

(2022) 04 CAL CK 0045

In the Calcutta High Court

Case No : MAT No. 838 Of 2020, CAN 1, 2, 3 Of 2021

Manoj Kumar Gupta & Anr.

APPELLANT

Vs

Suraj Singh & Ors.

RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

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

Citation : (2022) 04 CAL CK 0045

Hon'ble Judges : Prakash Shrivastava, CJ;Rajarshi Bharadwaj, J

Bench : Division Bench

Advocate : Debnath Ghosh, Nirmalya Dasgupta, Rajesh Upadhyay, Tanmay Mukherjee, Amal Kumar Saha, Iresh Paul, Pankaj Kumar Mukherjee

Final Decision : Disposed Of

Judgement

Rajarshi Bharadwaj, J

1. By this appeal, correctness of the order of the Learned Single Judge dated September 16, 2020 passed in W.P.A. No. 115 of 2020 (Suraj Singh -versus- State Bank of India & amp; Ors.) has been questioned by the writ petitioner.

2. Having heard the learned counsel for the parties and perusal of the records, it is observed that a registered lease deed between the appellant-respondent no.1 and respondent no. 2 dated 17th April, 2017 categorically mentions that the appellant-respondent is the lessor of the said premises.

3. The grievance of the appellant-respondent primarily is that despite the subsistence of the lease deed which creates a privity of contract between the Respondent no.1 and 2 as far as the lease is concerned, the respondent no.2 has not been paying any rent since March, 2018. The appellant-respondent had submitted that the decree without making the appellant a party, cannot have any effect on the lessor-lessee relationship between the parties.

4. It is contended that the Learned Single Judge failed to appreciate the fact that

the writ petitioner is co-owner of the property along with respondent no. 1 and thus the rental income of the said property cannot be disbursed or relegated to respondent no.1 only. Furthermore, the appellant states that the respondent no. 1 has admitted the fact that he had purchased the property along with the writ petitioner no. 1 and hence the Learned Single Judge ought not to have directed the bank to pay the entire monthly rent to the respondent no.1 only.

5. The Learned Single Judge had considered that an essential component is that the co-owners were never impleaded in the partition suit. Thus, the appellant-respondent no.2 is legally duty bound to carry on paying rent in respect of the let-out premises to the lessor, where neither of the parties were impleaded.

6. In light of the above discussions, the Learned Single Judge had disposed of the W.P.A. No. 115 of 2020 by directing the respondent no.2 bank to pay all arrear rents in respect of the disputed property to the respondent.

7. Submission of the appellants is that the impugned order dated September 16, 2020 is bad in law and facts, is devoid of any reason and hence is liable to be set aside by this Hon'ble Court. The appellants submit that the Learned Single Judge has erred in failing to appreciate the matter in proper perspective and hence there is no merit in the writ petition. Additionally, it is also submitted that the facts and pleadings as stated in the writ petition are contrary to the facts, untrue in nature and that the Learned Single Judge ought to have appreciated that the only issue involved in the writ petition was regarding a dispute between the alleged landlord and tenant.

8. It was further contested by the appellant no.1 that he was not made a "necessary party" in W.P.A No. 115 of 2020. As held in *M. Kuppuswami Naidu v. V.Chandrashekhar Reddi & Ors.*, 2003 (1) ALT 395, a "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a necessary party is not impleaded, the suit itself is liable to be dismissed. A necessary party, is a person without whose presence the court would be unable to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in whose favor or against whom the decree is to be made. If a person is not found to be a necessary party, the court would have no jurisdiction to implead him, against the wish of the plaintiff. The fact that the person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party to the suit.

9. Thus, as per Sub-rule (2) of Rule 10 of Order I the Court is empowered to add any person as a party to the suit if:

i. Such person ought to have been joined as a plaintiff or a defendant, and is not joined;

or

ii. Without whose presence, the question involved in the suit cannot be

completely decided.

10. In order to determine the question that who is a "necessary party" it was held in *Vidhur Impex and Traders Pvt. Ltd & Ors. V. Tosh Apartments Pvt Ltd. & Ors.* AIR (2012) SC 2925, that firstly, there must be a right to some relief against such party in respect of the controversies involved in the proceedings. Secondly, no effective decree can be passed in the absence of such party. Thus, the two tests are required to be satisfied to determine the question who is a "necessary party."

11. In the matter of *Sriram Parischa vs Jagannath & Ors.*, (1976) 4 SCC 184, the issue was whether one of the co-owners can file a suit for eviction without impleading other co-owners and whether a co-owner can be an owner for the purpose for an eviction suit. It was held by the division bench that the contention of the appellant that the co-sharer plaintiff must be the absolute owner and a co-owner cannot without impleading all the owners of the premises ask for eviction could not be accepted. Jurisprudentially, it is not correct to say that a co-owner of a property is not an owner. He owns every part of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner of the property. Hence the contention that the plaintiff who was admittedly the landlord and co-owner of the premise was not the owner of premises could not be accepted. It was further held that a co-owner is as much an absolute owner with respect to the interest held by him.

12. The Court, in *Sri Ram Parischa* also clarified that it is not necessary to establish that the plaintiff is the only owner of the property, as long as he is a co-owner of the said property. Thus, by virtue of being a co-owner to the disputed property, the appellant becomes a "necessary party". Similarly, in the instant case the respondent no.1 did not contest the fact the appellant is not a co-owner, hence the fact that the appellant is a "necessary party" in this matter is established.

13. Having heard the learned counsel for the parties, the perusal of the records of the order passed by the Learned Single Judge reveals that since the court did not consider the fact that the appellant was not impleaded and thus a necessary party, the impugned order is found to be devoid of any merit.

14. For the aforementioned reasons, the impugned order is quashed and is remanded back to the Learned Single Judge for fresh consideration of the writ petition after adding the appellant as a necessary party to the petition.