

(1992) 12 CAL CK 0028
In the Calcutta High Court
Case No : C.R. No. 1956 of 1985

Chakraberia Sishu Sangha

APPELLANT

Vs

Sibaji Dutta and Others

RESPONDENT

Date of Decision : 22-12-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), 115, 151
Transfer of Property Act, 1882 — Section 53A

Citation : 97 CWN 735

Hon'ble Judges : N. Batabyal, J

Bench : Single Bench

Advocate : Tapan Kumar Dutta, for the Appellant; Indranath Mukherjee for the Opposite Party, for the Respondent

Judgement

N.K. Batabyal, J.—This application for revision u/s 115 of the C.P.C. is directed against order No. 46 dated 25th March, 1985 passed by Smt. A. Debnath. Learned 1st Additional Munsif, Howrah in T.S. No. 61 of 1983. Two brothers who are the opposite parties no. 1 and 2 in this matter brought a suit against the opposite party No. 46 of 1981 in the Court of the Munsif of Howrah (renumbered on transfer to the Court of the Learned 1st Additional Munsif as T.S. No. 61/83) praying for a decree for eviction of the opposite party no. 3 from the disputed room and for mesne profits. The opposite parties no. 1 and 2 claim to be the absolute owner of the said premises as legatees under a will executed by Hrisikesh Dutta. The will was duly probated. The O.P. No. 3 was allowed to occupy the disputed premises on oral permission by the said Hrisikesh Dutta as a licensee. The opposite parties no. 1 and 2 served upon the O.P. No. 3 a Notice of revocation of licence on 26.6.75 calling upon the later to vacate the disputed premises. The opposite parties no. 1 and 2 subsequently cancelled the said Notice and again served a Notice upon the O.P. No. 3 on 22.1.1989 calling upon the O.P. No. 3 to quit vacate and deliver khas possession of the disputed premises in favour of the opposite parties no. 1 and 2 but the opposite party no. 3 did not vacate the said premises. In the suit filed for eviction the O.P. No. 3

filed a written statement denying the material allegations made in the plaint and contended inter alia that the opposite parties No. 1 and 2 were not the absolute owners nor they were possessed of the disputed property. He denied that there was any relationship of licensor and licensee between the parties as claimed In paragraph 23 of the written statement whereby the O.P. No. 3 has categorically stated that Hrisikesh Dutta executed an Agreement for sale in favour of Chakraberia Sishu Sangha a Registered Club (the petitioner in the revisional application) in token of his promise to sell the properties comprised within Municipal Holding No. 120/3. Baruipara 1st Bye Lane. P.S. Shibpur Dist Howrah and he received Rs. 1.000/- as earnest money and in part performance of the contract he delivered possession of the premises in favour of the Club on or about 14.4.1975 as purchaser. The O.P. No. 3 further stated that he occupied the disputed premises as a licensee under the said Club

2. During the pendency of the suit the petitioner club filed an application under Order 1 Rule 10(2) C.P.C. read with Section 151 of the Code praying for adding the petitioner club as a co-defendant in the said suit as a necessary party. The opposite parties no. 1 and 2 did not file any written objection against the said application for addition of party. The said application for addition of party ultimately came up for hearing when Smt. A. Debnath Ld. 1st Additional Munsif. Howrah by her order No. 46 dated 25th March. 1985 rejected the said application.

3. Being aggrieved by and dissatisfied with the said order passed by the Ld. Munsif the petitioner club has come up in revision against the said order alleging inter alia that the Ld. Munsif acted illegally and with material irregularity in not applying the established tests while considering the petitioners' application; that the Ld. Munsif acted illegally in holding that the petitioners' presence before the Court was not necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions in controversy and that the Learned Munsif acted illegally and with material irregularity in not at all considering Section 53A of the T.P. Act.

4. The O.P. No. 3 has died during the pendency of the suit and his heirs have been duly substituted. The revisional application is stoutly contested by the opposite parties no. 1 and 2.

5. The only point for consideration is whether there is any ground for interference in revision as urged by the revisionist petitioners.

6. It appears from the xerox copy of the Biana Patra dated 14th April, 1975 alleged to be executed by Shri Hrisikesh Dutta that there was an Agreement for sale in favour of the petitioner club for a consideration of Rs. 1001 /-. From the xerox copy it does not appear that prima facie possession was delivered by Shri Hrisikesh Dutta to the petitioner club. It has been argued by the Ld. Lawyer for the club that the expression "settle the question involved in the Suit" as used in the last sentence of Order 1 Rule 10 (2) means all the questions relating to the subject matter of the suit arising not only between the parties to the suit but also

third parties whose presence is necessary or proper for an effective and-final adjudication. The Ld. Lawyer in support of his contention has referred to a case reported in AIR 1973 Patna 347. The Ld. Lawyer for the club has submitted that unless his client is impleaded in the suit for eviction the opposite parties no. 1 and 2 may get a decree and evict the opposite party no. 3 from the same and thus come into possession of the same and this will tantamount to dispossession of the petitioner who came into lawful possession in part performance of the Agreement for sale. Once the petitioner club is thrown out of possession, it cannot take a plea of the doctrine of the part performance as provided u/s 53A of the T.P. Act. In this way the interest of the petitioner club will be seriously prejudiced.

7. Under Order 1 Rule 10 sub-rule (2) of the C.P. Code a person may be added as a party to the suit when he ought to have been joined as plaintiff or defendant and when, without his presence, the question in the suit cannot be completely adjudicated. Thus a person should not be added as a defendant merely because he would be incidentally affected by the judgment, if the question involved in the suit can be effectually and completely adjudicated without the presence of the intervenor, he should not be impleaded even in cases where he may eventually be affected by the judgment or the execution proceedings against the defendant. (Vide 73 CWN 555 , N.C. Garai vs. Matri Bhandar). It has also to be remembered that parties cannot be added so as to introduce a new cause of action in the suit. It has been held that parties should not be added in a suit for rent so as to change it into a suit for title though questions of title may be incidentally investigated in a suit for arrears of rent, e.g. where tenant disputes the extent of the title of the plaintiff to the arrears claim by the plaintiff. (Vide 28 CWN 805. 82 IC 369; 1011C 527). A suit for specific performance of an Agreement for sale cannot be converted at the instance of a stranger to the agreement, into one of title. The New Brahma Kshatriya Co-operative Housing Society Ltd. Vs. Govindlal Narbheram Thiakore and Others,

8. The Ld. Lawyer for the opposite parties no. 1 and 2 has submitted that it is true that the Court has discretion to add parties to a suit; but this power has got 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 controversy with persons whom he does not wish to implead. He takes the risk of not impleading a particular party. The Ld. Lawyer has relied upon the case reported in Mujtabai Begum and Another Vs. Mehbub Rehman and Others, The Ld. Lawyer has also drawn the attention of the Court to a case reported in Muslim Wakf Board and Another Vs. Municipal Board, In that case it has been held that as the plaintiff cannot be compelled against his wishes to implead anyone as a defendant, he is perfectly at liberty to frame his suit in any way. If the third party is a necessary defendant, then the suit would be dismissed otherwise, the case would be decided on the merits so far as the parties before the Court are concerned.

9. In the case at hand, we have a suit for eviction of an alleged licensee on revocation of the licence. The intervenor wants to be impleaded under Order 1 Rule 10 C.P.C. on the ground that if any order of eviction is passed against the defendant in the suit then its interest will be seriously jeopardised. If the intervenor is allowed an entry in the suit then the question of title of the plaintiff in the suit will necessarily crop up and this will certainly change a simple suit for eviction of a licensee into a full fledged suit for title. This will certainly introduce quite a new cause of action. It is true that the carriage of the suit always lies with the plaintiff and unless there is a compelling necessity, the court will not in exercise of its discretionary power conferred by the C.P.C. impose a party as co-defendant against the wishes of the plaintiff.

10. For the reasons stated above, in my humble view, the application under Order 1 Rule 10 C.P.C. has been rightly rejected by the Learned Munsif. The revisional application is accordingly disposed of on contest. The Lower Courts record be sent down at once.

Let a xerox copy of this order be handed over to the Ld. Advocates of both the parties on usual undertaking.