

(2022) 04 RAJ CK 0005

In the Rajasthan High Court

Case No : S.B. Civil Writ Petition No. 10622 Of 2016

Mohd Anwar And Others

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 01-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civil Procedure, 1908 — Section 89, Order 1 Rule 3, Order 1 Rule 10, Order 1 Rule 10 (2)

Citation : (2022) 04 RAJ CK 0005

Hon'ble Judges : Sameer Jain, J

Bench : Single Bench

Advocate : R.K. Agarwal, Shailesh Prakash Sharma, A.K. Jain, J.P. Goyal, Jyoti Swami, Sanjay Mehrishi

Final Decision : Dismissed

Judgement

Sameer Jain, J

1. The present writ petition has been filed under Article 227 of the Constitution of India being aggrieved of the order dated 31.05.2016 passed by learned Additional District Judge, Jhalawar in Civil Suit No.8/2015 whereby, the application filed by applicant-petitioner Mohd. Mansoor Alam under Order 1 Rule 10 (2) of CPC was allowed.

2. The brief facts of the case are that the plaintiff-petitioner Mohd. Anwar Alam along with three sisters had filed a suit for partition and permanent injunction against Mohd. Aktar Alam. It is important to mention that on 02.08.2014, Mohd. Aktar Alam died and his widow and legal heirs i.e. sons and daughters were brought on record. Plaintiff Nos.1-4 and defendant No.1 are real brothers and sisters whose father Mohd. Maqbool Alam died in the year 2004 and their mother died in the year 1993. The properties in dispute are immovable property and agricultural land.

3. On 12.03.2014, a suit for partition was filed in between plaintiffs and defendants referred above. During the pendency of the suit, plaintiffs and defendants arrived at compromise on 11.11.2014 under Section 89 of C.P.C. and the same was attested by the learned Trial Court. It is also important to mention that prior to entering into compromise, one application for impleadment was filed by the applicant respondent No.4- Mohd. Mansoor Alam on the ground that admittedly the subject matter of the suit is ancestral property upon which, the present suit for partition cannot be entered into as the applicant is also having vested right in the property. Secondly, he submitted that since the subject matter of suit is an ancestral property, entering of Hibanama/ gift-deed in the year 1953 by Shri Wazir Mohd., grandfather of petitioner was a nullity.

4. The contention of the petitioners is that the father of applicant Shri Wazir Mohd. during his lifetime by way of registered Hibanama/gift-deed had gifted the property to late Mohd. Maqbool Alam, father of plaintiffs and defendants.

5. The contention of learned counsel for the petitioners is that learned Trial Court has erred in allowing the impleadment application as he is a stranger/ outsider to the suit and he is indirectly challenging the bonafides of registered gift-deed/ hibanama. After almost five decades, he cannot file a suit to challenge the same as it is barred by law of limitation. They further submitted that in Mohammedan law the concept of joint family and ancestral property does not exist.

6. In support of their contentions, they relied upon the judgments of Apex Court in Mumbai International Airport Private Limited Vs. Regency Convention Centre And Hotels Private Limited And Others, (2010) 7 SCC 417, Ajambi (Dead) by Legal Representative vs. Roshanbi And Ors., (2017) 11 SCC 544 and Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay & Ors. (1992) 2 SCC 524.

7. In Mumbai International Airport Private Ltd. (supra), it was held that:-

"15. 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 "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a 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 or a proper party to the suit for specific performance."

8. In Ajambi (supra), it was held that:-

"11. It is true that there is no concept of joint family in Muslims but it was open

to late Shri Shaikaji to give his property to his children in a particular manner during his lifetime, which he rightly did, so as to avoid any dispute which could have arisen after his death. The arrangement so made was duly accepted by the family members and it was also acted upon. Only thereafter a formal record of the said fact was made by late Shaikaji in Ext. D.-7."

9. In *Ramesh Hirachand* (supra), it was held that:-

"5. It was argued that the Court cannot direct addition of parties against the wishes of the plaintiff who cannot be compelled to proceed against a person against whom he does not claim any relief. Plaintiff is no doubt dominus litis and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed though under Order I Rule 3, to avoid multiplicity of suit and needless expenses, all persons against whom the right to relief is alleged to exist may be joined as defendants. However, the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. Rule 10 specifically provides that it is open to the Court to add at any stage of the suit a necessary party or a person whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

10. The power of the Court to add parties under Order I Rule 10, CPC, came up for consideration before this Court in *Razia Begum* (supra). In that case it was pointed out that the Courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the Court and that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject-matter of the litigation whether it be the questions relating to moveable or Immovable property.

14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.

The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary

that the person must be directly or legally interested in the action in the answer, i.e. , he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action.

Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.* (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A. v. Bank of England* (1950) 2 All E.R. 611, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated:

The test is 'May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights.'

15. It has been strenuously contended before us that the second respondent has no interest in the subject-matter of the litigation and the presence of the respondent is not required to adjudicate upon the issue involved in the suit or for the purpose of deciding the real matter involved. It is pointed out that the subject-matter in the suit is the notice issued by the Municipal Corporation to the appellant and the issue is whether it is justified or not. The Hindustan Petroleum Corporation Limited is interested in supporting the Municipal Corporation and sustaining the action taken against the appellant. But that does not amount to any legal interest in the subject-matter in the sense that the order, if any, either in favour of the appellant or against the appellant would be binding on this respondent. It is true that being lessee of the premises, the Hindustan Petroleum Corporation Limited has an answer for the action proposed by the Municipal Corporation against the appellant, but for the purpose of granting the relief sought for by the appellant by examining the justification of the notice issued by the Municipal Corporation, it is not necessary for the Court to consider that answer. If that be so, the presence of the respondent cannot be considered as necessary for the purpose of enabling the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The appellant is proceeded against by the Municipal Corporation for the alleged action in violation of the municipal laws. The grievance of the respondent against the appellant, if any, could only be for violation of the agreement and that is based on a different cause of action. The consolidation of these two in the same suit is neither contemplated nor permissible."

10. Per contra learned counsel for the respondents submits that the petitioners have not approached this Court with clean hands in as much as they have not brought on record the order sheet dated 19.11.2014 wherein, learned Trial Court has made it clear that the objector/ respondent No.4 had already filed application for being impleaded as party and had also filed an objection against the compromise being entered into between the parties and as such suit could not have been decided finally on the basis of the compromise.

11. Learned counsel for the petitioner has drawn our attention to the copy of the suit.

12. Learned counsel for the respondent has further submitted that in the application filed on 09.09.2014, much before the compromise, it was averred that the property was ancestral and the petitioner living in joint family under joint ownership, has vested right in the property and is therefore, a necessary party under Order 1 Rule 10 CPC.

13. We have gone through the contentions raised by the respective counsels, judgments cited at Bar and scanned the record of the case.

14. The admitted facts of the case are that on 09.09.2014, the application for impleadment was filed by the respondent. In the said application, he has categorically submitted that the property-in-question in compromise deed and civil suit filed by the petitioners is ancestral property wherein, the applicants had equal right of ownership as was enjoyed by the petitioner's father. The petitioners as well as the applicant are living under one roof, their business, residence, telephone connection and gas connection are also common, if he is not impleaded as a necessary party, his vested right will be affected. It is also true that one of the son i.e. respondent No.5 represented by legal heirs have also justified, concurred and endorsed the claim of the applicant i.e. respondent No.4.

15. For the reasons stated in the impugned order dated 31.05.2016, this Court is not inclined to entertain the present writ petition under Article 227 of the Constitution of India as there is no manifest error or error apparent on the face of the record. The impugned order is justified. The case cited by the petitioner reported in (2017) 11 SCC 544 titled *Ajambi (Dead) by Legal Representative Vs. Roshanbi & Ors.* qua absence of joint family concept amongst Muslims has to be seen by learned Trial Court while disposing of the case on merits. The judgment cited by the petitioner in *Mumbai International Airport Private Ltd. (supra)* that he is stranger to the suit is also not tenable as in the given case the property-in-question is ancestral, and not self-acquired property. It is true that the plaintiff is a dominus litis and has right to implead any person as a party against whom he seeks relief in the suit but in the garb of such right, he neither deprive a person who has vested right in the property-in-question nor can get the suit decided malafidely in collusion.

16. For the reasons stated above, this Court is of the view that the respondent-applicant is a necessary party and the order dated 31.05.2016 is passed in accordance with law. No interference is called for and the writ petition is therefore, dismissed. All the pending applications also stand disposed of.