
(1994) 05 MP CK 0026

In the Madhya Pradesh High Court

Case No : Civil Revision No. 163 of 1992

Kamta Prasad and Others

APPELLANT

Vs

Smt. Vidyawati and Others

RESPONDENT

Date of Decision : 03-05-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 2 Rule 1, Order 22 Rule 10, Order 6 Rule 17

Citation : AIR 1994 MP 181 : (1995) JLJ 178 : (1994) 1 MPJR 298 : (1995) 40 MPLJ 127 : (1995) MPLJ 127

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : K.N. Gupta, R.A. Raman, for the Appellant; V.S. Chaturvedi, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

This revision is by the pen-dente lite purchasers against the order dated 30-6-1992, passed in Civil Suit No. 5A of 1990 by the Fourth Additional Judge to the Court of District Judge, Bhind, whereby the application of the petitioners under Order I, Rule 10, GPC and under Order XXII, Rule 10, CPC was dismissed.

The necessary facts giving rise to this petition are these. The plaintiff-respondent No. 1 and the defendants-respondents No. 2 and 3, are the members of the one family. The plaintiff instituted a suit for partition and injunction and for possession of her share in agricultural land and a house. After notice the defendants appeared in the suit and sought time for filing written statement and for that the case was adjourned from time to time. During the pendency of the suit, the defendant No. 2, Ramdulare executed two sale-deeds on 18-9-1991 in favour of the petitioners, transferring 11 Bighas and 6 Biswas which was part of the suit land of 17 Bighasf 16 Biswas, situated at village Khuri, District Bhind. Out of the two sale-deeds, one was for Rs. 87,000/- and another was for Rupees

35,500/-. After execution of the sale-deeds and transfer of the part of the suit land, the defendants absented themselves in the suit. The trial Court proceeded ex parte and closed the hearing after recording evidence on 11-3- 1992 and fixed the case for pronouncing judgment on 14-3-1992. The petitioners having come to know that suit is pending and the judgment is not pronounced, applied on 22-4- 1992 for impleading them as a party as defendants, have transferred their interest and the petitioners are vitally interested in the judgment which may ultimately be passed. The said application was opposed by the plaintiff. The trial Court rejected the application stating that as the hearing is closed and the case is fixed for pronouncement of the judgment and also held that the petitioners are not necessary parties to the suit. Hence, this revision.

Shri Roman, learned counsel for the petitioners, contends that the petitioners are the purchasers pendente lite, but the petitioners were not having any knowledge of pending litigation the vendors have received full consideration without disclosing the fact of pendency of the suit, thereafter, the defendants having no interest, chose to remain ex parte so that if any decree is passed it is the petitioners who had to suffer as they will be bound by the proceedings or the decree which may ultimately be passed in the suit. Therefore, even if the hearing was closed in the facts and circumstances of the case, the trial court ought to have allowed the petitioners to be impleaded suo motu as a party to the suit, particularly when the suit is for declaration and possession for half of the share of the plaintiffs in the suit land with the defendant No. 2 the mother of the defendant No. 1, even if the judgment is pronounced, a preliminary decree will be passed which will not be final. If the petitioners are not allowed to be impleaded as party, neither the petitioners can file an application under Order IX, Rule 13, CPC to set aside ex parte decree nor they can appeal and thus they will be deprived of the valuable land which will cause a great injustice to the petitioners.

On the other hand, Shri V.S. Chatur-vedi, learned counsel for the respondent/plaintiff, raised a preliminary objection that the application for impleading as a party was virtually an application under Order XXII, Rule 10, CPC, for grant of leave of the Court to continue the suit on devolution of interest which was refused. Against such an order of refusing to grant leave under Order XXII; Rule 10, CPC, an appeal lies under Order XLIII, Rule 1(1), CPC and not a revision u/s 115, CPC. On merits, it was contended that as the hearing in the case was closed and the case was posted for pronouncing judgment in view of the law declared by the Supreme Court in the case of Arjun Singh Vs. Mohindra Kumar and Others, the application was rightly dismissed. The petitioners did not act with due diligence who are guilty of unreasonable delay as they waited and watched the proceedings without making an attempt to be impleaded and later on when the case was fixed for pronouncement of judgment, applied for impleading them as a party. It was also submitted that the defendant No. 2, Ram Dulare, at the time of execution of sale deeds was having no interest and was minor, therefore, the sale deeds so executed are null and void, hence, the petitioners were not

necessary parties, therefore also the order is right. Learned counsel cited few decisions and also submitted written submissions.

Before I deal with the contentions, it would be appropriate to State the principle of Section 52 of the Transfer of Property Act, 1882, for short, the "TP Act", and the right of lis pendens purchaser to be joined as a party to a pending litigation. Section 52 intends to prevent one party to a suit making an assignment inconsistent with the rights may be established in the suit and which may require a further party to be impleaded in order to make effective the Court's decree as the doctrine of lis pendens not only binds the parties to the suit, but also purchasers pendente lite in relation to the subject-matter of the suit. The Supreme Court in the case of Nagubai Ammal and Others Vs. B. Shama Rao and Others, ruled that Section 52 does not wipe out the sale pendente lite altogether but to subordinate it to the rights based on the decree in the suit. The Supreme Court also considered the effect of the words used in Section 52 "so as to affect the rights of any other party thereto under any decree or order which may be made therein" and observed that the "transfer" is good except to the extent that it might conflict with rights decreed under the decree or order. It is in this view that transfers pendente lite have been held to be valid and operative as between the parties thereto. See also a decision of this Court in the case of Ashok Kumar v. Sunnukhan 1982 J LJ 132.

As to the rights of a pendente lite purchaser to be joined as a party as the Supreme Court in the case of Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another, observed that such a person will be bound by the proceeding taken by the parties in whose favour of the decree is passed in execution of the decree, the justice requires that such purchaser should be given an opportunity to protect his rights.

A Division Bench of this Court, in the case of Devisahai Premraj Mahajan Vs. Govindrao Balwantrao and Others, while considering the case of addition of party of transferee pendente lite at appellate stage, has observed that so far as allowing a party to be impleaded under Order I, Rule 10(2) or Order XXII, Rule 10, or Order XLI, Rule 20 is concerned the discretion has to be exercised by the Court judicially. It was further observed that there is no bar of the transferee pendente lite being impleaded as a party under Order XXII, Rule 10 at the appellate stage. However, the question will be one of the due diligence. But, if he is guilty of unreasonable delay and waits and watches the proceedings without making an attempt to be impleaded and later on files an application at a very late stage, unless he explains the delay or shows some justifiable reason for having remained silent, his prayer to be impleaded at a late stage can evidently not be allowed.

In the case of Radheshyam v. Bhagwanlal 1977 J LJ SN 83, this Court, following the decision in the case of Saila Bala (supra), observed that Rule 10 of Order XXII, is enacted with the object that in case of assignment, creation or devolution of interest, the suit may be continued by or against a person whom or

upon whom such interest has come or devolved. It is true that the Court has been invested with discretion, but like any other discretion, it must be exercised judicially. This provision enable a party to apply to the Court for being made a party so that he may safeguard his own interest by prosecuting the suit as he himself desires. It was further observed that Order XXII, Rule 10 does not cast any obligation on the transferee to become a party to the suit because he may think that his interests are protected by the original defendant. In other words, the transferee is not obliged to apply for being made a party. The fact remains that a decree to be passed in that suit against the original defendant will operate against the transferee as well. Thus, essentially it is the choice of the transferee whether to apply for leave of the Court or not.

This Court in the case of *Dharamsingh v. Jalima* 1980 J LJ 738 , while considering an application of a transferee pendente lite in a suit where the transferor filed an application for compromise in the suit and before decree could be passed, has taken the view that the Court has to exercise the discretion judicially. The application should be allowed as transferor has no interest in the suit property as he had already parted with all his interest therein. In *Baijanti Bai Vs. Prago and Others*, following the decision in *Dharamshing's* case (supra), this Court further held that the application should be allowed to avoid multiplicity of proceedings and if the party challenges a transfer as illegal, in that inquiry should be held.

Coming to the application of Order I, Rule 10(2), CPC, a bare reading of the sub-clause (2) shows 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 is not properly joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable to the Court to effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

In *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, it was held that it is, within the discretion of the Court to add or implead proper parties for completely settling all the questions that may be involve in the controversy either suo motu or on the application of a party to the suit, or an application filed at the instance of such other party. In the case of *Munshi Ram Vs. Narsi Ram and Another*, it has been held that Order I, Rule 10(2) of the Code enables the Court to implead a person who appears to be necessary party so as to effetuaty and completely adjudicate upon and settle all the questions involved in a suit.

In fact, Order I, Rule 10(2), CPC empowers the Court to implead any person as party suo motu, who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. True, the plaintiff is dominus litis, but a Court has to see that it may not be that a collusive decree is obtained against the real owner or interested person without impleading him as a party and it may not

become final affecting vitally the rights of such person. Therefore, to avoid such a situation and also to avoid multiplicity of proceedings, a Court should permit such a person to be added as a party.

In the opinion of this Court, a reading of the two provisions of Order XXII, Rule 10 and Order I, Rule 10, CPC, it is amply clear that under Order XXII, Rule 10, if the interest is assigned of the subject-matter of the suit, the assignee may apply to be impleaded as a party even at an appellate stage and if a person is vitally interested in the litigation and ultimate decree which may be passed in the said litigation vitally affecting his rights, he may apply to be added as a party under Order I, Rule 10(2), CPC. However, the Court, while considering the application under Order I, Rule 10(2) or under Order XXII, Rule 10, has to exercise the discretion judicially.

It is further clear from reading Order I, Rule 10, wherein the expression "at any stage of the proceedings" used and in Order IX, Rule 7, CPC, the word "hearing" is used. The two expressions carry a different meaning. This Court had an occasion in the case of Badri Prasad Soni Vs. S. Kripal Singh, to consider while considering an application under Order VI, Rule 17, CPC and distinguishing the case of the Supreme Court in the case of Arjun Singh (supra) has taken the view that as the suit commences by the presentation of plaint under Order IV Rule I and it stands disposed of so far as the trial Court is concerned, on the pronouncement of judgment under Order XX, Rule 3. This being the position regarding the commencement of the suit and its termination in the trial Court, the irresistible conclusion is that delivery of judgment by the trial Court is a stage in the proceeding. In this view of the matter, it can safely be said that because of the expression "at any stage of the proceedings" employed in Order VI, Rule 17, the Court is competent to allow either party to alter or amend his pleading at any time even before the judgment is pronounced, as till then, the Judge has the seisin over the case and is not functus officio. The same is the view of this Court in the case of Narendra Singh Sengar Vs. Shrimati Maltidevi and Others, Though Shri Chaturvedi has placed reliance on a contrary view of this Court in the case of Dhirendra v. State Bank of India 1993 MPLJ 607 and Ramchandra v. Smt. Indarbai (1993) 2 MPWN 79, but that would not make any difference as this Court has to consider whether in the facts and circumstances of the case whether the Court trying the suit has exercised the discretion judicially or not.

In the case in hand, the trial Court has rejected the application merely on the ground that the case was reserved for pronouncing the judgment, but did not consider that the purchaser pendente lite will be vitally affected by the decree which may ultimately be passed against the defendants who have even not filed their written statements and transferred the property and executed the sale-deed without disclosing the fact about the pendency of the suit. The trial Court also did not consider that as the suit was for declaration and partition of the share, a preliminary decree will be passed declaring the rights of the parties

interested in the property under Order XX, Rule 18, Sub-clause (2), CPC and therefore, a final decree will have to be passed after hearing the parties. Therefore, the contention of Shri Roman that under Order I, Rule 10, CPC, the addition of parties to the suit can be made at any time before the final decree; the trial Court without considering this aspect of the matter and the fact that by addition, the substantial justice will be done between parties, has rejected the application, in the opinion of this Court, is right.

Besides, it is stated at the Bar that the Presiding Officer who closed the hearing and heard the arguments and posted the case for pronouncement of the judgment, could not deliver judgment and has been transferred. In such circumstances, his successor will have to hear the arguments afresh in the case. In this situation, even if the reasoning of Arjun Singh's case (*supra*) is applied, then the hearing cannot be said to be concluded as the hearing of the suit means the hearing at which the Judge would be taking evidence or hearing arguments, or would have to consider the questions relating to the determination of the suit which would enable him finally to come to an adjudication upon it. Therefore, in such a situation, even the application under Order IX, Rule 7, would be maintainable. See, the decision of this Court in *Bhojraj v. Diwarkar* (1965) MPLJSN 74; *Mankunarbai v. Girjabai* 1981 IMPWN 56; and in *Kalawati v. Jagdish Prasad* (1991) 1 MPWN 123. Therefore, the reliance of Shri Roman on an unreported decision of this Court in the case of the *Union of India v. Raghuraj Singh* (Civil Revision No. 112 of 1984, decided on 26-11-1984), is appropriate wherein, in a similar situation when the case was posted for pronouncement of judgment, but the judgment could not be pronounced and the trying Judge was transferred and, therefore, the Court observed that as the successor Judge shall have to reopen the case for arguments and if the case is reopened for arguments, the case will be revived for hearing and an application under Order IX, Rule 7, CPC for setting aside the *ex parte* proceedings would be maintainable.

Lastly, I have to deal with the preliminary objection of learned counsel Shri Chaturvedi. True, the petitioner ought to have applied under Order XXII, Rule 10, CPC, his application is substantially under Order XXII, Rule 10, CPC and against the order of refusing to give leave, miscellaneous appeal lies under Order XLIII, Rule 1(1) and not a revision. But, to meet that, Shri Roman has filed an application for converting this revision into a Misc. Appeal as the limitation for both and the court-fees payable is the same and the petitioners have filed the revision within time, hence, the conversion can be allowed. Therefore, it would not make any difference, hence, it is not necessary for me to deal with this question.

In the result, the revision is allowed with no order as to costs. The order of the trial Court is set aside and the case is sent back to it to reconsider the application under Order I, Rule 10 and under Order XXII, Rule 10, CPC and dispose it of afresh in accordance with law. While considering the application, the plaintiff shall also be free to demonstrate that the transfer is null and void and, therefore,

addition of parties under Order I, Rule 10 or under Order XXII, Rule 10, CPC because, the interest has not devolved, is not necessary.