

(2006) 09 AHC CK 0166

In the Allahabad High Court

Case No : Civil Miss. Application No.928 of 2006, In re: Testamentary Case No.1 of 2004

Mohit Kumar

APPELLANT

Vs

Mrs Lilu Kumar and Others

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

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

Citation : (2006) 09 AHC CK 0166

Hon'ble Judges : A.N.Varma, J

Final Decision : Allowed

Judgement

A.N. Varma, J.—This is an application preferred by Himalayan Institute Hospital Trust (hereinafter to be referred to as "HIHT") through its appointed person wherein a prayer has been made to delete the name of the Society i.e. HIHT from the array of the parties impleaded as respondent No.4. In support of the averments made in this application an affidavit has been filed by Shri Ganesh Kala son of late Daya Dhar Kala working as Manager with the HIHT, Jolly Grant, Dehra Dun, Uttranchal. According to the averments made in the application, HIHT is Society registered under the Societies Registration Act, 1860 having its registered Governing Body and Presidential Body as per approved Bye Laws which alongwith its Constitution, as acknowledged and registered with the Registrar of Societies, Dehra Dun. As per the list of approved and registered Governing Body as well as the Presidential Body of the Society, Mrs. Lilu Kumar i.e. respondent No.1 and Shri M.L. Dar and the petitioner have no locus standi as they are neither members of the Governing Body or Presidential Body nor even general body of the Society. Since the said Society i.e. opposite party No.4 is not represented by the Governing Body or any authority of the Society as contemplated under the provisions of Section 6 of the Societies Registration Act rather the same has been impleaded as respondent No.4 through (i) Mrs. Lilu Kumar and (ii) Lt. General M.L. Dar (Retd.) alleging them to be the members of the Presidential Body who are neither any authority nor members of the

Governing Body, therefore, the same deserves to be deleted from the array of parties.

2. A suit had been instituted being Regular Suit No. 865 of 1997 M.L. Dar and Others v. Vikram Singh and Others, wherein HIHT was impleaded as plaintiff No.4 through its Presidential Body said to be duly nominated by the deceased Chairperson His Holiness Swami Ram alias Shri Brij Kishore Kumar (1) Lt. General M.L. Dar (Retired) (2) Mohit Kumar son of Shri Brij Kishore Kumar alias His Holiness late Dr. Swami Rama (3) Mrs. Lilu Kumar wife of Shri Brij Kishore Kumar alias His Holiness late Dr. Swami Rama. The other plaintiff's were M.L. Dar plaintiff No.1, Mohit Kumar plaintiff No.2 and Mrs. Lilu Kumar plaintiff No.3.

3. The prayer made in the said suit was for a decree declaring the document dated 5.11.1996 as forged, fabricated and void and all the defendants be prohibited and restrained from operating all the Bank Accounts of HIHT in any capacity whatsoever. In the said suit an application under Order 1 Rule 10(2) read with Section 151 CPC was preferred for deletion of the name of plaintiff No.4 from the array of parties on the ground that the defendants in the said suit were members of the Presidential Body and only the Presidential Body is competent to do work related with the affairs of the Institution as the said Presidential Body had been nominated by the founder President of the Institute i.e. His Holiness Swami Ram and since the defendants had also been accorded recognition by the registrar of Societies as Presidential Body and the entire work relating to the Society was being done by them and plaintiffs No.1 to 3 neither being members of the HIHT nor any recognition having been accorded to them and also they were not doing the work of the Society in any capacity nor was there any resolution in their favour to file a suit as such the name of plaintiff No.4 deserved to be deleted from the array of plaintiffs.

4. The Trial Judge opined that plaintiff No.4 had inappropriately been made a party by plaintiffs No.1 to 3 and, therefore, directed deletion of the name of plaintiff No.4 from the array of the parties. The application, thus, was allowed and plaintiff No.4 HIHT was ordered to be deleted being unnecessary party. Being aggrieved against the said order, a petition under Article 227 of the Constitution of India, filed before the High Court at Uttranchal which was dismissed as not maintainable in view of alternative remedy being available to the petitioners under Section 115 of the CPC. The said order of the High Court was made subject matter of challenge before the Hon"ble Supreme Court by Shri Mohit Kumar and Others. While entertaining the petition the opinion expressed by the High Court on the point of maintainability of the petition under Article 227 of the Constitution of India was left open to question. However, no interference was made by the Apex Court with the orders of the High Court or the Trial Court that plaintiffs No.1 to 3 could not have joined with them plaintiff No.4, represented through themselves when that itself was the issue arising for decision. It was observed that even in the absence of plaintiff No.4 being arrayed as party to the suit cause of action allegedly arises to plaintiffs No.1 to 3 was

capable of being decided on merits. With the said observation the petition was disposed of.

5. I have heard Shri Jayant Bhushan, learned Senior Advocate, for the applicant as well as Shri Mohit Kumar, who appears in person and Shri Yashovardhan Swarup, learned counsel for opposite party No.1.

6. Shri Bhushan submitted that Section 6 of the Societies Registration Act prescribes for filing all suits by and against the Societies. His submission is that every Society registered under the Societies Registration Act may sue or be sued in the name of the President, Chairman or the Principal Secretary or Trustees as may be prescribed in Rules and Regulations and in absence, the names of such persons as shall be appointed by the Governing Body. As per his submission, opposite party No.1 Mrs. Lilu Kumar is neither the President nor the Chairman nor the Principal Secretary nor Trustee nor appointed by the Governing Body for the purpose, therefore, the name of opposite party No.4 through opposite party No.1 and M.L. Dar deserves to be deleted from the array of the parties. He further submitted that in view of the fact that opposite party No.4 who was plaintiff in Suit No.856 of 1997 was directed to be deleted from the array of the parties and the said order having been confirmed by the Apex Court, therefore, opposite party No.4 has inappropriately been impleaded as such. He also drew the attention of this Court towards the provisions of Order 1 Rule 10(2) CPC, which prescribes that Court may strike out or add parties. As per his submission the Court may at any stage of the proceedings either suo motu or upon an application of either party order that the name of any party inappropriately joined whether as plaintiff or defendant may be struck off. According to him, in view of the fact that Mrs. Lilu Kumar and M.L. Dar are neither office bearer of the Society nor appointed by the Governing Body to act as such, impleadment of opposite party No.4 through them is not proper and, therefore, the same deserves to be deleted from the array of parties. In support of his contention he placed reliance upon (1) (2003) 8 Supreme Court Cases 413, Illachi Devi (dead) by LRs. and Others v. Jain Society, Protection of Orphans India and Others (2) AIR 1974 Allahabad Page 422, Khalil Ahmad and Others v. Additional District Judge, Gorakhpur and Others and (3) AIR 1989 Allahabad page 168, Kisan Uchchattar Madhyamik Vidyalaya Samiti, Deoria and Others v. III Addl. District Judge, Deoria and Others.

7. Shri Mohit Kumar, in opposition, argued that the application for striking out the name of opposite party No.4 is not maintainable as Ganesh Kala is neither the Manager nor has been authorized to move such an application. According to him, the said application has not been preferred by Dr. Dato Mohan Swami but a stranger and the application at his behest is not maintainable. He further submitted that the proceedings for grant of probate and letters of administration under the Succession Act are proceedings in rem, therefore, all persons interested are necessary parties. As per his submission, impleadment of opposite party No.4 is not improper inasmuch as the question as to who is managing the

affairs of the Society is to be decided in the proceedings, therefore, opposite party No.4 does not deserve to be deleted.

He further submitted that in case opposite party No.4 is deleted from the array of parties great prejudice would be caused and his interest would be adversely affected. In support of his contention he placed reliance upon ILR 16 Madras 380, ILR Volume XLIV page 778, AIR 1924 Allahabad page 35, AIR 1954 SC page 5, AIR 1984 Delhi page 145 and AIR 1955 Hyderabad page 172.

8. Shri Yashovardhan Swarup, however, adopted the arguments advanced by Shri Mohit Kumar.

9. A necessary party is one who ought to have been joined i.e. a person in whose absence no effective decree at all can be passed. On the other hand, a proper party is he whose presence is necessary to enable the Court to effectually and completely adjudicate upon and decide all questions involved.

10. Plain reading of Order 1 Rule 10(2) CPC sets out that the Court may, at any stage, of the proceedings either suo motu or upon an application of either party may order striking out the name of any party improperly joined whether as plaintiff or defendant. It is not necessary that where an application is preferred only then such an action can be taken. If during the course of the proceedings it is brought to the notice of the Court that a plaintiff or defendant has improperly been impleaded the Court can act under Order 1 Rule 10(2) CPC and direct the name of the plaintiff or defendant so improperly impleaded to be struck out from the array of the parties.

11. In *Kisan Uchchattar Madhyamik Vidyalaya Samiti* (supra) this Court in paragraph 11 has observed as follows:

?With profound regards, I may say that it can never be a principle which may be made applicable in every case in view of the wide sweep of the language employed in O.1` R.10(2) of the Code. The provisions of O.1 R.10(2) of the Code clearly empower the Court to implead any person as party suo motu, who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. In case the plaintiff is permitted as a rule to choose, his own opponents and the Court does not interfere on the point, in that event it may be that a collusive decree is obtained against the real owner or interested person without impleading him as a party and when the decree will become final, then at a very late stage the person vitally affected or the real owner may come to know about it. This would lead to defeat the interest of justice which should not be permitted in a Court of law and to avoid these ugly situations the Parliament with considerable ingenuity enacted O.1 R.10(2) of the Code which has been couched in a language having very wide sweep.?

12. In *Khalil Ahmad and Others* (supra) this Court in paragraph 6 held as follows:

?Learned counsel also contended that Order 1, Rule 10(2) CPC can apply only for impleading a person who could or should have been impleaded as party on the date of the institution of the suit. The contention is that as these persons were not necessary parties on the date of the suit, Rule 10(2) will not apply. Here also we are unable to agree with the learned counsel. If Rule 10(2) gives power to the Court to implead a person whom the plaintiff did not impleaded initially, we see no reason why the Court should not be able to implead a person who subsequently becomes a necessary party and whom the plaintiff omits to implead. The stage at which the necessity is to be considered cannot be the stage only of the date of the institution of the suit, but any date upto the date of the final adjudication. If during the pendency of the suit at any stage the Court finds that the person who is a necessary party is not before it, it can direct that he be impleaded as a party and should be before the Court. The Court thus committed no error of law in directing the impleadment of these persons as parties.?

13. In *Illachi Devi* (supra) the Hon"ble Supreme Court in paragraph 31 observed as follows:

?31. A bare perusal thereof would show that a Society registered under Societies Registration Act as contradistinguished from a company registered under the Companies Act cannot sue in its own name. It is to be sued in the name of the President, Chairman or Principal Secretary or trustees as shall be determined by the rules and regulations of the Society or in the name of such person as shall be appointed by the governing body for the occasion in default of such determination. It is, therefore, not correct to contend that it is capable of suing or being sued in its own name.?

14. In ILR 16 Madras 380, the question was as to whether the genuineness of Will was *res judicata* for purposes of proceedings under the Probate and Administration Act. The principle laid down, thus, in the said case does not have any application to the case at hand.

15. ILR Volume XLIV page 778 (supra) also is on the question of *res judicata* and as such is not at all attracted in so far as the case at hand is concerned.

16. The other cases relied upon by Shri Mohit Kumar also do not have any application to the facts and circumstances of the controversy being raised at this juncture.

17. The Court, thus, is not precluded under Order 1 Rule 10(2) CPC from striking out the name of any party improperly joined or addition of any person, who ought to have been joined for the purposes of passing effective and executable decree for the purposes of resolving the controversy involved. Even if there is no application the Court can act *suo motu*. Filing of a formal application is not required in case where a party is to be impleaded or deleted.

18. Thus in view of what has been said hereinabove, the application deserves to

be allowed and as such is accordingly allowed. Himalayan Institute Hospital Trust opposite party No.4 is directed to be deleted from the array of the parties. Let necessary amendment in the array of parties be carried out within a week.

(Application allowed)