

(2003) 01 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 364 of 2000

Kumari Kanchan and Others

APPELLANT

Vs

Bishan Das and Others

RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 6 Rule 17, 115, 151

Citation : (2003) 1 ShimLC 417

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : Anuj Nag, for the Appellant; Bhupender Gupta and Ajeet Jaswal, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Verma, J.—This revision petition u/s 115 of the CPC (hereafter referred to as "the Code") is directed against the order dated 25.10.2000 passed by the learned Sub Judge 1st Class (2), Kangra whereby he has dismissed the application of the Petitioners/Plaintiffs (hereafter referred to as "the Petitioners") to implead Naresh Kumar, Vijay Kumar, Sheela Devi and Urmila Devi as proforma Respondents.

2. The Petitioners have instituted a suit for declaration that the Respondents/Defendants (hereafter referred to as "the Respondents") have got no right or title to change the nature of the suit land comprising Khata No. 53 min, khatauni No. 146, Khasra Nos. 985 and 988 measuring 0-01-33 hectares and Khata No. 154, Khatauni No. 373, Khasra Nos. 986 and 987 measuring 0-00-90 hectares situate in Mohal Nerti, Tehsil and District Kangra and the entries in the revenue records showing Respondent Bishan Dass as tenant of the land Khasra Nos. 985 and 988 on payment of rent of Rs. 5 to the Petitioners/land owners are wrong as no tenancy was created by the Petitioners in favour of the said Respondent and for restraining the Respondents from changing the nature of the suit land by making construction thereon or cutting trees there from. In the alternative, a

decree for mandatory injunction for possession by way of demolition of structure has been prayed for. The said suit was admittedly instituted on 23.12.1989 and the Respondents filed their written statement on 21.8.1990 wherein inter-alia they took the objection qua misjoinder and non joinder of the parties. When the suit was at the stage of final arguments, the Petitioners moved an application dated 29.9.2000 under Order 1 Rule 10 read with Section 151 and Order 6 Rule 17 of the Code for addition of parties and amendment of the plaint.

3. It has been averred in the application that names of Naresh Kumar, Vijay Kumar, Sheela Devi and Urmila Devi are shown in the column of ownership qua the suit land but they could not be joined as parties at the time of institution of the suit as proforma Defendants. The Respondents took the objection regarding non joinder of necessary parties and proper parties. Though there is no dispute with other co-sharers but with a view to avoid the controversy regarding non joinder of parties the application was filed to implead them. It is further averred that addition of proposed parties and consequential amendment in the plaint is necessary for the just decision of the case.

4. The application was resisted by the Respondents on the grounds that the Petitioners have intentionally, knowingly and deliberately not impleaded the proposed parties despite objections by the Respondents in their written statement and the proposed parties are not interested to contest the claim of the Respondents and that the application has been filed at a highly belated stage just to prolong the litigation. It has also been claimed that the proposed proforma Defendants are neither necessary nor proper parties to the suit.

5. After hearing the parties, the learned trial Judge vide impugned order dismissed the application. Hence this revision petition.

6. I have heard the learned Counsel for the parties and have also perused the relevant records.

7. It was contended by the learned Counsel for the Petitioners that the settled position in law is that amendment of pleadings is to be liberally allowed. Therefore, the rejection of the amendment application by the trial Court is contrary to the settled position in law.

8. In substance the application filed by the Petitioners is not for the amendment of pleadings by raising any ground of attack or defence but to add some of the persons as proforma Defendants to the suit, therefore, strictly speaking the application is not for amendment of the pleadings/plaint but in fact it is an application for addition of parties, therefore, the principles governing amendment of pleadings are not applicable to the controversy in hand. The contention, therefore, is misconceived and cannot be sustained.

9. It was further contended by the learned Counsel for the Petitioners that the proposed parties are shown as owners of the suit land and were not impleaded as party, therefore, they are necessary parties to the suit and ought to have

been allowed to be impleaded for full and final determination of the controversy in the suit.

10. The object of Order 1 Rule 10 of the Code is to bring before the Court all the persons who are parties to the disputed subject matter of the suit so that the dispute may be determined fully and finally at the same time. Therefore, these powers can be exercised only in two even dualities: (i) when a party ought to have been joined as a necessary party to the suit but has not been joined; and (ii) when the question involved in the case cannot be completely decided without the presence of a party. The powers are discretionary but has to be exercised in a judicious manner so as to avoid inconvenience or embracement and on being satisfied about the bona fides of the Applicant. If the application is not bona fide and is dilatory and vexatious it cannot be allowed.

11. In the case in hand, there is no dispute that the suit was instituted on 23.12.1989 and the written statement was filed by the Respondents on 21.8.1990 taking an objection therein that the suit was bad for misjoinder and non-joinder of parties. The Petitioners pursuant to this objection did not take steps for impleading any person as a party to the suit even if there is any who may be a necessary party to the suit. It was after almost 11 years of the institution of the suit when it was at the stage of final arguments that the application for impleading a few persons as proforma Defendants has been filed. A perusal of the application itself reveals that there is no dispute with the co-sharers now sought to be impleaded. But they are sought to be impleaded just to avoid the controversy regarding non joinder of parties meaning thereby that it is not the case of the Petitioners even in their application that the persons sought to be impleaded as proforma Defendants are in fact necessary parties and in their absence the suit cannot be fully and finally decided.

12. It is settled position in law that a suit by a co-owner for possession against a trespasser in respect of the entire property without impleading other co-owners is maintainable without impleading the other co-owners. Even in view of this position in law the proposed parties who are alleged to be the "recorded co-owners" are not necessary parties to the suit.

13. In view of the above discussion, it is evident that neither the proposed parties are shown to be necessary parties to the suit nor it is made out that the controversy in the suit cannot be fully and finally adjudicated in their absence. Secondly, the application which has been filed after about 11 years of the pendency of the suit which is at the stage of final hearing is not a bona fide application and could be dismissed even on this score. The impugned order is, thus, neither illegal nor suffers from any jurisdictional error, therefore, does not call for any interference.

14. As a result, this petition merits dismissal and is accordingly dismissed. No order as to costs.