
(1968) 01 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 31 of 1968

Banarsi Dass Durga Prashad

APPELLANT

Vs

Panna Lal Ram Richhpal Oswal and Others

RESPONDENT

Date of Decision : 12-01-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 115

Citation : AIR 1969 P&H 57

Hon'ble Judges : R.S. Sarkaria, J

Bench : Single Bench

Advocate : Rajendra Nath Mittal, for the Appellant;

Judgement

1. This is a civil revision directed against an order, dated 28th December, 1967, of the Senior Subordinate Judge. Narnaul. Dismissing the application of the petitioner, Banarsi Dass, under Order 1 Rule 10. Civil Procedure Code, for being impleaded as a defendant in Suit No. 326 instituted by Panna Lal and Banwari Lal against Smt. Chameli.

2. Shri Banarsi Dass had instituted suit in the Court of the Subordinate Judge at Narnaul for specific performance of a contract of sale against Smt. Chameli, widow of Udha Ram. During the pendency of that suit, Panna Lal and Banwari Lal instituted the aforesaid Suit No. 326, dated 18th November, 1967, against Smt. Chameli for a permanent injunction restraining her from interfering with the possession of the plaintiffs over a Chabutra 41/2sq. ft. in area, shown in the map annexed to the plaint. In the alternative , they prayed for possession of that property. In his application under Order 1, Rule 10. Civil Procedure Code, Banarsi Dass alleged that this Chabutra was a part of the property, which was the subject mater of hi suit for specific performance of contract against Smt. Chameli. He further averred that the suit brought by Panna Lal and Banwari Lal against Smt. Chameli was collusive, and Smt. Chameli, confessing judgment in that case, wanted to defeat his suit for specific performance. In short, it was urged that the decision in the suit brought by Panna Lal and Banwari Lal would incidentally

affect his claim against Smt. Chameli. The subordinate Judge dismissed the petition, holding that Banarsi Dass was neither a necessary nor a proper party to be added as a defendant in the suit instituted by Panna Lal and another. He, therefore, dismissed his application.

3. The first question to be considered, is, whether this revision petition against an order dismissing an application under Order 1, Rule 10, Civil Procedure Code, is maintainable. There is divergence of judicial opinion on this point. Some of the High Courts have held that no revision lies against such an order. But the weight of authority seems to be in support of the view that the High Court can interfere in revision u/s 115 of the Code of Civil Procedure, if it finds that there is some material irregularity or illegality in the order. Though the point was not directly discussed this view is implicit in the decisions of this court reported as AIR 1951 P&H 352 : 1968 PLR 98. The observations in AIR 1926 PC 142 also lend uproot to that view. I would, therefore, answer this question in the affirmative.

4. As regards the merits of the case. I do not find any good ground to issue notice to the respondent. Order 1. Rule 10. Civil Procedure code, provides for addition of two kinds of parties, namely. (1) necessary parties who ought to have been joined and in whose absence no effective decree can be passed at all, and (2) proper parties, whose presence enables the court to adjudicate more "effectively and completely" all the questions involved in the suit.. It is admitted by the counsel for the petitioner that Banarsi Dass was not a necessary party to the suit instituted by Panna Lal and other against Smt. Chameli. Nor does he maintain that Banarsi Dass's addition as defendant in the suit brought by Panna Lal, etc., against Smt. Chameli would be necessary to decide "effectively and completely" the issues between Panna Lal, etc. and Mst. Chameli in that suit. All that the learned counsel says is that the collusive decree that might be passed in favour of Panna Lal, etc., will indirectly injure his interests in the suit for specific performance brought by him to institute another suit against Panna Lal and Smt. Chameli with regard to that collusive decree. If Banarsi Dass is added as a defendant in the suit brought by Panna Lal, etc., that would, according to the learned counsel, avoid multiplicity of suits.

5. I am afraid, the contention cannot be accepted. Under sub-para (2) of O. 1. Rule 10, Civil Procedure code, as already observed, a person may be added as a party to a suit in two cases only, i.e., when he ought to have been joined and is not so joined, i.e., when he is a necessary party, or, when without his presence the questions in the suit cannot be completely decided. In my opinion, there is no jurisdiction to add a party in any other case merely because that would save a third person the expense and botheration of a separate suit for seeking adjudication of a collateral matter, which was not directly and substantively in issue in the suit into which he seeks intrusion. The leading authority on the point is the English case. Moser V. Marsden (1892) 1 Chh 487. The plaintiff, in that case was the patentee of a machine. He brought an action against the defendant for using a machine, which he alleged was an infringement of his patent. M., the

maker and patentee of the defendant's machine, applied to be added as a defendant, alleging that a judgment in the action would injure him, and that the present defendant would not efficiently defend the action. It was held that M., not being directly interested in the issues between the plaintiff and defendant, but only indirectly and commercially affected, the Court had no jurisdiction to add him as a defendant. The judgment in that case turned on an interpretation of Order xv1, rule 11, of the Supreme court, which is in pari materia with Order 1, Rule 10 (2) of the Code of Civil Procedure. The following observations of Lord Justice Lindley would be useful:

".....It cannot be said that the case comes within that part of the rule which provides that the Court may order the names of any parties, whether plaintiffs or defendants "who ought to have been joined," to be added. In no sense can it be said that Montforts ought to have been joined as a party to this action. But reliance is placed on the following words of the rule, which provide for adding the names of parties "whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and sweetly all the questions involved in the cause or matter". But what is the question involved in the action? The question, and the only question is whether what Marsden is doing is an infringement of the plaintiff's patent.....Can it be said that the rule prevents the plaintiff from proceeding against a defendant without having to litigate with every body who may be in any way affected, however indirectly, by the action? It appears to me that it does not. The counsel for the Applicant grounded his argument on the allegation that Montforts' interest would be affected by the decision in this action. It is true that his interest may be affected commercially by a judgment against the Defendant, but can it be said that it would be legally affected? Can we stretch the rule so far as to say that whenever a person would be incidentally affected by a judgment he may be added as a defendant?"

6. I am in respectful agreement with the above observations in Moser's case 1892 1 Ch 487. The law in India on this point is the same, i.e. a person may not be added as a defendant merely because he would be incidentally affected by the judgment.

7. Moreover, if Banarsi Dass were to be added as a defendant in the suit commenced by Panna Lal, etc., it would amount to introduction of a new cause of action. The court would then have to enquire into the circumstances under which Smt. Chameli's agreement with Banarsi Dass entered, an enquiry with which Panna Lal and Banwari Lal had nothing to do. Such a course will supplant Panna Lal's case altogether and would, in substance, drag him into a different controversy between Banarsi Dass and Smt. Chameli.

8. There is difference of judicial opinion among the High courts on the question, whether the Court has power under Order 1, rule 10, Civil Procedure Code, to direct a person to be impleaded as a defendant when the plaintiff is opposed to his addition as a party. The Jammu and Kashmir High Court in Bindru V. Sada

Ram, AIR 1960 TK 67 and Andhra Pradesh High court in Razia Begun V. Anwar Begun AIR 1958 AP 195 have taken the view that the court has the power to implead a party if it considers that his presence is necessary or proper for disposing of the case, and that an order under the aforesaid rule can be made even if the plaintiff does not consent. On the other hand, the Madras High Court in Official Receiver of South Kanara Vs. Bastiao Souza and Others, M. Abdul Razack Vs. S. Mohammad Shah, , the Madhya Pradesh High Court in Mujtabai Begum and Another Vs. Mehbub Rehman and Others, , and the Andhra Pradesh High Court in Motiram Roshanlal Coal Co. V. District Committee, Dhanbad AIR 1962 AP 357, have held that no person can be brought on record as defendant, if the plaintiff does not want him, and that if he is a necessary party the suit must fail on account of his non-joinder.

9. I would prefer to steer a middle course and law draw the golden mean. As a rule, the Court should not add a person as a defendant in a suit when the plaintiff is opposed to such addition. The reason is that the plaintiff is the dominus litis. He is the master of the suit. He cannot be compelled to fight against a person against whom he does not claim any relief. If opposition by the plaintiff to the addition of parties is to be disregarded as a rule, it would be putting a premium on the undesirable practice of third parties intruding to ventilate their own grievances, into a litigation commenced by one at his own expense against another. The word "may" in sub-rule (2) imports a discretion. In exercising that discretion, the Courts will invariably take into account the wishes of the plaintiff before adding a third person as a defendant to his suit. Only in exceptional cases, where the Court finds that the addition of the new defendant is absolutely necessary to enable it to adjudicate effectually and completely the matter in controversy between the parties, will it add a person as a defendant without the consent of the plaintiff. An instance of such exceptional cases is furnished by one reported as AIR 1958 Andh Pra 195. In that case the plaintiff had sought a declaration that she was the legally wedded wife of the defendant and the applicant to contest the claim. The applicant claimed to be another married wife of the defendant. The prayer was granted on the consideration that the declaration of the status of the party acts, more or less, in rem and affects the parties for generations to come. The case before me is not an exceptional case of that kind.

10. Still there is another aspect of the matter which has been discussed by the learned Subordinate Judge in his order. Banarsi Dass has yet no vested right in the property which is the subject matter of his suit for specific performance. He is still striving to establish his right to the property. So far his right is merely inchoate. He cannot, therefore, be said to be a person whose rights would be legally affected by the decree in Panna Lal's suit.

11. For all the reasons aforesaid, I do not find any force in this petition, which I hereby dismiss in limine.

12. Petition dismissed.