
(1992) 07 OHC CK 0021
In the Orissa High Court
Case No : Civil Revision No. 84 of 1991

Rabindra Mohapatra and Others

APPELLANT

Vs

Souri Prasad Malla and Others

RESPONDENT

Date of Decision : 27-07-1992

Acts Referred:

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

Citation : (1993) 75 CLT 113 : (1993) 2 OLR 102

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : B.K. Das and A.P.K. Das, for the Appellant; P.K. Routray, P.K. Mohanty and P.K. Ray (O.P. No. 7), for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—Petitioners applied to be impleaded as parties in the suit. The same having been refused, this Civil Revision has been filed assailing the order of the trial Court.

2. Suit is in respect of 19 decimals out of 57 decimals of land in plot No. 555, Disputed land is claimed to be the middle portion of the entire area. It is claimed by plaintiff that the entire area was recorded as "Puratana Patita" belonging to Raja of Burdhan in Kujang Estate. In the year 1939, the same was settled with one Binakar Behera on occupancy basis. Binakar Behera being entitled raiyat of the village, he acquired occupancy right over the land and continued to pay rent in respect of the same being in cultivating possession. By the time Binakar died in the year 1970, his right as occupancy raiyat was protected u/s 8 of the Orissa Estates Abolition Act. Jamabandi was also filed in favour of Binakar. On death of Binakar, plaintiff purchased the land measuring 57 decimals from Simananda and Jagabandhu, two out of three sons of deceased Binakar, by registered sale deed dated 16-1-1984. He got delivery of possession and continued to enjoy the same. Defendant No. 2 is natural born third son of Binakar. When plaintiff came to know that defendant No. 2 is the 3rd son, he approached defendant No 2 for

sale of his 1/3rd share to plaintiff. Defendant No. 2 executed a sale deed on 20-10-1986 receiving a consideration of Rs. 1,800/- but the same was not registered. Defendant No. 2 had also signed the notice u/s 31 of the Orissa Tenancy Act, but the sale deed could not be presented for registration. In spite of promising to get the sale deed registered, defendant No. 2 executed a sale deed in favour of defendant No. 1 on 21-10-1986 in respect of the suit land, in respect of his 1/3rd interest in the land of Binakar. Since title had already passed in respect of the entire 57 decimals, plaintiff is paying rent for the same. When defendant No. 2 lastly refused to register the sale deed and when defendant No. 1 on the strength of the registered sale deed threatened to dispossess the plaintiff, the suit was filed for a decree for specific performance of contract, directing defendant Nos. 1 and 2 to register the sale deed already executed on 20th October, 1986 for which the plaintiff expressed his readiness and willingness to bear the expenses and for declaration of his possession on the suit land, or in the alternative recovery of possession and for permanent injunction.

3. Defendant No. 1 contested the suit. In his written statement it has been asserted amongst others that he purchased the disputed land on behalf of the villagers who were using the land as "Sarbasadharan rasta" which was also recorded as "Puratana Patita" and Simannda recognising the communal character of the land has sold it reflecting interest of the villagers.

4. At this stage, application has been made by the petitioners to implead them as defendants to protect the interest of the villagers by protecting the communal character of the land. This being refused by the trial Court on the finding that plaintiff has his own choice of making parties against whom he would contest, application cannot be allowed which would expand the scope of the suit itself.

5. Mr. B. K. Das, learned counsel for the petitioners submitted that the principle of addition of party is now settled by a Division Bench of this Court in a decision reported in 57 (1984) CLT 31 (Indrajit Dandasena and others v. Mangal Charan Dandasena and Ors.). In the said decision, it has been held that the principle of dominus litis has got no application where the party sought to be impleaded is either a necessary or a proper party. According to Mr. Das in view of the assertion of defendant No. 1 that he has purchased the land on behalf of the villagers to protect their communal interest over the land, such a question is at issue in the suit and petitioners are at least proper parties, if not necessary parties since event of a decree against defendant No. 1, petitioners would be directly affected by such decree.

6. Mr. P. K. Routray, on the other hand submitted that the only question to be considered is whether the earlier execution of the sale deed on 20-10-1986 by defendant No. 2 in favour of the plaintiff would be sufficient for a decree as prayed for when defendant No. 2 has registered another sale deed in respect of the same land on the next day i.e. on 21-10-1986 in favour of defendant No. 1. In the present case, nature and character of the land would not be required to be gone into although defendant No. 1 made such assertion in the written statement

to defeat claim of the plaintiff. Mr. Routray, relied upon a decision reported in *Sadhu Behera and Others Vs. Krishna Chandra Sutar and Another*, where it has been held that in a suit for a specific performance of a contract for sale, instituted by a purchaser against the vendor, a stranger to the contract, who was contending that the contracted property is a joint family property of which he is also the co-owner would not entitle him to be added as a party. In such a case specially when there was no prayer for possession of the suit land if third party were added, it would enlarge scope of the suit and the suit would be turned into a suit for title.

7. It is true that nature of the suit would decide the question of a party being impleaded who has not been added as a party by the plaintiff. Where the scope of the suit would be enlarged which is not necessary for adjudication to consider the question of relief in the suit, a party may not be necessary to be added. Where, however, on the question raised by the parties in their pleadings, interest of other persons would have to be considered, such persons can be impleaded if they request the question to be considered in their presence. Principle of *dominus litis* will not be applicable in such cases. In such a case, they should not be allowed to file pleadings enlarging the scope of the suit.

8. In a recent decision of the Supreme Court reported in *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others*, referring to earlier decision of the Supreme Court reported in *Razia Begum Vs. Sahebzadi Anwar Begum and Others*, it has been observed that Courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the Court and that a person to be added as a party to a suit, he should have a direct interest in the subject matter of the litigation whether it be the questions relating to movable or immovable property. It has been held that suits may be for property or for declaration of status or legal character. In suits relating to property rule, present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party. While further analysing it was observed that main object of Order 1, Rule 10 CPC cannot be said to be to prevent multiplicity of actions though it may, incidentally have that effect. It was observed :

".....It is therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights.""

Observation in decision of Devlin, J. in the decision reported in (1956) 1 All ER 273 (*Amon v. Rephael Tuck & Sons Ltd.*) to the effect "The test : is may the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights was approved.

9. Thus, analysed, the question of addition of a party whom plaintiff did not choose to add, would depend upon facts and circumstances of each case depending upon the assertions in the pleadings Where status of a person is the

dispute direct interest of the party may not be insisted upon since such status would have far reaching further effect. Where property is in dispute, direct interest has to be found out to add him as a party.

10. In this case, the property is share of defendant No. 2 who executed a sale deed in favour of plaintiff which had not been registered. Next day he executed and registered a sale deed in respect of the same property in favour of defendant No. 1. Defendant No. 1 in his written statement asserted that he has purchased it to protect interest of the villagers who have communal right of passage as "Sarbasadharan rasta". When for granting relief to plaintiff it has to be considered whether the disputed property was "Sarbasadharan rasta" petitioners can be said to have direct interest in the property to that extent since by grant of relief to plaintiff by directing defendant Nos. 1 and 2 to register the sale deed in his favour and permanent injunction against them would directly affect interest of petitioners, who on basis of such decree may get protection of law to interfere with the direct interest of the petitioners. Object of Order 1, Rule 10, CPC, therefore, is satisfied in this case even on basis of the tests laid down by the Supreme Court.

11. In result, Civil Revision is allowed. I make it clear that no copy of the plaint need be served on the defendants which would be only empty formality and they would not be permitted to file any written statement beyond asserting facts in support of their right of passage. There shall be no order as to costs.