

(1991) 09 KAR CK 0032

In the Karnataka High Court

Case No : Civil Rev. Petition No. 6080 of 1989

M/s. Sharja Nice Bakery

APPELLANT

Vs

The Superintendent and Chairman, Tender Committee,
Karnataka Medical College Hospital and others

RESPONDENT

Date of Decision : 17-09-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10 (2), 115
Land Acquisition Act, 1894 — Section 18

Citation : AIR 1992 Kar 391 : (1991) 3 KarLJ 45

Hon'ble Judges : K. Ramachandriah, J

Bench : Single Bench

Advocate : R. K. Hatti for B. Rudra Gowda, for the Appellant; B. V. Murlidhar, HCGP, for the Respondent

Judgement

1. Petitioner is the plaintiff and respondents 1 and 2 are defendants 1 and 2 respectively in O.S. 77/89 on the file of the I Addl. Munsiff, Hubli (for short "the Munsiff" of "the trial Court"), Petitioner had filed that suit against respondents 1 and 2 only for a declaration that Notification No. LPV (2) Tender 62/88-89 dated 2-1-1989 issued by the first defendant is illegal and for the consequential relief of mandatory injunction directing the first defendant to call for the tenders in respect of bread item. Sometime after the suit was filed, third respondent herein made an application in the trial Court under Order 1, Rule 10(2) CPC praying that he may be impleaded as third respondent to the suit as he was vitally interested in the subject matter of the suit inasmuch as he has been supplying diet articles and HNS articles to the Karnataka Medical College Hospital, Hubli and Mental Hospital, Dharwad for more than 25 to 30 years without any complaint regarding the quality and quantity of the materials supplied by him and he had also deposited earnest money of Rs. 45,000/- in the State Treasury and a further sum of Rs. 15,000/- on 7-2-89 in response to the above mentioned tender Notification issued by the first defendant.

2. The said prayer of the third respondent was opposed both by the petitioner as

plaintiff and by respondents 1 and 2 as defendants 1 and 2. But, the trial Court has by order dated 17-10-89 allowed the application of the third respondent and has permitted him to be impleaded as third defendant in the suit.

3. It is that order that is challenged by the plaintiff in the suit by filing this Revision Petition u/s 115 C.P.C.

4. Sri R. K. Haiti, appearing for Sri. B. Rudra Gowda, learned counsel for the petitioner, argued that the third respondent is neither a necessary nor a proper party to the suit as no relief is claimed against him in the suit and the tender referred to above relates to supply of bread only to the two Hospitals and not the diet articles and, therefore, the learned Munsiff was not justified in permitting the third respondent to come on record as third defendant. Sri B. V. Murlidhar, learned High Court Government Pleader, appearing for respondents 1 and 2 submitted that he is supporting the above mentioned contention of the learned counsel for the petitioner as defendants 1 and 2 opposed the application filed by the third respondent in the trial Court also. But, third respondent is not represented by any counsel and he is also not present before Court although he is personally served with notice issued to him as per office note.

5. Nevertheless, the point for consideration is whether the trial Court has improperly exercised the jurisdiction vested in it in permitting the third respondent to come on record in the suit as third defendant. Order 1, Rule 10(2) C.P.C. inter alia provides that the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined 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, be added.

6. In the instant case, the learned counsel for the petitioner as well as respondents 1 and 2 are not in a position to produce a copy of the tender Notification referred to above and contents of that Notification are also not extracted in the impugned order. Even bread item in respect of which the above mentioned tender is said to have been issued by the first defendant also comes under the category of diet articles. Third respondent has contended in his application that he had deposited Rs. 60,000/- in response to the said tender Notification for supplying diet articles to the two Hospital and he would be adversely affected if the said tender Notification is declared as illegal by the Court as per the prayer made by the plaintiff. Therefore, it is necessary to examine whether the presence of the third defendant in the suit is necessary in order to enable the Court to effectually and completely to adjudicate upon and settle all the questions involved in the suit or whether his presence would result in any untoward hardship or injustice either to the petitioner or respondents-1 and 2.

7. This Court has considered the scope of Order 1, Rule 10(2)C.P.C. in Anbeline

Bai v. Mrs. Roslie G. Castelino 1967 (2) My LJ 365 and has held that if the relief or reliefs prayed for by the plaintiff if given, do not affect the person sought to be added as a party insofar as the subject matter of the suit or any right thereto is concerned, then it would not be necessary to add him as a party to the suit and that the words "the questions involved in the suit" in Order 1, Rule 10 C.P.C. have reference only to such question as may arise in the suit in order to give reliefs sought for by him and they have no reference to the pleas relied by him. On this point, there is a decision of the Supreme Court in Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR"s., in which it is held the definition of "person interested" given in Section 18 of the Land Acquisition Act is an exclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation to be awarded in respect of the land to be acquired and, therefore, a local authority or a Company for whose benefit the land is acquired and who is bound under an agreement to pay compensation is a necessary party to be imp leaded in exercise of the powers vested in the Court under Order 1, Rule 10(2) C.P.C. Following the said decision, this Court has held in General Manager, KSRTC v. Jagadguru Mallikarjuna Murugharajendraswamy 1980 (2) KarLJ 306 that a local Authority or a Company for whose benefit the land is acquired is entitled to come on record in the proceedings. In Narayana Rao Swami Rao Kulkarni and Another Vs. Bheema Rao Swami Rao Kulkarni and Another, the Court was considering whether the order passed by the trial Court by permitting the person who claimed to be a tenant of agricultural lands in a suit for partition to come on record as a defendant requires to be interfered with in exercise of the revisional powers u/s 115 C.P.C. In that context, this Court has held that the Court below has rightly exercised the jurisdiction vested in it under Rule 10(2) of Order 1, C.P.C. in ordering addition of applicant in I.A. II as defendant-3 in the suit for partition having regard to the claim put forwarded by him that he was in actual enjoyment of the suit lands being in possession of them as his tenant entitled to the benefits conferred upon him under the Karnataka Land Reforms Act and, therefore, the order of the trial Court does not call for interference under S. 115 C.P.C.

8. In my opinion, the observations made in the above decisions aptly apply to the facts of the case on hand and, as such, the impugned order does not call for interference.

9. In the result, the Revision Petition is dismissed directing the parties to bear their own costs.

10. Petition dismissed.