

(1970) 02 GAU CK 0002
In the Gauhati High Court
Case No : First Appeal No. 18 of 1964

Nitya Sadhu Jamatia and others

APPELLANT

Vs

Chandra Dayal Jamatia and others

RESPONDENT

Date of Decision : 07-02-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 9

Citation : (1970) 02 GAU CK 0002

Hon'ble Judges : R.S. Bindra, J.C.

Bench : Single Bench

Advocate : R. Ghosh, for the Appellant; N.C. Roy for Respondents Nos. 30-35, for the Respondent

Judgement

R.S. Bindra, J.C.

1. This appeal by the plaintiffs is directed against the judgment and decree dated 14-9-1964, by which the Additional Subordinate Judge, Tripura, Shri N. M. Paul, dismissed their suit for possession by partition of their share in the land covered by jote No. 75.

2. The suit was founded on the allegations that the lands described in Schedule 1 of the plaint had been acquired jointly by the plaintiffs and the defendants Nos. 1 and 2 from the Government of Tripura as jotedars against the payment of certain amount. The acquired land was covered by jote No. 75 and its area was mentioned as approximately 5 drones though actually it turned out to be about 30 drones within the boundaries given in the relevant order of the Government. For sometime after the acquisition, it was alleged further, the plaintiffs, who are 10 in number, and defendants Nos. 1 and 2 continued in joint possession of the entire area but subsequently for the sake of convenient enjoyment they entered into different parcels of the land. The description of the area under the possession of the plaintiffs was given in Schedule 2 of the plaint while that in occupation of the defendants Nos. 1 and 2 was set out in Schedule 3 of the plaint. Sometime before the institution of the suit, it was pleaded, disputes

cropped up between the plaintiffs and the defendants Nos. 1 and 2 and the latter initiated proceedings u/s 107, Criminal P. C. against the former in collusion with the other defendants. The defendants Nos. 1 and 2, it was alleged further, were out to dispossess the plaintiffs from the lands mentioned in Schedule 2 of the plaint, and so it was considered inevitable that the entire area jointly owned should be partitioned and the plaintiffs made secure in possession of the land which falls to their share. The plaintiffs claimed 10/12th share in the joint land covered by jote No. 75 and alleged that the remaining 2/12th share belongs to defendants Nos. 1 and 2. The total number of the defendants in the suit was 63. Different sets of the defendants filed separate written statements. In the written statement filed by defendants Nos. 1 and 2, it was admitted that to begin with the land under jote No. 75 had been jointly acquired by them and the plaintiffs, but it was alleged that partition by metes and bounds had been effected between the joint owners more than 10 years before the institution of the suit. On that basis it was claimed that the suit for possession by partition was not maintainable. Another objection taken was that the plaintiffs had sold their share of the land to a large number of persons and since quite a few of them had not been imploded, the suit for partition was not properly constituted.

3. The trial Court settled the following issues between the parties:

- (1) Whether the plaintiffs have got any cause of action in this suit?
- (2) Is the suit bad for defect of parties?
- (3) Is the suit properly valued and stamped?
- (4) Whether the plaintiffs have got any right, title or possession in the suit lands?
- (5) Are the suit lands liable to be partitioned between the parties? If so, what would be the share of the plaintiffs in those lands?
- (6) What relief, are the plaintiffs entitled to get?

Issues Nos. (1) and (2) were decided against the plaintiffs and issue No.(3) in their favour. Issues Nos. (4) and (5) were decided against the plaintiffs but for reasons, which are not comprehensible. In consequence of the findings on issues Nos. 1, 2, 4 and 5 the suit of the plaintiffs was dismissed with costs.

4. Issue No. (1) was decided against the plaintiffs on the finding that plaintiffs and defendants Nos. 1 and 2 had partitioned the property by metes and bounds and so they were no longer joint owners of the land covered by jote No. 75. This finding was based almost exclusively on the basis of what is mentioned in the plaint. I have critically examined the plaint but have not been able to spell out there from that the plaintiffs had admitted that they had partitioned the land with defendants Nos. 1 and 2 by metes and bounds and their status as joint owners had come to an end. All that was mentioned in the plaint was that the plaintiffs on one hand and the defendants Nos. 1 and 2 on the other had been in possession of separate parcels of land, of which the descriptions are respectively

given in Schedules 2 and 3 of the plaint. In para 5 of the plaint it was specifically asserted that despite the possession of the plaintiffs and the defendants over different parcels of the joint land, "the suit land is joint property possessed separately." In face of such pleadings, the trial Court was in patent error in holding that the plaintiffs had admitted in the plaint that final partition had been affected between them and the defendants Nos. 1 and 2.

5. Under issue No. (2) the Court held that some of the persons to whom, according to the admission of plaintiff No. 1 Nitya Sadhu Jamatia as P. W. 1, a part of the land comprised in jote No. 75 had been sold by the plaintiffs had not been imploded and, as such, suit for partition was not properly constituted. Shri R. Ghosh, appearing for the plaintiffs-appellants, contended that since the names of the various persons to whom the plaintiffs had sold some areas out of jote No. 75 were elicited by the defendants only during the course of the cross-examination of the plaintiff Nitya Sadhu Jamatia, the proper course for the trial Court to follow was to give an opportunity to the plaintiffs to amend the plaint by bringing those vendees on the record as defendants and that it was altogether illegal for the Court to dismiss the suit on the basis of non-joinder of certain necessary parties to the suit.

I have found substance In this submission of the learned counsel for the appellants. Rule 9 of Order 1, Civil P. C. provides that no suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. There are admittedly a number of cases in which the Court cannot, under the substantive law deal with the rights and interests of the parties actually before it in the absence of certain other persons. As an instance, I may mention that the Court cannot, in a suit by a co-trustee for possession of the trust property, grant any relief to the plaintiff in the absence of all other co-trustees on the record, the reason being that all the co-trustees represent a single and indivisible right which cannot be adjudicated upon and no effective decree can be passed by the Court in their absence. Likewise, a partition suit will not be legally constituted if all the co-owners of the properties involved in the suit are not brought on the record. In such cases, the obvious course open to the Court is to bring the necessary parties on the record under Rule 10 of Order 1. Sub-rule (2) of Rule 10 enjoins 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 person 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, be added. The combined reading of Rule 9 and Rule 10 (2) plainly yields the conclusions, (i) that a suit cannot be dismissed on the basis merely of non-joinder of parties, and (2) that power vests in the Court to bring on the record any person who is a necessary party to the suit and in whose absence it is not possible for the Court to effectually and completely adjudicate

upon and settle all the questions involved, in the suit. It would follow that it was obligatory on the Court either to give an opportunity to the plaintiffs to impale those persons in the suit to whom some parts of the land covered by jote No. 75, according to the statement of Nitya Sadhu Jamatia plaintiff, had been sold, or to straightway impale those persons as parties on its own initiative. The Court was clearly not justified in dismissing the suit on the short ground that in the absence of all the co-owners on the record the suit was not properly constituted.

6. As a result, I allow the appeal, set aside the judgment and decree of the trial Court, and remand the case to the trial Court with the direction that it should be entered at its old number and an opportunity given to the plaintiffs to bring on the record such persons to whom any of them may have sold some parcels of the land covered by jote No. 75. Those persons then shall be summoned and the case tried afresh after framing additional issues as may arise from the pleadings of the persons newly brought on the record.

7. Before parting with the case, I would like to state that while discussing the trial Court's finding on issue No. (1) I should not be taken to have held that partition by metes and bounds as pleaded by defendants Nos. 1 and 2 had not been proved. The only conclusion recorded by me is that on the basis of the pleadings adopted by the plaintiffs it is not possible to hold that such a partition had been effected. The trial Court would give its own finding afresh on that issue after taking into consideration the pleadings of the parties and all other data available on the record.

8. Taking all the circumstances into consideration, I have decided to leave the parties to bear their own costs of this appeal and order accordingly.