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(1995) 11 PAT CK 0006

In the Patna High Court

Case No : Civil Revision No. 380 of 1992 (R)

Padam Sagar Suri — APPELLANT

Vs

Prayag Lal Rana and Another — RESPONDENT

Date of Decision : 01-11-1995

Acts Referred:

Citation : (1995) 11 PAT CK 0006

Final Decision : Allowed

Judgement

Gurusharan Sharma, J.—The plaintiff-opposite party No. 1 herein filed Partition Suit No. 61 of 1985 for partition of his half share in the properties detailed in Schedules A and B to the plaint against defendant No. 1. Opposite Party No. 2 herein. The petitioner was also impleaded as defendant No. 13 therein. It is true that with respect to certain dispute between the parties referred to in the Arbitration agreement dated 27.7.1983, the petitioner was appointed as sole arbitrator and he gave his award. A reference of the said award has been made in paragraph-9 of the plaint, but neither the said award has been challenged, nor any relief has been claimed against the petitioner in the suit. The petitioner is a Jain Sadhu. He is neither a co-sharer of the opposite party No. 1 nor belongs to his family, nor he is a purchaser nor interested in any of the suit properties.

2. After receiving summons, the petitioner appeared in the suit and filed written statement, stating therein that he was not interested in the suit properties and the award given by him has already been made Rule of the Court. It was, therefore, prayed therein that his name be stuck off from the suit.

3. Thereafter on 26.9.1992, the petitioner filed a separate petition under Order 1, Rule 10 (2) read with Section 151 of the CPC for striking out his name from the category of the defendants, which has been rejected by the impugned order dated 29.8.1992.

4. The Subordinate Judge observed that as alleged in the plaint defendant No. 13 was appointed as an arbitrator to arbitrate the matter in connection with the suit

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properties and so he has been made a party and if the plaintiff has not disclosed any cause of action against him and he has been made a proforma defendant, the suit was liable to be dismissed as against him, but the suit can be dismissed only after full hearing. It has further been observed that if the defendant No. 13 feels that the plaintiff has not sought any relief against him and he was un-necessarily and improperly made a party, he may not contest the suit, but his name cannot be struck out at this stage, and rejected the said petition.

5. Admittedly, the suit in question is pure and simple suit for partition and the plaintiff has not pleaded any cause of action as against defendant No. 13, who is neither a co-sharer, nor a transferee, nor has got any interest in the property under partition. In my opinion, since earlier the said defendant No. 13 had acted as arbitrator and had given award in a dispute relating to one of the items of the suit property, which has already been made Rule of the Court, he was not liable to be impleaded as a party defendant in this suit. He is neither a necessary nor proper party to the suit. He has been unnecessarily impleaded without any relief against him.

6. The primary meaning of a party is a litigant who has a part to play in the proceeding. There must be a right to the plaintiff to some relief against a party impleaded in the suit in respect of the matter involved therein, otherwise considerable prejudice is likely to be caused to a party, whose interest has no nexus to the subject matter of the suit. When Order 1 Rule 10 of the Code provides that the court may strike out the name of the party, who has improperly joined as plaintiff or defendant, these words have reference to the suit as framed. When a person is neither a necessary nor a proper party and his presence is not required for any complete and effective adjudication of any question involved in the suit, he can not be impleaded merely because the plaintiff so wished. The party impleaded must have direct interest in the subject matter of litigation.

7. In the circumstances, if a person, who has no real concern with the suit has been impleaded as a party, the proper course in such case for the court is to exercise the power under Order 1 Rule 10 (2) of the Code for ordering at any stage of the proceedings, the name of a defendant improperly joined to be struck out instead of dismissing the suit as against him. This is an appropriate way in case of misjoinder of parties. In this connection reference may be made to a Full Bench decision of Madras High Court in Abdul Sac alias Varusai Mohammad Sahib Vs. Sundara Mudaliar and Another, , wherein it was held that it was the duty of the trial judge to strike out the name of a party improperly impleaded and it is quite wrong procedure to dismiss the suit as against him.

8. In the circumstances, the impugned order dated 29.8.1992 passed by the Second Subordinate Judge, Giridih, in Partition Suit No. 61 of 1985 rejecting the petition dated 26.5.1992 filed on behalf of the defendant No. 13 is hereby set aside and the name of defendant No. 13 is directed to be struck out from the plaint of the said suit.

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9. In the result, this Civil Revision application is allowed. However, there will be no order as to costs.

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