

(2014) 07 GUJ CK 0120

In the Gujarat High Court

Case No : Special Civil Application No. 15522 of 2012

Gangaji Dhanji Kerai

APPELLANT

Vs

Meghbai Hamir Maheshwari

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2014) 07 GUJ CK 0120

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Nalin K. Thakker, Advocate for the Appellant; Dhaval D. Vyas, Advocate for the Respondent

Judgement

Abhilasha Kumari, J.—Rule. Mr. Dhaval D. Vyas, learned advocate waives service of notice of Rule on behalf of respondents Nos. 1 and 2. Respondent No. 3 has been served, but has not chosen to put in an appearance before the Court. Hence, it is not necessary to issue notice of Rule to the said respondent. On the facts and in the circumstances and of the case and with the consent of the learned counsel for the respective parties, the petition is being heard and finally decided.

2. By preferring present petition under Article- 227 of the Constitution of India, the petitioners have challenged the order dated 21.09.2012 passed by the learned Additional Senior Civil Judge, Bhuj-Kutch below the application at Exhibit-86, in Regular Civil Suit No. 162/1996, preferred by the respondents, whereby the said application for joining party-respondents has been allowed.

3. Briefly stated, the relevant facts are that petitioner No. 1 has filed Regular Civil Suit No. 162/1996 for declaration and permanent injunction in connection with the land in question, on 24.05.1996. The respondents filed their written statement and in the said written statement, they made a counter-claim regarding cancellation of two registered Sale Deeds dated 29.09.1976. In the said suit, respondent No. 2 made the application at Exhibit-86 for joining three

heirs of deceased Jivubha Tanubha Jadeja-the vendor of the land in question. This application stands allowed by the impugned order. Aggrieved thereby, the petitioners have approached this Court by way of the present petition.

4. Mr. Nalin K. Thakker, learned advocate for the petitioners has made the following submissions :-

(a) No prayer has been made against the parties that have been joined. Hence, they are not proper parties.

(b) No application has been made by the parties to be joined in the suit.

(c) There is no consent of the parties to join them in the capacity of the heirs of the person who sold the property in 1976. Before passing the impugned order, no notice was issued by the Trial Court to the said heirs.

(d) There is nothing on record to show that the heirs are interested in being joined in the pending suit.

(e) The sale of the property, which dates back to the year 1976, has been executed by way of registered Sale Deed. Hence, if aggrieved, the heirs may challenge it by a separate suit.

(f) The desire of the respondents to join the heirs of the seller in support of their counter-claim is to gain support for their counter-claim, which is not maintainable in law, as the respondents are challenging a Sale Deed of 1976 therein.

(g) The counter-claim is not maintainable because it is essentially a cross-suit. A cross-suit is required to be filed with all the trappings of a suit. The counter-claim filed by the respondents does not fulfil this requirement, hence, it is not maintainable. The respondents must set out all the material facts, as if they are the plaintiffs. A counter-claim can be raised only within the period of limitation, that is, three years. In the present case, in the counter-claim, the challenge is to a registered Sale Deed dated 29.09.1976, after twenty years. It is, therefore, clearly barred by limitation. While granting the application of the respondents, which has been made only on the basis of the counter-claim, the Trial Court has erred in holding that the legal heirs of the vendor ought to be joined as party-defendants on the ground that the registered Sale Deed of 1976 is under challenge. Even though the suit has been filed in the year 1996, if the legal heirs of the vendor are aggrieved, they are free to file a separate suit, but they cannot be permitted to enter into the suit instituted by the petitioners, as they are neither proper nor necessary parties and no prayers have been made against them.

(h) The impugned order is erroneous, as there is no party on record against whom the heirs are claiming in the counter-claim. No issue regarding the counter-claim has been framed in the suit of the petitioners.

On the above grounds, it is prayed that the impugned order be set aside and the

petition be allowed.

5. Mr. Dhaval D. Vyas, learned advocate for respondents Nos. 1 and 2 has strongly opposed the submissions advanced on behalf of the petitioners by submitting that the suit property has been mutated in the names of the respondents in the revenue record. The petitioners have fabricated the Sale Deeds, in order to grab the land, therefore, it was necessary to file the counter-claim. The respondents are challenging the Sale Deeds in the counter-claim and as the parties who have been joined are the legal heirs of the vendor, who has since passed away, it is necessary to bring them on record, in order to make the challenge in the counter-claim effective. It is further submitted that the challenge is to a document where the petitioners are the purchasers and the parties now joined are the legal heirs of the seller. In view of the prayers made in the suit preferred by the petitioners, seeking permanent injunction against the respondents, it has become necessary to file the counter-claim. In view of the case put up by the respondents in the counter-claim, the legal heirs of the seller are proper and necessary parties and have been rightly joined by the Trial Court.

5.1 It is next submitted that there is no dispute regarding the fact that the parties who have been joined are the legal heirs of the vendor of the land. Any decision in favour of the petitioners would adversely affect them, therefore, in this view of the matter as well, they are the necessary parties.

5.2 It is next submitted that whether the counterclaim is legally tenable, or not, is not the subject matter of an application under Order-I, Rule-10 of the Code. The Trial Court would go into this issue separately, during the trial.

5.3 It is further submitted that the provisions of Order-I, Rule-10 of the Code do not lay down any bar of limitation in joining parties. The assertion in the counter-claim is that the land in question never belonged to the seller, therefore, the heirs of the seller are proper and necessary parties and, as such, can be joined at any stage of the suit.

5.4 It is further submitted that earlier as well the Trial Court has allowed an application for joining parties, which was filed when petitioner No. 2 expired and her heirs were brought on the record by the Trial Court vide order dated 16.02.2012. In this view of the matter as well, the Trial Court has rightly allowed the application of the respondents.

5.5 On the strength of the above submissions, it is prayed that the impugned order, being just and proper, be not interfered with.

6. I have heard learned counsel for the respective parties, perused the averments made in the petition, contents of the impugned order and other documents on record.

7. It has been submitted by the learned advocate for the petitioners that no prayer has been made in the suit preferred by the petitioners against the parties that have been joined, hence, they are not proper parties.

8. This submission cannot be sustained as the claim of respondents Nos. 1 and 2 made in the counter-claim is the basis of the application for joining the heirs of the seller of the land who, according to the respondents, did not have proper title to sell it. As the petitioners have preferred the suit for declaration and permanent injunction against the respondents in respect of the same land, and as the respondents are challenging the Sale Deed in the counter-claim, in the view of this Court, it would be necessary to join the heirs of the vendor.

9. It has also been submitted that no application has been made by the parties to be joined in the suit. This submission is also devoid of merit. It is for the respondents, who are the defendants in the suit, and who have filed the counter-claim, to make an application and it is not necessary that the legal heirs of the vendor file an application themselves.

10. Another submission of the learned advocate for the petitioners is that no consent has been given by the legal heirs of the vendor to join them in the suit. This submission is also without merit. Had there been any opposition, the legal heirs were free to come before the Trial Court and contest the application.

11. It should be kept in mind that the Sale Deed in respect of which the petitioners claim to be owners of the land is dated 29.09.1976. The suit has been instituted by the petitioners in the year 1996. The prayers made in the suit are such that if granted, they would affect the respondents who claim to be in possession of the land in question and have produced revenue entries regarding this aspect.

12. The counter-claim is based upon the assertion of the respondents that the vendor had no title to sell the land. In this view of the matter, they have made an application to join the legal heirs of the vendor, who had since died, as parties to the suit.

13. In the view of this Court, the Trial Court has not committed any error in allowing the application of the petitioners, in view of the counter-claim filed by the respondents as they would be necessary parties.

14. Most of the submissions advanced by the learned advocate for the petitioners are regarding the merits of the counter-claim, which cannot be gone into by this Court, at this stage. The merits of the counterclaim has nothing to do with an application for joining under Order-I, Rule-10 of the Code. The merits as well as question of limitation are aspects that will be gone into by the Trial Court while trying the suit.

15. Insofar as the application for joining is concerned, the provision of Order-I, Rule-10 (2) of the Code permit the Court to either join or strike out party at any stage of the suit. The Court has discretion to add such party who may be necessary, in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. There is no bar of limitation in the said provision of law.

16. For the aforestated reasons, and as joining of the legal heirs of the deceased vendor would enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit, no error of law or jurisdiction has been committed by the Trial Court while passing the impugned order. The petition is devoid of merit and deserves to be rejected.

17. It is, accordingly, rejected. Rule is discharged. There shall be no orders as to costs.