

(2013) 04 TP CK 0003
In the Tripura High Court
Case No : CRP 71 of 2012

Indian Oil Corporation Ltd. Vs Amit Roychoudhuri and Others

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2013) 04 TP CK 0003

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : D.K. Biswas, for the Appellant; P. Roy Barman, P. Chakraborty and Mr. S. Datta, for the Respondent

Judgement

S.C. Das, J.—While C.M. Application No. 35 of 2013 filed in connection with this revisional case is taken up for hearing, it has been proposed by the learned counsel of both side that the entire revisional case, if so considered by this Court may be disposed of and in that case, a separate order of temporary injunction, as sought for, in CM. Application No. 35 of 2013 may not be passed by this Court and that may be kept open for the petitioner of C.M. application to approach the trial court without wasting time. It is therefore, considered that the revisional application may be finally disposed of since learned counsel of both side are present and a simple issue is involved in the revisional case.

2. Heard learned counsel, Mr. D.K. Biswas for Indian Oil Corporation Ltd., the petitioner and learned counsel, Mr. P. Roy Barman for the respondent Nos. 1 to 7, learned counsel, Mr. P. Chakraborty for the respondent No. 8 and learned counsel, Mr. S. Datta for the respondent Nos. 9 and 10.

3. The petitioner herein, Indian Oil Corporation Ltd. instituted Title Suit No. 59 of 2003 in the Court of Civil Judge (Sr. Division), Court No. 1 inter alia seeking Specific Performance of Contract and other consequential relief. The suit property for which, the civil suit has been instituted by the Indian Oil Corporation Ltd. (for short, IOC) originally belonged to respondent Nos. 1 to 7. According to IOC, there was a contract between the IOC and defendant Nos. 1 to 7 and while the agreement was still in force, defendant Nos. 1 to 7 sold out that property to defendant No. 8 for valuable consideration. Defendant No. 8 mortgaged the

property to defendant No. 9 while taking a loan and that loan could not be paid by defendant No. 8 in terms of the loan agreement and as a result thereof, defendant No. 9, the UCO Bank pursuant to the provisions prescribed in Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, SRFAESI Act), entered in an agreement with ASREC (India) Limited (respondent No. 10) and thereby, ASREC acquired and/or purchased the mortgaged land and taken over the property from UCO Bank. In view of the agreement between defendant Nos. 9 and 10 in respect of the suit property, respondent No. 10 made an application before the trial court for adding them as a party and respondent No. 9, UCO Bank made another application praying for striking out their name from the array of defendants in the suit. The petitioner herein i.e. IOC, who is the plaintiff in this suit raised objection that for proper adjudication of the suit even if, respondent No. 10 i.e. ASREC is added as a party, but, presence of UCO Bank also necessary for adjudication of the suit. The trial court i.e. the Civil Judge (Sr. Division), Court No. 1, Agartala by order dated 11.04.2012 allowed both the petitions filed by the respondent Nos. 9 and 10 and thereby, added respondent No. 10 as a defendant in the suit and deleted the name of respondent No. 9 i.e. the UCO Bank from the array of defendants.

4. Having aggrieved, the plaintiff-petitioner filed the present revisional application for setting aside the order and further praying for keeping the UCO Bank as a party in the suit.

5. Respondent No. 8, Mr. Swapan Dey filed CM. Application No. 35 of 2013 inter alia stating that ASREC in the mean time, published a notice in the newspaper namely, "Daily Telegraph" dated 24.02.2013 proposing to sale out the land which they got from UCO Bank at a much lesser price than that of the actual market price of the land. Therefore, respondent No. 8, Mr. Dey by filing an application under Order 39 Rule 1 and 2 of CPC prayed for a temporary injunction restraining the respondent No. 10 i.e. ASREC (India) Ltd. from further proceeding with the sale of the land till disposal of the revisional application.

6. Since the matter is very simple, the revisional application is taken up for disposal on merit.

7. Admittedly, the suit was for Specific Performance of Contract and other consequential relief between IOC Ltd. and the respondent Nos. 1 to 7, but, because of the subsequent development of sale of the land to respondent No. 8, those respondents i.e. respondent No. 8 to 10 has come into picture. While the suit is pending before the trial court and UCO Bank has been made a party in the suit for adjudicating upon the issues, the deletion of the name of UCO Bank, at the stage of adjudication of the suit, was not proper. It is the prerogative of the plaintiff to array the defendants against whom the plaintiff sought for relief. UCO Bank, being a necessary party,- has come into picture, since defendant respondent No. 8 after purchase of the land from the original owners i.e. defendant Nos. 1 to 7, mortgaged it to defendant No. 9 i.e. the UCO Bank and under such circumstances, the suit ought to be disposed of in the presence of all

the defendants i.e. including the defendant Nos. 8, 9 and 10.

8. Order 1 Rule 10(2) prescribes the provision regarding striking out or adding parties which provides that:

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

9. In the facts of the present case, it is an admitted position that UCO Bank (respondent No. 9) was properly added as a party to the suit. It is contended by learned counsel, Mr. Biswas that presence of UCO Bank is necessary for proper adjudication of the suit since the land, in question, was mortgaged by the defendant No. 8 to the Bank (respondent No. 9) after it was purchased from defendant Nos. 1 to 7. He has also contended that defendant Nos. 1 to 7 in view of the agreement with IOC was bound to transfer the land to the plaintiff; but in violation of the agreement, defendant Nos. 1 to 7 sold out the land to defendant No. 8 and defendant No. 8, after such illegal purchase mortgaged it to defendant No. 9, while the agreement between IOC and the principal defendants i.e. defendant Nos. 1 to 7 was in force. The presence of defendant No. 9, UCO Bank being a necessary party is necessary for proper adjudication of the suit.

10. Learned counsel, Mr. Datta appearing for the Bank has submitted that in view of the agreement signed between defendant Nos. 9 and 10, the Bank already transferred all its rights in respect of the suit land to defendant No. 10 and since defendant No. 10 has already stepped to the shoes of defendant No. 9, presence of defendant No. 9 is no longer necessary for adjudication of the suit. It is however, agreed by learned counsel, Mr. Datta that defendant respondent No. 9, the UCO Bank was a necessary party and therefore it was arrayed as a defendant in the suit.

11. Once, the Bank was arrayed as a necessary party in the suit, before the suit finally adjudicated upon, it cannot be said that presence of the Bank for the purpose of adjudication is over. Let us have an idea as to what is understood as a "necessary party" and "proper party" for decision in a civil suit. "Necessary party" means - without whose presence a substantial decree cannot be made. It means a party without impleading whom a claim cannot be legally settled by Court. A "proper party" means without whom a substantial decree may be made, but, not a decree which shall completely settle all questions which may be involved in the controversy, and conclude the rights of all the persons who have any interest in the subject matter of the litigation.

12. In the present case at hand, the plaintiff-petitioner instituted the suit against defendant Nos. 1 to 7 claiming specific performance of contract and other

consequential relief in respect of the suit land. Admittedly, the suit land belonged to defendant Nos. 1 to 7. It is the case of the plaintiffs that while the agreement between the plaintiff and defendant Nos. 1 to 7 was in force, those defendants sold out the suit land to defendant No. 8 and defendant No. 8 took a loan keeping the suit land in mortgage to defendant No. 9. Defendant No. 9 in the process of realization of the loan amount ultimately handed over their interest in the suit land under an agreement to defendant No. 10. The factual matrix presented by the contesting parties and the sequence of events makes it abundantly clear that the suit should be decided in presence of all the defendants who are already on record. It was not proper for the learned Civil Judge (Sr. Division) in striking out the name of defendant No. 9, "the UCO Bank from the array of defendants. More particularly, it is the privilege of the plaintiff to array the defendants against whom the plaintiff sought relief in a given case and if it is found that such a defendant has not been wrongly made a party, the Court is not required to strike out the name of any of the defendants on the prayer of the defendants alone without considering the case of the plaintiff.

13. In view of the discussions made above, I am of considered opinion that the suit should be adjudicated upon and decided in presence of all the defendants on record including the defendant respondent No. 9, the UCO Bank Ltd.

14. The defendant respondent No. 8 may approach the trial court for the relief they sought in the C.M. Application No. 35 of 2013 before this Court.

15. The Civil Revision Petition accordingly, stands disposed of.

16. I made easy the cost of the proceeding. Send down the L.C. record along with the copy of the judgment.