

(2015) 09 AHC CK 0077

In the Allahabad High Court

Case No : C.M. Petition No. 5171 of 2015 & Civil Misc. Writ Petition No. 5171 of 2015

Chandrabali Yadav

APPELLANT

Vs

Nand Bahadur and Others

RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 227

Citation : (2015) 129 RD 463

Hon'ble Judges : Manoj Kumar Gupta, J.

Bench : Single Bench

Advocate : Rajeshwar Yadav and Vijay Bahadur Yadav, for the Appellant; Manoj Kumar Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Manoj Kumar Gupta, J.—The petitioner has assailed the validity of the order dated 19.8.2015 passed by Additional District Judge/Special Judge, EC Act, Jaunpur in Civil Revision No. 176 of 2013, whereby the revision has been allowed and the order of the Trial Court dated 4.9.2013 permitting impleadment of the petitioner as a party defendant in Original Suit No. 168 of 2008, has been set aside. The plaintiff-respondents have instituted Original Suit No. 168 of 2008 against the defendant-respondents for permanent prohibitory injunction restraining contesting defendants No. 1 to 4 from interfering in the possession of the plaintiffs and proforma defendants and their constructions existing over the suit property. The suit property has been shown with letters A, B, C, D, E, F, A in the plaint map and according to the plaintiff-respondents, its new number is 52, measuring 0.80 decimals. The plaint case is that the suit property had vested in the plaintiff-respondents under section 9 of U.P. Act No. 1 of 1951.1

2. In the suit, the State of U.P. through Collector, Jaunpur, Collector Jaunpur and Gram Panchayat, Brahmanpur and one Rajmani Yadav have been arrayed as

contesting defendants. The State of U.P. and the Collector, Jaunpur have filed a written statement on 22.10.2010, contending that the suit property belongs to the State Government and the Gram Panchayat and is recorded as "Bheeta" in the revenue records. The claim of the plaintiff-respondents that the suit property had vested in them, was thus categorically denied.

3. During the pendency of the suit, the petitioner, who claims himself to be an Ex-Pradhan of the Village, filed an application seeking his impleadment in the proceedings. In the application, it was stated that the petitioner had filed writ petition No. 40811 of 2008 in the shape of a Public Interest Litigation before this Court and wherein, he was given liberty to make a representation before the Sub-Divisional Magistrate and the Sub-Divisional Magistrate was required to examine the matter and take appropriate decision. It was pointed out that in pursuance of the liberty granted by this Court, the petitioner had moved representation before the Sub-Divisional Magistrate, but the Sub-Divisional Magistrate, by order dated 3.12.2008, expressed his inability to take any decision in the matter, unless the interim order granted in Original Suit No. 168 of 2008 preferred by the plaintiff-respondents, is in existence. The Sub-Divisional Magistrate in its order has observed that it shall be open to the petitioner to file the order of this Court in the suit proceedings, so that the stay order passed in the suit is vacated. It was on the strength of the said order that the petitioner sought his impleadment in the suit proceedings.

4. The application was opposed, but the Trial Court, by order dated 4.9.2013, allowed the impleadment of the petitioner as a party defendant to the suit by observing that unless the petitioner is impleaded in the suit, the true spirit of the order passed by this Court would not be achieved.

5. It seems that after the passing of the order by the Trial Court dated 4.9.2013, the petitioner preferred another Public Interest Litigation No. 13236 of 2014 before this Court in respect of the same cause of action i.e. his grievance regarding un-authorised possession of plot No. 52 by the private respondents. The aforesaid petition was disposed of by order dated 4.3.2014, by a Division Bench, placing reliance on the decision of the Supreme Court in the case of Jagpal Singh and Others Vs. State of Punjab and Others, and on an order passed in Public Interest Litigation in the case of Prem Singh Vs. State of U.P. and Others, Liberty was granted to the petitioner to approach the concerned respondents with a certified copy of the order so that the appropriate inquiry can be initiated and action taken in accordance with law.

6. The plaintiff-respondents in Original Suit No. 168 of 2008, being aggrieved by the order of the Trial Court dated 4.9.2013 allowing impleadment of the petitioner in the suit, preferred a revision, which has been allowed by impugned order dated 19.8.2015. The Revisional Court has held that even assuming that the suit land is Bheeta land, as is also the case set up by the state respondent in the suit, the petitioner, who claims himself to be an Ex-Pradhan, is neither a necessary nor a proper party to the litigation. It has been observed that the main

contesting party in the suit are the State Government through Collector as well as Gram Sabha, both of whom have duly filed their written statement and are contesting the proceedings. It has further been observed that Gaon Sabha which is the custodian of the land reserved for public purposes is taking all interest in the suit and is contesting the proceedings. The Revisional Court further noted that in the order of this Hon'ble Court passed in the Public Interest Litigation, there was no direction to implead the petitioner as a party defendant. It has been observed that since the petitioner is neither a necessary nor a proper party for deciding the issues involved in the suit and as such, his presence is not necessary and accordingly, the order passed by the Trial Court has been set aside.

7. Learned Counsel for the petitioner placing reliance on the decision of the Supreme Court in the case of Hinch Lal Tiwari Vs. Kamala Devi and Others, submitted that bhumidhari rights can not accrue in favour of a person in respect of a land covered by section 132 of the Act, even if he is in possession thereof. It is urged that in such circumstances, the petitioner, who is Ex-Pradhan and had approached this Court twice by way of the Public Interest Litigation is entitled to be heard in the suit. Learned Counsel for the petitioner has also placed reliance on a recent judgment of the Supreme Court in the case of Baluram Vs. P. Chellathangam, .

8. The basic issue before the Court is whether the petitioner, who is an Ex-Pradhan, is a necessary and a proper party to be impleaded as a party defendant to Original Suit No. 168 of 2008.

9. Indisputably, in case the suit land is Bheeta land, then in view of the provisions of section 132 of the Act, bhumidhari rights can not accrue in respect thereof in favour of any person. The question whether the suit land is Bheeta land or not and whether it could vest in favour of the plaintiff-respondents are to be decided in the presence of the State of U.P., the Collector and the Gram Sabha. This is in view of the fact that such land vests in the State and remains under the management of Gaon Sabha. Thus, it cannot be disputed that the only necessary parties to the suit are the State of U.P., Collector, Jaunpur and the Gram Sabha.

10. The law in respect of Public Interest Litigation is not circumscribed by the technicalities of the Civil Procedure Code. Any person, raising an issue of public importance can approach a Court for setting the law in motion, so long as the petition is not motivated or based on mala fide considerations. Thus, the petitioner in his capacity as an Ex-Pradhan had approached this Court twice by way of Public Interest Litigation, complaining that the private respondents are in possession of the Bheeta land and no action had been taken by the State respondents to dispossess the private respondent therefrom. Undoubtedly, Public Interest Litigation at his instance, being a member of the Gaon Sabha and an Ex-Pradhan, was maintainable and was entertained by this Court. The fact that the Public Interest Litigations, at his instance, were entertained by this Court, however, is not sufficient to make the petitioner a necessary or a proper party to

the suit instituted by the plaintiff-respondents wherein, as observed above, the State of U.P., Collector Jaunpur and the Gram Panchayat are already contesting the proceedings. For becoming a party to a suit, governed by the provisions of Civil Procedure Code, one has to meet the test prescribed by Order I, Rule 10 CPC.

11. By virtue of the order of this Court dated 14.9.2015, the records of Public Interest Litigation No. 13236 of 2014 have been placed before this Court. A perusal thereof reveals that in the said petition, the petitioner had not disclosed about filing of the earlier Public Interest Litigation by him, being Civil Misc. Writ Petition No. 40811 of 2008. The petitioner had also suppressed the fact about pendency of the civil suit and regarding an injunction order operating therein.

12. In the opinion of the Court, these facts were essential to be disclosed in the second Public Interest Litigation No. 13237 of 2014, which the petitioner had filed before this Court. Even the filing of the earlier petition by him, was not disclosed. Rather, the petition was filed by making an incorrect declaration that it was the first petition on his behalf for the relief claimed therein. It was on the basis of the pleadings made in the said petition that this Court disposed of the petition by order dated 4.3.2014 granting liberty to the petitioner to move before the Appropriate Authority.

13. The suit in question is not a representative suit. Although, indirectly, the decision therein may affect the whole village community, but it does not mean that any member of the public can seek his impleadment therein. If this is permitted, there may be several public spirited citizens coming forth, seeking their impleadment. The process would go on ad infinitum, making it impossible for the suit to proceed. Concededly, the petitioner has no personal interest in the matter. In such view of the matter, this Court is in full agreement with the view taken by the Revisional Court in holding that the petitioner is not required to be impleaded in the suit.

14. In the case of Balu Ram (*supra*), an agreement for sale was allegedly executed by a trust. In a suit for specific performance for enforcement of the agreement for sale, one Balu Ram applied for impleadment as a party defendant, which was allowed by the Trial Court, but the order passed by the Trial Court was set aside in revision. The Supreme Court held that the petitioner before it, is not alien to the subject matter of litigation, as he is a beneficiary of the trust and thus, if the sale is made at a throw away price, his interest would be adversely affected. However, it is not in dispute in the instant matter, that the petitioner does not have any personal interest in the litigation. Twice, he had moved this Court claiming himself to be a public spirited citizen and not for redressal of any personal cause. The State-respondents are already contesting the proceedings.

15. In such view of the matter, the Revisional Court was fully justified in setting aside the order passed by the Trial Court permitting impleadment of the petitioner.

16. In view of above discussion, this Court does not find any illegality in the impugned order passed by Revisional Court so as to warrant interference in exercise of supervisory power under Article 227 of the Constitution. The petition lacks merit and is dismissed.

1The Act.