
(1979) 05 CAL CK 0007
In the Calcutta High Court
Case No : C.R. No. 3172 of 1978

Keshbendu Mohanto

APPELLANT

Vs

Sm. Bindubashini Sarkar

RESPONDENT

Date of Decision : 31-05-1979

Acts Referred:

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

Citation : AIR 1979 Cal 384

Hon'ble Judges : Jyotirmoyee Nag, J

Bench : Single Bench

Advocate : Kumud Ranjan Purkait and Sudhangsu Nath Ganguly, for the Appellant; Asis Ch. Bagchi, for the Respondent

Judgement

Jyotirmoyee Nag, J.—This Rule is directed against Order No. 42 dated 17-7-1978 passed by the learned Munsif at Sealdah, in Title Suit No. 442 of 1969. The Title Suit No. 442 of 1969 was decreed in part by the learned Munsif on 14-11-1972. In the said decree though the prayer for permanent injunction was granted, the prayer for mandatory injunction was rejected. Against the said judgment and decree, the plaintiff, opposite party preferred an appeal to the Court of the learned District Judge, Alipore. The said appeal which was numbered as Title Appeal No. 1196 of 1972 was heard by the learned Subordinate Judge, Sixth Court, Alipore, who was pleased to send back the suit on remand to the learned Munsif for re-hearing of the matter on certain specific points. The directions given in the judgment are as follows:--

"The judgment and decree of the learned Munsif under appeal are hereby set aside. The suit goes back on remand to the learned Munsif for a rehearing in the light of what has been stated in the body of the judgment as above. Within 30 days of the receipt of the record by the learned Court below, the plaintiff shall have the opportunity of taking necessary steps in the learned Court below for the holding of the local investigation in the suit. The parties will be at liberty to adduce further evidence, if any. The evidence already on record shall also be the

evidence for the purpose of rehearing. Upon such rehearing the learned Munsif shall dispose of the suit according to law by an all comprehensive judgment. In default of any steps for the holding of any local investigation in the suit being taken by the plaintiff within the aforesaid time, the learned Munsif shall hear the arguments of the learned lawyer for both parties and dispose of the suit according to law by an all comprehensive judgment."

After the records were received by the learned Munsif, as the plaintiff did not take steps for local investigation in time the petition for holding local investigation long after the specific time was rejected by the learned Munsiff. Thereafter, the plaintiff filed a petition praying for withdrawal of the suit with liberty to file a fresh suit which was rejected by the learned Munsif. The plaintiff moved this Court in revision against that order. But ultimately, the application was not pressed by the plaintiff. Accordingly, the Rule was discharged. Thereafter, on 8th February, 1977 the plaintiff filed an application in the Court below before learned Munsif under Order 1, Rule 10, Civil P. C. for addition of certain parties. An objection was taken by the petitioner that there was no scope to file any application for addition of parties in view of the order of remand by the learned Appellate Court. It was specifically stated therein that if the plaintiff did not take steps for local investigation within one month from the date of arrival of the record in the Court below, the learned Munsif would decide the case after hearing the argument of both the parties on the evidence already taken". But the learned Munsif on hearing both the parties was pleased to allow the plaintiff's application for addition of parties by his order No. 42 dated 17th July, 1978 holding that the person sought to be added as defendants are necessary parties in whose absence no effective decree can be passed, without such parties the decree would neither be according to law nor would it be all comprehensive. The learned Munsif was of the view that by adding such persons as parties it would not be inconsistent with the directions given by the learned Appellate Court and accordingly allowed the application of the opposite party plaintiff. The defendant has come up against the said order in revision before this Court. It is argued on behalf of the petitioner that the learned Munsif erred in allowing the application of the plaintiff opposite party for addition of parties inasmuch as that went beyond the direction given in the order of remand of the learned Appellate Court and in this connection, the learned Advocate for the petitioner has cited two cases, The first one is reported in Balaswaraswami Varu and Another Vs. Mallidi Dorayya and Others, wherein it has been held that when an appellate Court decides on a question of fact and remands the case for further enquiry, the lower Court has to act within the limits of the remand order. It cannot reopen the findings of the appellate Court. If it does it exceeds the limits of its jurisdiction. In this case the direction of the appellate Court was that if no steps were taken for local investigation the learned Munsif would hear the argument of the learned lawyer for both the parties and dispose of the suit according to law by an all comprehensive judgment. Therefore, the learned Munsif had to confine himself to the remand order that is he had to hear the argument by both the parties and

dispose of the suit according to law by an all comprehensive judgment. It has been argued that the learned Munsif could not entertain the application for addition of parties at that stage and the learned Advocate for the petitioner has referred to another case reported in K. Veerabasappa Vs. The Court of District Judge at Chitradurga and Others, wherein it has been held that where a superior court has passed a restricted order of remand pertaining to a particular issue and none of the parties had urged for open remand it is not open to any of the parties or for any Court to enlarge the scope of the remand order that too by a side window. If such a course is permitted it is destructive of all judicial discipline and will strike at the very root of the efficacy and binding nature of an order of a superior court on the parties to a dispute and the necessity at a subordinate Court to faithfully implement an order of remand of the superior Court. This does not, however, mean that in a remanded case, a subordinate Court cannot allow an application for amendment at all or that an order of remand should be implemented even without reference to any change in law or any other valid circumstances which can neither be predicted nor exhaustively catalogued."

On the other hand, it is argued on behalf of the opposite party that the learned Munsif was directed to pass a judgment in accordance with law by an all comprehensive judgment and that can only be done if all the necessary parties are before the Court. This objection regarding non-joinder of necessary parties was taken by the defendant himself that the suit cannot proceed in absence of neighbors who used the pathway which is the subject matter of the suit. The learned Munsif found that in absence of these necessary parties no effective decree could be passed nor would that be a decree according to law or an all comprehensive judgment and decree. In this connection Order 1, Rule 10, Clause (2) is very relevant. 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. Therefore, the learned Munsif was right in allowing the application of the plaintiff opposite party for adding certain parties who are considered to be necessary for proper adjudication of the suit. The case cited by the learned Advocate for the petitioner above does not shut out or take away the jurisdiction of the trial court to do whatever is necessary for proper adjudication of the matter before him after remand which is according to law and this direction is contained in the remand order itself.

2. Accordingly, I uphold the order of the learned Munsif and discharge the Rule.

3. There will be no order as to costs.