
(2000) 04 PAT CK 0031
In the Patna High Court
Case No : Civil Revision No. 52 of 2000

Bhagwan Singh and Others	Vs	APPELLANT
A. Sanjivi and Others		RESPONDENT

Date of Decision : 06-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2001) 1 BLJR 451

Hon'ble Judges : Prasun Kumar Deb, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prasun Kumar Deb, J.—This Civil revision petition has been preferred against the order dated 18.12.1999 passed by Sri B.K. Choudhary. Subordinate Judge-I, Jamshedpur, in Title Suit No. 74 of 1996 whereby and whereunder the prayer made by the petitioners for intervention in the suit as contemplated under Order Rule 10(2) of the CPC has been rejected.

2. The petitioner's contention is that they were party in the proceeding u/s 90 of the Chotanagpur Tenancy Act, 1968 (the Act) before the Settlement Officer in Case No. 78 of 1995-96 raising their claim over the suit property. The plaintiff-opposite party No. 1 had initiated the above proceeding. The rejection of the prayer of settlement of the plaintiff is a cause of action for the present suit. The petitioners had not been made party although they had claimed over the suit property as per the cause of action being shown in the suit itself. The learned Court below by scrappy order has rejected the prayer on the ground that although the petitioners were claiming possession over the suit property for a long 40 years but no scrap of paper has been submitted in support of their contention. This very observation of the Court below is wrong on the face of it as it appears that along with the petition for intervention, a long list of document had been submitted by the petitioner before the trial Court. A copy of that list of document has been annexed as Annexure 3 to the Civil revision petition.

3. On the factual aspect, Mr. N.K. Prasad, Senior counsel appearing for and on behalf of the plaintiff-opposite party No. 1 has not submitted anything but his contention is that the Civil revision petition is not maintainable and this Court has got no jurisdiction to entertain this petition u/s 115 of the CPC as the impugned order does not suffer from lack of jurisdiction or material irregularity. The material irregularity is there on the face of it as the Court below while exercising his jurisdiction had not applied his judicial mind when although documents were there in support of the contention of the petitioners had been overlooked. The further sub-mission of Mr. N.K. Prasad is that under Order I Rule 10(2) of the Code of Civil Procedure, there is only one scope of intervention when it could be found that the party intending to intervene is necessary party or a proper party. Here, in the present case, according to Mr. Prasad, although the petitioners had raised their claim but the order had been passed in favour of the State of Bihar and being aggrieved, the suit has been filed.

4. On the other hand, Mr. Manjul Prasad, counsel appearing for and on behalf of the petitioners submitted that the very cause of action of the suit is the settlement case and the decision thereof in which the petitioners were admittedly party. Hence even if the petitioners are not considered to the necessary party, they were definitely a proper party for complete adjudication of the suit. In this respect, the very wordings of Order I, Rule 10(2) of the CPC have been referred to. Therein, it was specifically codified that in making a party to the suit, the considerations are "whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit".

5. Thus, when the petitioners were claiming the lands in suit before the Settlement Officer then for complete adjudication of the rival claims of the petitioners and that of the opposite party can be decided in the same suit otherwise there will be a multiplicity of the suit, i.e., the opposite party shall have to file a similar nature of suit against the Government Officials i.e. the defendants in that suit and such curtailing of multiplicity of suits comes within the purview of "complete adjudication" in the same suit/proceeding. The same view has been taken by the apex Court in the case of Savitri Devi Vs. District Judge, Gorakhpur and Others, wherein it was observed that Order I, Rule 10 of the CPC enables the Court to add any person as party at any stage of the proceeding if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of a multiplicity of proceedings is also one of the objects of the said provision in the Code. Thus, the petitioners are definitely necessary parties to the suit and even if not necessary party but at least proper party for the purpose of complete adjudication in respect of the suit property for avoiding multiplicity of suits.

6. When the claim of the petitioners was there admittedly and definitely in respect of the suit property then the petitioners' claim for intervention in the suit

is required to be allowed and the grounds stated in the impugned order are not at all proper and justifiable.

7. It has been argued by Mr. N.K. Prasad, Senior Counsel appearing for and on behalf of the opposite party that the petitioners have not got a single scrap of papers regarding their right and title over the suit property. It might be that they have no proper right at this stage but it is not there that they have not raised their claims over the suit property for long and the that respect a list of documents had been filed along with their petition for intervention and the same was overlooked by the learned Court below while coming to a decision in rejecting the prayer for intervention. The rulings submitted by Mr. N.K. Prasad in the case of Raja Ram Singh and Another Vs. Kapildeo Singh and Others, rather supports the case of the petitioners and not the opposite party. There also, it was held by a Single Bench of this Court that if a party is necessary to be joint for complete adjudication and effective decision of the suit, then his intervention comes within the purview of Order I Rule 10(2) of the Code of Civil Procedure.

8. Regarding jurisdiction u/s 115 of the Code of Civil Procedure, Mr. Prasad, Senior Counsel has referred to a judgment of the apex Court in the case of The Municipal Corporation of Delhi Vs. Shri Suresh Chandra Jaipuria and Another, . In that case, there was concurrent findings of both the Courts below in respect of injunction matter as contemplated under Order XXXIX, Rules 1 and 2 of the CPC and as such it was held that interference by the High Court u/s 115 of the CPC is unjustified. That case has got no bearing in the present circumstances of the case. Similarly in the case of The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, has also got no bearing in the present circumstances of the case. In that case also, there were orders of injunctions by the Courts below and it was held by the apex Court that High Court should not interfere u/s 115 of the CPC even if the order is right or wrong or in accordance with law or not unless it has exercised its jurisdiction illegally or with material irregularity. In the present case, the jurisdiction conferred on the Court had been illegally exercised by the learned Court below as he had given go-by to the settled principles of law in respect of the provision under Order I, Rule 10(2) of the CPC and hence when application of illegal jurisdiction is there by the Court below, this Court must exercise its jurisdiction u/s 115 of the Code of Civil Procedure. How the Court below had failed to exercise his jurisdiction conferred on him had already been explained in the earlier paragraphs. In that view of the matter, although the scope of this Court is narrow for exercising jurisdiction u/s 115 of the CPC but the present case is a fit case where this Court must apply its jurisdiction as conferred u/s 115 of the CPC not only for the ends of justice but also for proper and complete disposal of the suit in the hands of the Court below.

9. In the result, this Civil revision petition is allowed, the impugned order dated 18.12.1999 passed by the Subordinate Judge-I, Jamshedpur, is hereby set aside with direction to the Court below to allow the petitioners to intervene in Title Suit No. 74 of 1996.