
(1994) 01 AHC CK 0110

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6872 of 1989

Lal Chandra and Others

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 24-01-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1994) 2 AWC 848

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : V.C. Misra, for the Appellant; S.D. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 15-2-1988 passed by Respondent No. 2 allowing the impleadment application filed by Respondents No. 5, 6 and 7 and the order dated 3-3-1989 passed by Respondent No. 1 dismissing the revision against the aforesaid order.

2. The facts in brief, are that Respondent No. 3. Ram Karan Yadav, filed suit No. 185 of 1979 against the Petitioners for declaration that he was owner as well as in possession of the disputed property and for recovery of possession in case it was held that in view of the proceedings u/s 145 Code of Criminal Procedure he was not in its possession. During the pendency of the suit the Plaintiff transferred the disputed property on 20th June, 1984 in favour of Ragho Ram, Rajmani and Subhash Chandra, Respondents No. 5, 6 and 7 in this writ petition. On 3-1-1985 they moved an application (73-C) under Order 22 Rule 10 CPC for being impleaded as party to the suit. Before disposal of that application on 25th March, 1985 they moved another application under Order I Rule 10 CPC with the same prayer. On 9th April, 1985 their counsel noted on the order sheet:

73-C because of technical ground not pressed.

3. On 11th April, 1985 the trial court allowed the application under Order 1 Rule 10 CPC and rejected the application under Order 22 Rule 10 CPC as not pressed. The Petitioners filed revision against the order dated 11th April, 1985 by which the application for impediment under Order 1 Rule 10 was allowed. The revisional court allowed the revision on 18th July, 1987 holding that the application under Order 1 Rule 10 CPC was not maintainable inasmuch as the transferee has no right to move such application under that provision if the property is transferred during the pendency of the suit.

4. On 3rd August, 1987 Respondents No. 5 to 7 filed another application under Order 22 Rule 10 CPC praying that they should be impleaded as Plaintiffs in the suit. The said application was allowed by the trial court on 15-2-1988. The revision preferred by the Petitioners against the said order was dismissed by Respondent No. 1 on 3rd March, 1989. The Petitioners have filed this writ petition against these orders.

5. I have heard learned Counsel for the parties.

6. Learned Counsel for the Petitioner submitted that the contesting Respondents No. 5 to 7 having not pressed their application 73-C earlier which was filed under Order 22 Rule 10 Code of Civil Procedure, their second application was not maintainable. The application which was filed earlier was not pressed. Their learned Counsel had made an endorsement as follows:

73-C because of technical ground not pressed.

The application was not pressed on the ground that they do not intend to press that application. They filed a second application on 3rd August, 1987 indicating the reasons why the earlier application was not pressed. There was no decision on merits while dismissing the first application filed by them. The second application, under these circumstances, was not barred by principle of resjudicata.

7. The Respondents have alleged that the Plaintiff has left with no interest in the property and he has become Sadhu. Admittedly the sale deed has been executed by him in favour of Respondents No. 5 to 7 and in case they are not impleaded in the suit there will be no one to prosecute the suit. The courts below have come to the conclusion that gross injustice will be caused in case they are not permitted to be impleaded as party in the suit. The view taken by Respondents No. 1 and 2 does not suffer from any manifest error of law.

8. In view of the facts and circumstances of the present case the present writ petition is dismissed. Parties shall, however, bear their own costs.