
(1991) 09 AHC CK 0034
In the Allahabad High Court
Case No : C.M.W.P. No. 25775 of 1991

Lakshmi Narain

APPELLANT

Vs

The District Judge, Fatehpur and others

RESPONDENT

Date of Decision : 12-09-1991

Acts Referred:

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

Citation : AIR 1992 All 119 : (1992) 1 AWC 210

Hon'ble Judges : R.K. Gulati, J

Bench : Single Bench

Advocate : Ramendra Asthana, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition is directed against an order dated 2-8-1991, passed in Civil Revision No. 15 of 1991.

2. The brief facts are that one Janardan Prasad plaintiff-respondent No. 2 filed a suit in the Court of Munsif Fatehpur against the defendant-petitioner and defendant respondents Nos. 3 to 5, seeking declaration that he was the owner of the house denoted as "As" in the map attached to the plaint and for cancellation of the sale deed executed by the petitioner defendant in favour of defendant respondent No. 3 in respect of a portion of that house. The case set up on the plaint was that the plaintiff and defendant respondents Nos. 2 and 4 namely, Niranjana and Hira Lal respectively, are real brothers and sons of one Narbada Prasad since deceased. Narbada Prasad and Sardar were the sons of one Jodha, a common ancestor who owned two houses shown with letters Aa and Ba in the plaint. Sardar died issueless. Narbada Prasad separated from his father during his life-time and was residing in house Ba along with Niranjana and Hiralal defendants Nos. 3 and 4. However, the plaintiff continued to reside in house Aa. After the death of Narvada Prasad as family settlement house "Aa" was given exclusively to the plaintiff and house "Ba" was given to his other two brothers

defendants Nos. 3 and 4. It may be observed that these defendants were arrayed only as pro forma defendants who in their written statement have admitted the case of the plaintiff. However, the suit was contested by the petitioner-defendant and defendant-respondent No. 3. The defendant-petitioner denied the correctness of the pedigree given in the plaint and set up his own pedigree. He claimed that one Laxman had four sons, 2 of them were Jodha and Balloo. The plaintiff and defendants Nos. 3 and 4 are the descendants of Jodha while the defendant-petitioner, Sukhdeo, Laxmi and Niranjana Lal who are brothers are the descendants of Balloo. According to the case of the defendant-petitioners the house in question was owned by Laxman and consequently, all the heirs of Laxman were the necessary parties to the suit. The trial court, it seems framed an issue to that effect being issue No. 4 and decided the same in the affirmative. The trial court directed the plaintiff to amend his plaint, accordingly, within the specified period, Feeling aggrieved, the plaintiff respondent preferred a revision which was allowed by the impugned order. Challenging the order passed by the Revisional Court, the present writ petition has been filed.

3. Having heard learned counsel for the petitioner, in my opinion, the writ petition is devoid of all merits. The question that arises for consideration is whether the persons who were directed to be impleaded as defendants at the instance of the petitioner-defendant, were necessary parties for the decision of the suit and consequently, the impugned order is liable to be interfered with.

4. In *Sri Mandir Mahadev Prithvi Nath v. Swami Prakashanand* 1981 ALJ 567, it has been observed by this Court :--

".....normally the Court should not add a person as defendant when the plaintiff is opposed to such addition. The reason is that the plaintiff is the *do minus litis*. He is the best judge of his own interest and it should be left to him to choose his opponent from whom he wants relief. If he seeks relief against a particular person, it is not the look out of the Court to see whether the relief should be claimed against other persons, nor is it duty of the Court to investigate whether the necessary parties have been added or left out."

For the purposes of the present case, it is not necessary to go to the extent the rule has been laid down in the aforesaid case. Suffice it to say that the Court may upon an application or suo motu in a fit and proper case, implead a new party as defendant even against the plaintiff's consent under certain circumstances. Sub-rule (2), O.1, R. 10 of the Civil P.C. envisages the circumstances when the Court may strike off or add parties. The said Rule, inter alia, says that the Court may at any stage of the proceedings either upon or without the application of either party, and on such term as may appear to the Court to be just, order the name of any person who ought to have joined, whether as plaintiff or defendant, or whose presence before the Court is necessary in order to enable the court effectively or completely to adjudicate upon and settle all the questions involved in the suit, be added. It is clear that the addition of parties

under the Rule is not the question of initial jurisdiction of the court but of judicial discretion to be exercised on judicial considerations, considering the facts and circumstances of a particular case. The discretion conferred on the Court is with a view to deal with the every case of defect of parties. The Court exercising discretion under this Rule may implead an additional defendant at the instance of one of the defendants even though the impleadment is seriously contested by the plaintiff. The discretion vested with the Court though wide is, however, circumscribed by limitations which are built-in in the provisions contained in O. 1, R. 10(2) itself. The Court has been empowered to add a party to a suit in two situations, namely, when a party ought to have been joined when the suit was originally instituted and was not so joined, Or secondly, the presence of the person sought to be added is necessary to effectively and completely adjudicate upon and settle all points involved in the suit. It is for the effective adjudication of the real controversy between the parties that the Court should alone exercise its discretion vested in it. The discretion of the court is to be exercised sparingly and in exceptional cases, for the plaintiff is do minus litis and in the normal course one cannot be impleaded as additional party if a plaintiff does not want. In a case where the court directs addition of a party against the will of the plaintiff who is to control the litigation, the Court must be satisfied that there is anything in the suit which cannot be determined on account of absence of party in the party-array, or whether any prejudice would be caused by that party not being added. To put it differently, where a person is neither necessary nor proper party, the Court has no jurisdiction to add him as a party. The question of necessary party is to be determined with reference to the averments in the plaint and the matter up for decision before the Court. The object of the rule is to promote the cause of justice and to bring before the Court at the same time all the persons who are parties to the dispute relating to the subject-matter, thereby avoiding inconvenience and separate trials.

5. Now reverting to the case in hand, as already stated, the relief sought in the suit in question was one of declarations that the plaintiff respondent is the owner of the house in suit and for cancellation of the sale deed executed by the defendant-petitioner in respect of a portion of that house. If it is found that the plaintiff is the sole owner of the house, he shall be entitled to the relief, otherwise, the suit would be dismissed. It has to be borne in mind that the suit is not one for partition where presence of all the shareholders may be warranted. Before directing Or refusing to add party, the Court is entitled to consider whether the person sought to be added has a prima facie claim to the subject-matter of litigation. The court cannot implead additional defendant on the mere asking of one of the defendants or because a party feels that it will be in a position to defend itself better in the event the prayer is granted. From the impugned order it is evident that except for the defendant-petitioner none of the heirs of Laxman has come forward with the case that all the heirs of Laxman are the shareholders in the house in suit. It is settled that the person or persons cannot be joined as parties to the suit because he or they would be incidentally

affected by the judgment. The main consideration, as already observed, is whether or not the presence of such person is necessary to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. If the question at issue between the parties can be worked out without anyone else being brought in, a stranger should not be added as a party. It may be observed that a necessary party is the one without whom no order can be made effectively nor the effective decree can be passed at all or in his absence it is not possible to adjudicate upon effectively and completely on the matter in controversy between the parties. On the facts of the present case, it is not possible to hold that the suit cannot proceed effectively in absence of the other persons who were sought to be added at the instance of the defendant-petitioner. The case of the plaintiff respondent is simple that on family settlement the house in question was allotted to his share which initially belonged to Jodha the grandfather of the plaintiff-respondent and defendant-respondents Nos.3 and 4. It is not at all necessary for the adjudication of that controversy to implead all the heirs of Laxman who have not come forward to claim any share in the house in suit. In my opinion, the view taken by the Revisional Court on the facts of the present case, was quite just and proper which does not require any interference by this Court.

6. For what has been stated above, the writ petition is without any substance and is, accordingly, rejected summarily.

7. Petition dismissed.