

(1912) 10 AHC CK 0003
In the Allahabad High Court

Chimman Lal and Another

APPELLANT

Vs

Sikandar Khan

RESPONDENT

Date of Decision : 24-10-1912

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3

Citation : 17 Ind. Cas. 641

Hon'ble Judges : Rafique, J; George Knox, J

Bench : Division Bench

Judgement

1. This is an application in revision from an order of the Subordinate Judge of Saharanpur, rejecting an application of the applicants, by which they had asked the lower Court to be brought on the record as defendants in the suit brought by Sikandar Khan against Imam-ud din and others. It appears that one Rao Ghulam Husain Khan was the proprietor of the property which is the subject-matter of the suit of Sikandar Khan. After Ghulam Husain Khan's death, his son, Khadim Husain Khan, entered into possession of the property. After the death of Khadim Husain, there was a dispute as to the succession to the property, between Musammat Latif-un-nisa, widow of Ghulam Husain Khan and Haji Hemu Khan, who described himself as the nephew of Ghulam Husain. Sikandar Khan stated in that suit that he was the son of Ghulam Husain Khan by his second wife. It was decided by this Court that Sikandar Khan was the legitimate son of Ghulam Husain. Subsequently, there was a dispute between Sikandar Khan and Musammat Latif-un-nisa, and the dispute was compromised in this way that she was to remain in possession of 7/8th of the property as her legal share and of the balance in lieu of dower. Musammat Latif-un-nisa executed a deed of gift on the 11th of January 1899, in favour of Imam-ud-din, son of Rahim Bakhsh, in respect of 555 bighas, 16 biswas, situated in Mauza Sakraura. Imam-ud-din, in turn, executed a deed of mortgage in favour of the applicants in respect of the property gifted to him. The mortgage was renewed on the 31st of March 1911. Musammat Latif-un-nisa died in April 1908. After her death, Imam-ud-din and some others entered into possession of the property left by her. Sikandar Khan

instituted a suit in the Court of the Subordinate Judge of Saharanpur on the 28th of April 1911, against Imam-ud-din and others, who were in possession of Ghulam Husain's property after Latif-un-nisa's death, on the allegation that he was entitled to get possession of 7/8th of the property as the legitimate son of Ghulam Husain Khan. After the institution of Sikandar Khan's case, Imam-ud-din executed a deed of sale on the 28th of June 1911, in respect of the property which he had mortgaged to the applicants in favour of the latter. The applicants, on the basis of their sale-deed, made an application to the Subordinate Judge of Saharanpur under Order I, Rule 3, to be brought on the record. The lower Court on the objection of the plaintiff rejected the application. In revision before us, it is argued that though the applicants may have no ground to be made, defendants on the basis of the sale-deed in their favour, yet as the sale-deed was obtained in lieu of the consideration of the mortgage-deed which was executed prior to the institution of the suit, the applicants should be brought on the record as defendants in the case. We are unable to agree with the learned Advocate for the applicants. The rule as to array of parties is given in Order I, Rule 3. It is to the effect that all persons may be joined as defendants against whom any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative. In the present case, no relief is sought by Sikandar Khan against the applicants, nor is the case of Sikandar Khan the same against the applicants as against the defendants already on the record. We, therefore, think that the order of the learned Subordinate Judge was correct. The application fails and is dismissed with costs.