
(1944) 04 AHC CK 0005
In the Allahabad High Court
Case No : E.S.A. No. 953 of 1943

Kishan Lal

APPELLANT

Vs

Ram Chandar

RESPONDENT

Date of Decision : 04-04-1944

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (1944) 04 AHC CK 0005

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : S.N. Seth and Darbari Lal, for the Appellant; C.B. Agarwala, for the Respondent

Final Decision : Allowed

Judgement

Sinha, J.—This is a decree-holder's appeal and arises under the following circumstances.

2. The Plaintiff Kishan Lal brought a suit in the Court of the Munsif of Amroha for an injunction against a number of Defendants. Defendants 1 and 2, according to him, had opened a parnala in their house towards the side of the Plaintiff's house, and the prayer was for the closing of that paruala The house belonged to Defendants 1 to 4, Lachman, Kishan Lal, Ram Chandra and Murari Lal, sons of one Ajudhia Prasad. Defendant Kishan Lal should not be confused with the Plaintiff Kishan Lal, the latter being the son of one Kalian Rai. Defendant No. 5 was also cited as a Defendant, inasmuch as the allegation against him was that he had colluded with the Defendants. Relief was sought only against Lachman and Kishan Lal on the ground that although the house belonged to Defendants 1 to 4, the real mischief-makers were Lachman and Kishan Lal. Defendants Nos. 1 to 3 that is, Lachman, Kishan Lal and Ram Chandra, entered a common defence. They pleaded that the parnala was an old one and that they had acquired a right of easement with respect to the same. Certain other defences were raised with which I am not concerned at this stage. Defendant No. 4 did not enter any

defence. Defendant No. 5 complained that he had been unnecessarily impleaded.

3. The learned Munsif accepted the Plaintiff's case and decreed the suit. The decree was in the following terms.

The parnala opened by Defendants Nos. 1 and 2 should be closed. The Plaintiff's cost is to be payable by the Defendants.

4. The Plaintiff put his decree in execution and Ram Chandra, the third Defendant, pleaded that the parnala was the part of the house which belonged to him and as no decree had been passed against him, the Plaintiff was not entitled to proceed in execution against him. The Plaintiff thereupon made an application under Order 21 Rule 97 of C. P. C. The learned Munsif rightly treated this objection as one u/s 47 of the C. P. C. and repelled the objection of Ram Chandra. He ordered the closing of the parnala and held that Ram Chandra had no right to object to the same. Against this order Ram Chandra went in appeal. The learned Addl. Civil Judge of Moradabad has allowed the objection and dismissed the execution. He held that the relief prayed was only against defdts. 1 and 2 and not against defdt. No. 3 and no execution could, therefore, proceed against him. He winds up his judgment in the following terms:

Technically the Appellant is correct though justice does not lie on his side and for same reason I will withhold costs....

5. Kishan Lal has come before me in S. A. His main contention is that as Defendant No. 3 had, along with defdts. Nos. 1 and 2, entered a common defence and had denied the right of the Plaintiff, he was as much bound by the decree passed in favour of the Plaintiff as the other Defendants, namely, Lachman and Kishan Lal.

6. I am of opinion that this contention is sound. When Ram Chandra denied the title of the Plaintiff and when the learned Munsif had, in the suit itself, accepted the Plaintiff's case and held that the Defendants were not justified in their conduct, all the Defendants were bound by that decree. Not only that Ram Chandra in common with his two brothers, Lachman and Kishan Lal, denied the title of the Plaintiff, but even in the execution department his plea was not merely that no decree had been passed against him but that he was the owner of the house and that the Plaintiff was not entitled to have any relief against him.

7. The case may be approached from yet another point of view. Lachman, Kishan Lal, Ram Chandra and Murari Lal are sons of the same father. They must, unless the contrary is established, be deemed to be members of a joint Hindu family. It has been held in *Hori Lal v. Munman Kunwar* (1912) 34 All 549 at p. 560.

What is required is that all persons whose interests are to be affected by the suit are sufficiently and substantially represented. In the case of a joint Hindu family, all persons interested are represented in the suit by the manager and are substantially parties to it through the manager. I do not think that it is essential that the manager when he brings his suit, should state in distinct terms that he

is suing as manager, or that the Plaintiff in a suit against the family should describe the Defendant as the manager of the family.

8. A decree passed against Lachman or Kishan Lal will be a good decree not only against them but also against Ram Chandra and Murari Lal, if they are members of a joint Hindu family, although the latter may have been absent from the suit itself. In this case apart from being absent from the suit, they were parties to it and also parties to the decree which followed the suit.

9. "Procedure" said Lord Penzance in the well-known case of *Kendall v. Hamilton* 2 "is but the machinery of the law after all-the channel and means whereby law is administered and justice reached. It strangely departs from its proper office When in place of facilitating it is permitted to obstruct, and even extinguish legal rights, and is thus made to govern where it ought to subserve " This case was quoted with approval by Banerji J. in his judgment in the Full Bench case noted above. This disposes of the objection of Ram Chandra completely.

10. It is true that in this case we do not know which of the four sons of Ajudhia Pd. was the manager of the family, but this much is true that the case falls within the meaning of the dictum quoted above, namely, that all persons whose interests are to be affected by the suit are sufficiently and substantially represented Even if Murari Lal and Ram Chandra had been no party to the litigation, it could not be said that their interests were not sufficiently represented by Lachman and Kishan Lal. We are not left merely to speculate, but on the contrary, we find that Ram Chandra made common cause with Lachman and Kishan Lal in the defence which they set up.

11. I, therefore, allow this appeal, set aside the decree of the lower appellate Court and restore that of the Court of first instance with costs throughout.