
(1989) 10 AHC CK 0013
In the Allahabad High Court
Case No : Civil Revision No. 128 of 1984

Pragatisheel Sahkari Grih Nirman Samiti Limited	APPELLANT
Vs	
Smt. Rajeshwari Devi and Others	RESPONDENT

Date of Decision : 03-10-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(1), Order 1 Rule 8, Order 1 Rule 8(1), Order 1 Rule 8(3)
Uttar Pradesh Co-operative Societies Act, 1965 — Section 7, 9

Citation : (1990) 1 AWC 601

Hon'ble Judges : D.S. Bajpai, J

Bench : Single Bench

Advocate : S.M.K. Chaudhary, Vijay Chandra and S.S. Chauhan, for the Appellant; K.N. Mehrotra, Shanker Pd. and V.K. Dubey, for the Respondent

Final Decision : Allowed

Judgement

D.S. Bajpai, J.—Pragatisheel Sahkari Grih Nirman Samiti Limited, Lucknow through its Secretary Sri. S.P. Misra has preferred this civil revision petition against order dated 5th September, 1984 passed by Additional Civil Judge, Lucknow in Regular Suit No. 152 of 1982 by which applications of Shailendra Singh and Gaya Prasad Rastogi opposite parties 7 and 6 respectively numbered as Ga-40 and Ga-19 for their impleadment as co-Plaintiffs were allowed under the provisions of Order 1 Rule 8 of the Code of Civil Procedure.

2. Brief facts giving rise to the civil revision are that the Plaintiff Pragatisheel Sahkari Grih Nirman Samiti Limited, Lucknow, which is a society registered under the provisions of Section 7 of the U.P. Cooperative Societies Act, 1965 (hereinafter referred to as the Act) filed a suit for specific performance of a contract to sell fifty eight thousand square feet land against opposite parties 1 to 5 on the allegation that they had refused to perform their part of the contract and hence decree for specific performance was prayed for. Opposite party No. 7 alleged in his application for impleadment Ga-40 that since the Secretary of the

Plaintiff society had demanded a sum of rupees fifty thousand from opposite party No. 7 for meeting legal expenses in the suit against which he had paid a sum of Rs. 47,400/- on 22-6-1981 and thereafter, it appeared to the applicant that the Secretary of the Society wanted to usurp the land for which agreement was made in collusion with the opposite parties by entering into a compromise and thus interest of opposite party No. 7 as also other members of the society was to suffer adversely and as such it was necessary that he be impleaded as co-Plaintiff to protect the interest of members of the society as also opposite party No. 7 himself.

3. Similarly, opposite party No. 6 also filed an application for impleadment Ga-19 alleging that he had paid a sum of rupees sixty five thousand to Sri. T.N. Varma (father of Defendants-opposite parties 2 to 5 and husband of Defendant opposite party No. 1). He further alleged that rupees eighty thousand had been taken by the Plaintiff-society from him and that since the rights and interest of the members of the society as also of the opposite party No. 6 were in jeopardy in view of the changed attitude of the Secretary of the Society who wanted to usurp the land in suit by entering into a compromise with the Defendants-opposite parties, he was entitled to be impleaded as a co-Plaintiff under the provisions of Order 1 Rule 8(3) of the Code of Civil Procedure. The learned trial Court after taking into consideration all facts placed before it held that the interest of Sri. Shailendra Singh was likely to be affected in case he was not impleaded as a co-Plaintiff. A similar finding was recorded on the application of Gaya Prasad Rastogi and it was held that he was entitled to be co-Plaintiff Under Order 1 Rule 8(3) of the Code of Civil Procedure.

4. I have heard the learned Counsel for the parties and perused the order of the learned trial Court. Opposite parties 6 and 7, though duly served and represented by Sarvshri Shankar Prasad and K.N. Mehrotra Advocates and Sri. V.K. Dubey Advocate respectively did not appear to address the Court either on 11-9-1989 when the case was listed or thereafter on 12-9-1989 and 14-9-1989. It has been urged on behalf of the applicant that opposite parties 6 and 7 were strangers to the contract and had no right of being impleaded since the contract was between the society and the Defendants. Learned Counsel submitted that it was the society, which was a body corporate and which had entered into a contract through its Secretary for purchase of the land from the Defendants-opposite parties and as such no right or interest of the impleaded Plaintiffs-opposite parties was at all affected and hence they were not necessary parties. Sub-rule 1 of Rule 8 of Order 1 of the CPC provides as under:

8 (1) Where there are numerous persons having the same interest in one suit -

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested ;

(b) The Court may direct that one or more of such persons may sue or be sued,

or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

Learned Counsel submitted that only a person or persons can sue or be sued, may defend a suit on behalf of all or for the benefit of such persons interested but since in the instant case it was a society alone which was interested in specific performance of agreement to sell opposite parties 6 and 7 not having been members of the Plaintiff-society could not get benefit of the said Rule, since they had no interest at all in the subject matter of the suit much less having the same interest in the suit and as such could not be impleaded as a party to the suit by being impleaded as co-Plaintiffs. Learned Counsel relied on a Full Bench decision of the Madhya Pradesh High Court in a case *Panne Khushali and Another Vs. Jeewanlal Mathoo Khatik and Another*, wherein it has been held, on consideration of a Full Bench decision of this Court in the case of *Benaras Bank v. Bhagwandas* AIR 1947 All 18 in which the Court spelt out tests for determining the question as to who was a necessary party to a proceeding relying on a decision of their Lordships of the Supreme Court in *Deputy Commr., Hardoi, in charge Court of Wards, Bharawan Estate Vs. Rama Krishna Narain and Others*, by their Lordships of the Madhya Pradesh High Court the tests as under:

- (i) There must be a right to some relief against such party in respect of the matter involved in the proceedings in question,
- (ii) It should not be possible to pass an effective decree in the absence of such a party.

Thus bearing in mind the aforesaid tests, discussed hereinabove, the irresistible conclusion is that the applicants are not the necessary parties for the reasons to follow.

Learned Counsel also placed before me a decision of their Lordships of the Calcutta High Court in *Bhagirathmall Kanodia and Others Vs. Ramricklal Girdhardas and Others*, where a similar view has been taken. Needless to say that in the case in hand the opposite parties 6 and 7 who are applicants for impleadment as co-Plaintiffs having no right of relief against the Defendants, their impleadment was not necessary and they could not be held to be necessary parties to the suit. The submission of the learned Counsel for the applicant has, therefore, to be sustained.

5. Learned Counsel further contended that in any case opposite parties 6 and 7 were not entitled for being impleaded as co-Plaintiffs Under Order 1 Rule 10(1) of CPC since the said Rule provides that the Court has power, at any stage, of the suit to order any person other than the Plaintiff to be substituted or added as Plaintiff on such terms as it thinks proper provided the suit had been instituted by a wrong person as Plaintiff or where it was doubtful that it had been instituted in the name of the right Plaintiff and that it was necessary for determination of the real matter in dispute to implead such a person as Plaintiff and here in the present case no such situation arises. Learned Counsel contends that the Plaintiff

being a society registered under the U.P. Cooperative Societies Act is a body corporate as provided u/s 9 of the said Act which is as under:

9. Cooperative Societies to be bodies corporate. The registration of a society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal, and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it was constituted.

I, therefore hold that the applications could not be allowed even under the provisions of Order 1 Rule 10(1) of the CPC as also Under Order 1 Rule 8.

6. The contention of the learned Counsel for the applicant then was that the opposite parties 6 and 7 were interested in the money alleged to have been advanced by them to the Secretary of the Plaintiff society and they could at the most have a cause of grievance against the Secretary. It might have been open for them to take legal action against the Secretary individually or acting for the Society in case they were advised so to do but since no relief could be granted to the applicant in the suit, their applications were not only unwarranted but misconceived. The suit as framed was a suit by the Society for the benefit of the Society and its members. The applicants opposite parties 6 and 7 were not remotely concerned with the interest of the society. In this view of the matter the applicants could not be impleaded as parties to the suit much less as co-Plaintiffs.

7. Learned Counsel for the Defendants 1 to 5 Sri. Sudhir Shankar could not dispute that there was no privity of contract between the opposite parties 6 and 7 and the Defendants and as such the opposite parties 6 and 7 could not claim impleadment as co-Plaintiffs.

8. In the result, the Civil Revision succeeds and is allowed with costs throughout and the order of the learned Additional Civil Judge, Lucknow dated 5-9-1984 allowing applications Ga-40 and Ga-19 directing impleadment of opposite parties 7 and 6 as co-Plaintiffs in Regular Suit No. 152 of 1982 is set aside.