

(2001) 09 MP CK 0033

In the Madhya Pradesh High Court

Case No : Civil Revision No. 1542 of 2001

Jagannath Prasad Soni and Others

APPELLANT

Vs

Laxmi Narain Soni and Others

RESPONDENT

Date of Decision : 26-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), 115

Citation : (2001) 4 MPHT 247

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : R.P. Agrawal and L.K. Pandey, for the Appellant; K. Mehta, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.—This is a revision by the plaintiffs against the order by which the application of the intervenor "Shri Dev Radha Krishna Jugal Kishore Mandir", a registered Public Trust, under Order 1 Rule 10 (2), CPC for impleading it as a defendant has been allowed on the finding that it is a "proper party" in this suit.

2. The plaintiffs have filed the suit against the defendants for partition of the properties. One of such properties is house No. 8 (new Nos. 285 and 286), Chakarbhata Ward, Sagar. According to the plaintiffs this house is the joint family property of the parties and on the basis of an order dated 23-3-2001 of the Trial Court they are reconstructing the house. The case of the intervenor is that this house is the property of the Public Trust and it has been declared as such in earlier Civil Suit No. 5-A of 1972 by the judgment and decree dated 4-3-1976. After the decision in this civil suit the trust was registered as a Public Trust and the house in dispute is entered in the register as belonging to this Trust. It appears that subsequently there was another Civil Suit No. 9-A of 1980 in which by order dated 27-2-1985 the validity of the earlier decree has been doubted. An appeal against the order in the subsequent civil suit has been filed by the intervenor and that is pending. According to the intervenor the plaintiffs are

demolishing the temple and removing the idols installed therein in the name of reconstruction of the house.

3. The Trial Court has found that the intervenor is a proper party to the suit as the judgment and decree in this partition suit is going to affect directly and adversely the interest of the intervenor

4. It has been argued on behalf of the petitioners in this revision that the view taken by the Trial Court is not correct and in the suit for partition between the co-sharers an outsider cannot be permitted to intrude into and ventilate his own grievance. In the opinion of this Court this argument has no substance. On the facts and in the circumstances of this case the intervenor is a proper party. It is vitally interested in the protection and preservation of the property of the trust. The house in dispute is said to be included in the list of the properties of this Public Trust. Therefore, this property cannot be permitted to be divided amongst the plaintiffs and the defendants without hearing the intervenor and if it is held that this house is not the joint family property of the parties it will have to be excluded from partition. The decree in the suit is going to jeopardise the interest of the Trust in the house if it is really its owner. The presence of the intervenor in this suit would enable the Court to effectually and completely adjudicate upon the dispute. The intervenor looking to the background of the case has "direct interest" or "legal interest". The decree in this suit may result in the curtailment of legal interest of the intervenor.

5. In *Sampatbai and Another Vs. Madhu Singh Gambhirji*, , it has been held by this Court that under Order 1 Rule 10 (2) the test is not whether the joinder of the person proposed to be added as a defendant would be according to or against the wishes of the plaintiff or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the plaintiff. It is whether the relief claimed by the plaintiff will directly affect the intervenor in the enjoyment of his rights. It is not enough that the plaintiffs rights, and rights which the person desiring to be made a defendant wishes to assert should be connected with the same subject-matter. The intervenor must be directly and legally interested in the answers to the questions involved in the case. A person is legally interested in the answer only if he can say that it may lead to a result that will affect him legally - that is by curtailing his legal rights. Again in determining whether or not an applicant has a proprietary right in the subject-matter of an action sufficient to entitle him to be joined as a defendant the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established.

6. In *Savitri Devi Vs. District Judge, Gorakhpur and Others*, , the Supreme Court after referring to its earlier decision in *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others*, , has observed that though the plaintiff is "dominus litis" and not bound to sue every possible adverse claimant in the same suit, the Court may at any stage of the suit direct addition

of parties and generally it is a matter of judicial discretion which is to be exercised in view of the facts and circumstances of a particular case.

7. The revision is dismissed in limine.

8. Civil Revision dismissed.