
(1996) 08 GAU CK 0037
In the Gauhati High Court
Case No : Misc Appeal (First) No. 101 of 1988

Nishi Kanta Paul

APPELLANT

Vs

Pritilata Deb

RESPONDENT

Date of Decision : 01-08-1996

Acts Referred:

Civil Procedure Code, 1908 — Order 1 Rule 10, Order 6 Rule 18
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 6 Rule 18

Citation : (1996) 2 GLJ 463 : (1997) 1 GLT 308

Hon'ble Judges : D.N.Baruah, J and S.Barman Roy, J

Bench : Division Bench

Advocate : R.K.Jain, A.Begum, Advocates appearing for Parties

Judgement

D. N. Baruah, J.—This appeal is directed against the judgment and order dated 25.4.158 passed by the Assistant District Judge No.2, Cachar in Title Suit No.20 of 1983 on the ground that the plaintiff failed to amend the plaint as directed by the Court vide order dated 1.1.2.88. According to the Assistant District Judge there was non compliance of the provisions of Order 1 Rule 10 (4) of the Civil Procedure Code.

2. The facts for the purpose of disposal of this appeal may be stated as follows : The appellant, as plaintiff filed a suit (Title Suit No.20 of 1983) in the Court of Assistant District Judge No. 1, Cachar at Silchar for specific performance of contract against the defendant/respondents and prayed for a decree for various reliefs. The defendant Nos. 1 to 3 and 6 had already filed written statement. Issues were also framed. The plaintiff and defendant Nos. 1, 2 and 3 had also filed a compromise petition on 11.11.87. On 17.11.87 the proforma defendant No.6 filed a formal objection. Thereafter on 13.1.88 one Kashi Ram Jain & 11 others filed a petition in the Court of Assistant District Judge No.2, Silchar to which the suit was transferred. The said petition was filed in the Court under Order 1 Rule 10 (2) and also under Order 22 Rule 10 (i), read with section 151 of the CPC praying for an order to implead them as defendants inasmuch as they

had acquired the suit property from defendant Nos.9 to 13 by right of purchase by a registered deed of sale. They further stated that the interest of proforma defendant Nos.7 and 8 and also of principal defendant Nos. 1 to 3 had devolved upon them on the strength of Power of Attorney, on receipt of the consideration amount and delivery of possession. Defendant No.6 filed objection against the compromise petition. On that day defendant No.3 also filed a petition objecting against compromise even though he was a party to it. Hanuman Prasad Jain had also filed objection against that prayer for compromise in the Court of Assistant District Judge No.2, Cachar, Silchar. On the prayer of the said Hanuman Prasad Jain & others, the Court by order dated 11.2.88 allowed the prayer for amendment. While allowing the petition the Court observed thus :

"I, therefore, find and hold that this is fit petition filed by Hanuman Prasad Jain & others to implead them as party defendants and it should be allowed. Accordingly, I allow the petition. Amend the plaint by inserting the petitioners Hanuman Prasad Jain & others as defendants."

Though the order was passed for amendment directing to amend the plaint it was not very clear to whom the direction had been given. The plaintiff objected to the addition of Hanuman Prasad Jain & others and accordingly filed objection. However, the Court felt that it was necessary to add them as party. Under Order 1 Rule 10(1) CPC if a Court is satisfied that the suit has been instituted through a bonafide mistake in the name of a wrong person as plaintiff and that it is necessary for determination of the real matter in dispute so to do, the Court may order any person to be substituted or added as plaintiff upon such terms as the Court thinks just. Under subrule (2) of the said Rule of Order 1, the Court, on an application of either party or on its own motion, may order that any party improperly joined, whether as plaintiff or defendant be struck out, and that the name of any person, who ought to have been joined whether as plaintiff or defendant or whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

3. The Court can also in an appropriate case pass order to implead any person and/or strike out some of the names of the defendants. In this case the Court had in all probability exercised its power under Order 1 Rule 10, CPC in spite of the objection of the plaintiff/appellant. This order was challenged by the appellant/plaintiff before this Court in Civil Revision No.325 of 1988. The said revision was later on dismissed. Therefore the order to implead said Hanuman Prasad Jain & others became final. The order passed by the Assistant District Judge to amend the plaint was not very specific inasmuch as whether it directed the office to make the necessary correction or to the plaintiff. The plaintiff in spite of the order did not amend the plaint. Thereafter, an application was filed by the plaintiff appellant not to make the newly added persons as party as there was no amendment. After hearing the said application the Court held that in the present case Order 6 Rule 18 was not applicable; but it was the duty of the

plaintiff to make the Amendment and on failure to make the amendment the whole suit was dismissed. Hence the present appeal.

4. We have heard Ms. A. Begum, learned counsel appearing on behalf of the appellant and Mr. RK Jain, learned counsel for the respondent No. 1.

5. The amendment of the plaint or pleading can be made under Order 6 Rule 17. If the prayer for amendment is allowed and thereafter if the Court directs to make the necessary amendment as per the provision under Order 6 Rule 18 if the party who had obtained an order for leave to amend, does not amend within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court:

6. In this case the Assistant District Judge placed much emphasis on Order 1 Rule 10 (4). Subrule (4) may be quoted as under:

"Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant."

If this is not done the suit in our opinion cannot be dismissed. There are various procedure for disposal of the suit. We find that the Assistant District Judge overlooked those provisions and dismissed the suit without giving opportunity of hearing. In view of that in our opinion the impugned order suffers from illegality and irregularity. Accordingly we set aside the impugned order and remand the case to the trial Court. As it was not the plaintiff who sought for addition of party and it was the Court who passed the order to implead the third party, at their instance, the Court may direct the office to make necessary amendmend and proceed with the case.

7. In view of the above we allow the appeal and set aside the order passed with a direction to the trial Court to proceed with the main suit in accordance with the provisions of law. However, in the facts and circumstances of the case we make no order as to costs.