

(2014) 09 DEL CK 0045

In the Delhi High Court

Case No : First Appeal from Order (OS) No. 413 of 2014

Dunlop India Limited

APPELLANT

Vs

Kamal Mitra Chenoy

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 1 Rule 10, Order 6 Rule 17, Order 7 Rule 11, 151

Citation : (2015) 2 AD 572 : (2014) 176 PLR 32

Hon'ble Judges : Najmi Waziri, J; Kailash Gambhir, J

Bench : Division Bench

Advocate : C. Mukund, Ashok Kumar Jain and Amit Kasera, Advocate for the Appellant; Sandeep Sethi, Senior Advocate, Jeevesh Nagrath and Akanksha Singh Rohatgi, Advocate for the Respondent

Judgement

Kailash Gambhir, J.—The challenge in the present appeal is the composite order dated 24.07.2014 passed by the learned Single Judge dismissing the appellant application under Order 7 Rule 11 CPC, and Order 1 Rule 10, read with Section 151 CPC, while allowing the respondent/plaintiffs application under Order 6 Rule 17 CPC. The appellant's principle grievance is that the respondent/plaintiff has joined two distinct cause of actions in one suit which arise out of two reliefs have been clubbed together to invoke jurisdiction of this Court. Lastly, it is contended that there is a misjoinder of plaintiff No. 2 in the suit, because the plaintiff No. 2 is not a necessary or proper party in a suit for possession filed by plaintiff No. 1 against the appellants.

2. We have heard Mr. C. Mukund, the learned counsel appearing for the appellants and Mr. Sandeep Sethi, the learned Senior Advocate appearing for the respondent Nos. 1 and 2, who appears on advance notice.

3. The suit for eviction/permanent injunction has been filed by respondent No. 1/ plaintiff against the appellants in respect of property bearing No. 19, Block No. 171, Sunder Nagar, New Delhi. As per the case set up by the plaintiffs, plaintiff

No. 1 has claimed himself to be the owner of the said property, which were let out by him to the, appellant/defendant No. 1 for the residence of the appellant No. 2/defendant No. 2, viz. Dr. A.P. Singh and his family members, through a registered Lease Deed for a period of three years w.e.f. 1st August 2009. It is also the case of the plaintiffs that a separate Hire Agreement-dated 1st August 2009 was executed between the appellant No. 1 and respondent No. 2/plaintiff No. 2 for the hire of the fittings and fixtures, this Hire Agreement was to expire alongwith the Lease Agreement i.e., after a period of three years. The rent of the premises were Rs. 1,60,000/- which were payable by appellant No. 1 to the plaintiff No. 1/Respondent No. 1. The hire charges of Rs. 2,14,000/- were payable by the appellant No. 1 to the respondent No. 2/plaintiff No. 2.

4. Two separate applications were preferred by the appellant No. 1: one under Order 1 Rule 10 read with Section 151 CPC and the other under Order 7 Rule 11 read with Section 151 CPC. The former application sought deletion of respondent No. 2/plaintiff No. 2 from the array of the parties on the ground that she was an unnecessary and improper party in a suit for eviction filed by the respondent No. 1/plaintiff No. 1. The learned Single Judge has dismissed both the applications filed by appellant No. 1/Defendant No. 1. We find ourselves in complete agreement with the reasoning given by the learned Single Judge dismissing the applications. The learned Single Judge is correct in observing that if a suit confirms to the requirement of Order 1 Rule 1 CPC, which lays down that all persons may be joined in one suit as plaintiffs, subject to the satisfaction of two conditions namely; (i) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions and (ii) the matter must be such that if plaintiffs brought separate suits, any common question of law or fact would arise.

5. It is not disputed that the rented premises is the same, in respect of which two separate Agreements were executed; one for letting out the property itself and the other by hiring the movables. Both the Agreements were for a period of three years and evidently the Hire Agreement is not independent of the Agreement of lease as its existence and tenure was dependant on the lease Agreement. Although, the Hire Agreement was separately executed, it arises out of the same transaction i.e. of leasing out the property in question in favour of the same parties. Filing of separate suits by respondent No. 2/plaintiff No. 2 to claim the hire charges would lead to multiplicity of litigation between the parties, although common questions of facts and of law would arise, even if separate suits were brought by the respondents/plaintiff.

6. In an application filed under Order 7 Rule 11 CPC, the objection is raised to the effect that the plaintiffs have joined two distinct cause of actions in the same suit, just to invoice the jurisdiction of this Court. Here too, we find no infirmity or perversity in the reasoning given by the learned Single Judge in dismissing the application under Order 7 Rule 11 CPC.

7. Once we find that the respondent No. 2/plaintiff No. 2 could be joined

alongwith plaintiff No. 1/respondent No. 1 in the same suit as the reliefs claimed by them arise out of the same acts and series of transactions, then this plea that the respondent No. 2 was intentionally made a party, so as to bring the suit within the jurisdiction of this Court, cannot sustain. So far as the valuation of the suit for the purposes of Court fee and jurisdiction is concerned, the same has to be assessed as per the reliefs claimed in the suit and based on the total valuation of the suit. The learned Single Judge is also right in observing that for any deficiency in the Court fee the plaintiffs can always be directed to pay the same at any stage of the suit. The judgment of the Division Bench of this Court in the case of Mahesh Gupta Vs. Ranjit Singh and Others, also will be of no help to the case of the appellants as the fact situation and the legal issues that arose in that case are clearly distinguishable from the facts of the present case. In Mahesh Gupta (supra) the Court was dealing with the issue where an amendment was sought to increase the valuation of the suit so as to bring it within the pecuniary jurisdiction of the High Court and the view taken, by the Court was that once the Court did not have the pecuniary jurisdiction, then it could not have passed any order allowing an application seeking amendment of a plaint, so as to bring the suit within the pecuniary jurisdiction of a Court.

8. As far as the application moved by the plaintiff/respondent under Order 6 Rule 17 CPC is concerned, we find no infirmity in the order passed by the Learned Single Judge in so far it permits the respondents/plaintiffs to amend their plaint. In view of the aforesaid discussions, we find no merit in the present appeal. Accordingly, it is dismissed.