Lal, judgment of Apex Court in the matter of Razia Begum Vs. Sahebzadi Anwar Begum and Others, and the judgment of Madhya Pradesh High Court in the matter of Sunil and Others Vs. Satyanarayan Dubey and Others,

8. I have examined the ratio of the aforesaid judgments cited by the learned Counsel for the petitioners. The Division Bench of Madhya Pradesh High Court in the matter of Mujtabai Begum and Another Vs. Mehbub Rehman and Others, observed as under (para 20):--

"It is true that the Court has discretion to add parties to a suit; but this power has to be exercised in exceptional cases. The plaintiff must be allowed full discretion to put his case in the manner he likes and should not be forcibly involved into controversies with persons whom he does not wish to implead. He takes the risk, of not impleading a particular party."

9. The Apex Court in the matter of Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, on the question of impleadment of necessary party to the suit has, held that under Order 1, Rule 10 (2), CPC only those parties should be impleaded in the suit who have direct and legal interest in the litigation. It was further observed that where a party is not a necessary or proper party and where its impleadment would enlarge issue which is subject matter of decision of the suit the Court should direct the said party not to be impleaded in the suit. It was further observed that there must be a good and sufficient cause for impleading such party to the suit.

10. I have examined the ratio of the aforesaid decisions cited by the learned Counsel for the petitioners. I am of view that Order 1, Rule 10 (2) CPC gives a

very wide discretion to the Court to deal with any such situation which may result in prejudicing the interest of affected party if not impleaded in the suit and where the impleadment of the said party is necessary and vital for the decision of the suit. It is true that the discretion has to be exercised judicially but at the same time the concerned civil or appellate Court where the suit or appeal is pending has also to take into consideration that the party which is necessary to be impleaded will be put to a greater difficulty if not impleaded by the plaintiff who may have ulterior motives of not impleading such party and if the decision is given which may affect the interest of the said party greater prejudice would be caused to the said party as a result of not impleading while no prejudice or loss would be caused to the plaintiff because he will have full opportunity to defend his rights and interest; as against aggrieved party who has been impleaded as a party to the suit. The important aspect which would be looked into by the Civil Courts while deciding the applications under Order 1, Rule, 10(2), CPC is to avoid multiplicity of litigations and also conflicting decisions being passed in different suits which will be safeguarded as a result of allowing necessary party to be impleaded in the suit.

11. As a result of above discussion, the review petition fails having no merit and the same is dismissed as not maintainable.