
(1963) 12 MP CK 0014
In the Madhya Pradesh High Court
Case No : S.A. No. 33 and 37 of 1961 (I)

Heeralal

APPELLANT

Vs

Vishwanath

RESPONDENT

Date of Decision : 16-12-1963

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 77

Citation : (1965) JLJ 734

Hon'ble Judges : V.R. Newaskar, J

Bench : Single Bench

Judgement

V.R. Newaskar, J.—These second appeals arise out of a suit for the recovery of Rs. 2234-8-0 filed by the plaintiff Vishwanath against the State of Madhya Bharat on the allegations, that the Tehsildar Barnagar had acquired certain quantity of Juar belonging to the plaintiff and entered in the stock register in his name; that however when the question of payment of its price arose the Tehsildar by his order dated 12-6-1947 refused to pay on the ground that there was dispute pertaining to that Juar between the plaintiff and the District Co-operative Bank Barnagar; that according to the said Bank the Juar belonged to one Hiralal Dangi who had pledged it with the Bank; that the Juar acquired by the Tehsildar belonged to the plaintiff when it was in his possession. On these allegations the plaintiff claimed the price Rs. 1800 plus interest Rs. 434-8-0. The suit was initially filed against the State of Madhya Bharat alone on 14-7-1951. The State Government inter alia contended that the District Co-operative Bank, Barnagar and Hiralal were necessary parties to the suit. The trial Court considered this question and held by its order dated 11-7-1956 that the District Co-operative Bank, Barnagar was a proper party to the suit. It accordingly directed the said Bank to be impleaded. In compliance with this order the plaintiff impleaded the Bank and sought appropriate amendment of his plaint. This was allowed and amended plaint was filed impleading the Bank and Hiralal also as parties on 18-7-1956.

2. In answer to the notice to the Bank it appeared and contended inter alia that in the absence of a notice u/s 77 of the Madhya Bharat Co operative Societies Act or corresponding provision of the Gwalior Co-operative Societies Act, the suit was incompetent.

3. This contention found favour with the Court of first instance. The whole suit was consequently held had in the absence of any notice u/s 77 of the Madhya Bharat Co-operative Societies Act. The plaint was accordingly rejected under Order 7, Rule 11, C. P. Code.

4. The plaintiff preferred appeal. The appellate Court in para 6 of the judgment makes reference to the trial Court's order dated 11-7-1956. Whereby that Court had held that the District Co-operative Bank was a proper party. It however went beyond that finding and proceeded to hold that the said Bank was a necessary party. It further held that in the absence of averment as to notice to the Bank as required u/s 77 of the Act the plaint was liable to be rejected as being bad. The appeal was accordingly dismissed.

5. Hiralal also had preferred appeal No. 27 of 1957 on the ground that the trial Court while rejecting plaintiff's suit had not considered his counterclaim.

6. That appeal too was held to be incompetent as on dismissal of plaintiff's suit there was no point left in respect of the defendant's counter claim. It was further held that Hiralal had not filed a regular suit for establishment of his right nor had he sought any declaration. His appeal therefore was wholly misconceived. That appeal too was dismissed.

7. The plaintiff Vishwanath's legal representatives (as he was dead by that time) filed this second appeal No. 37 of 1961. Hiralal also preferred appeal No. 33 of 1961 much on the same ground on which he had preferred appeal in the first appellate Court. Both these appeals are heard together and are being disposed of by this judgment.

8. As regards appeal No. 37 of 1961 filed by Vishwanath's legal representatives the only question to be considered is whether the suit filed by Vishwanath is bad for want of notice to the District Co-operative Bank u/s 77 of the Co-operative Societies Act.

9. As regards appeal No. 33 of 1951 the point to be considered is whether the District Co-operative Bank was a necessary party to the suit. The answer to this question will depend upon the consideration whether without the Bank being added as a co defendant any effective decree can be passed in plaintiff's favour.

10. On the plaint allegations as they were, the plaintiff claimed the price of Juar belonging to him which the Government had acquired. He made a passing reference to the filing of a criminal prosecution against the plaintiff Vishwanath on the allegations of his having committed theft of the same while it had been in the possession of the Bank as a pledge from one Hiralal and joined him as a party since the Tehsildar had refused to pay him because of alleged dispute of

title between the plaintiff and Hiralal. Plaintiff however asserted that the grain was his and had been entered in his name in the Mandi Committee and it was acquired by the Government. On these allegations he claimed price of his article. The State Government repudiated his title on the ground that the Juar was in the possession of the Bank as a pledgee from Hiralal. This may be the Government's defence. Hiralal might also have said in his written statement that the Juar belonged to him and he had pledged with the Bank. The plaintiff however has not accepted these allegations and stuck to his own. The trial Court with a view to effectually and finally decide the dispute between the parties and to avoid multiplicity of the suit held that the Bank and Hiralal were proper parties. Even assuming they had not been joined it was perfectly competent for the plaintiff to prove his allegations that the quantity of Juar referred to in the plain belonged to him and had been acquired by the Government from him and in case does so prove could claim a decree in his favour. The presence of Hiralal and the Bank would be material with a view to effectually and finally determine the plaintiff's claim and to avoid multiplicity but it cannot be said that in their absence no effective decree can be passed. This question as to distinction between necessary and proper party was considered by the Division Bench of this Court in the case of Kedarmal Vs. Gopaldas First Appeal No. 76 of (1953) decided on 25-19-1960, wherein it was observed:

There is essential distinction between a necessary party and a proper party to a suit. Necessary parties are parties necessary for to the valid constitution of the suit and without whose persence no relief can at all be granted or if granted would be of no avail to the plaintiff. Proper parties, on the other hand are those whose presence enables the Court to adjudicate more effectually and completely the questions raised in the suit and has the effect of avoiding multiplicity of actions.

The question, as to who are necessary parties to a suit, depends, in my opinion, upon two considerations namely:

- (1) Whether there is statutory provision that an action would be incompetent in the absence of a certain party.
- (2) Whether the relief claimed cannot, effectually be granted in the absence of a certain party either because the plaintiff does not represent the entirely of interest entitling him to sue or because the nature of the relief claimed be such that in the absence of an absent party it cannot be granted at all or its grant would be futile or valueless.

If either or both these considerations are found to exist it would be a case of necessary parties."

11. This view of law has prevailed in that decision. In face of this it cannot be said that the Bank was a necessary party. As held in that case there is neither any statutory provision in a case of this sort for joining a contestant to plaintiff's title as a party nor can it be said that no effective relief can be granted without

the presence of such an alleged contestant. As held by the Court below presence of the Bank was needed only with effectually and finally, It was consequently a correct view of the trial Court that the Bank was merely a proper party. The lower appellate Court erred in holding that it was a necessary party. In so doing it has not taken into account the exact distinction between a necessary and a proper party.

12. Next question, is assuming that the Bank was merely a proper party could the plaint have been rejected on the ground the Bank had not been impleaded I do not think it could have been rejected. Firstly, the Bank, on the defendant's own stand was holding the grant as a pledgee from Hiralal. Hiralal was on record. In case Hiralal failed to establish his title as against the plaintiff and the alleged pledge by him with it the Bank's inferior claim as a pledgee would also fail. Even if we assume that the Bank would have a right to be heard before it finally loses its right as a pledgee, where it is not on record there could be no final adjudication depriving it of its right. In the second place, where person is merely a proper party the claim cannot fail due to its absence although it might be open for the Court to direct that he be impleaded. This was what done here. The Bank was added as a party not because the plaintiff wanted it on record but because the Court had directed it to be impleaded. In this state of things neither the Bank nor the State Government could take shelter u/s 77 of the Madhya Bharat Co-operative Societies Act for claiming the dismissal of the suit due to want of notice.

13. In Kilaparti Appalanarasamma Vs. Commissioner, Municipal Council and Another, , the question raised was as regards the effect of absence of notice u/s 80 C. P. C. to the Government which was added as a party during the pendency of the plaintiff's suit against the Municipality for injunction on the basis of his title and possession. The Municipality in its written statement had contended that the disputed land belonged to the Government. The Court directed it to be added. It was in those circumstances held by the Madras High Court that absence of notice to the Government u/s 80 C. P. C. before it was added as a party was not fatal to the suit as the Government was not a necessary party.

14. I would respectfully agree with this view. The same principle will apply to a notice u/s 77 of the Madhya Bharat Co-operative Societies Act, The lower appellate Court was consequently not right in holding the plaintiff's suit as incompetent. Trial Court while rejecting the plaint proceeded on the wrong basis that even if the District Co-operative Bank was added as a proper party notice u/s 77 was essential. The lower appellate Court committed another error in holding that the Bank is a necessary party. The rejection of the plaint under these circumstances was improper.

15. The appeal preferred on plaintiff's behalf No. 37 of 1961 is therefore allowed add the order of rejection of the plaint is set aside. The case shall go back for further trial according to law. The plaintiff is entitled to his costs of the first appellate Court and this Court. Costs in the trial Court will abide the final result.

16. As regards Hiralal's appeal No. 33 of 1961, since the trial Court's rejection of the plaint is being set aside and the case is being sent for retrial, it is not necessary to consider its merits in this Court although the reasoning on which the first appellate Court proceeded in his appeal is apparently cogent. He shall bear the costs of his appeal both here and in the lower appellate Court.