

(2005) 11 AHC CK 0133

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8821 of 2003

Ram Kishan and Others

APPELLANT

Vs

Trilok Chand and Others

RESPONDENT

Date of Decision : 23-11-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2006) 2 AWC 1494 : (2006) 1 UPLBEC 432

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Y.K. Sinha, for the Appellant; Rajiv Gupta and Pankaj Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Vineet Saran, J.—Plaintiff Respondent nos. 1 to 5 filed suit No. 259 of 1995 before Civil Judge (Senior Division), Ghaziabad on 28.2.1995 praying for a decree of permanent prohibitory injunction restraining the respondent No. 7, Nagar Palika Dadri as well as Respondent No. 6, Nagar Parishad kannchari Mahasangh, Dadri from taking possession over the land in dispute and not to interfere in the peaceful possession of the plaintiffs over the said property.

2. The dispute arose when on 5.2.1995 a foundation stone was laid by the then M.L.A. of the area inaugurating Nagar Parishad Karmchari Avas Colony over 2 Bighas of land which the plaintiffs respondents No. 1 to 5 claim that" they had purchased on 16.5.1983 from its owner Jeevan Lal, in whose favour the land was duly recorded by the order of the competent authority (Deputy Director of Consolidation) passed on 7.6.1961. An exparte injunction order was granted in favour of the Plaintiff respondent nos. 1 to 5, which was thereafter confirmed on 16.5.1995. However, against the said injunction order the respondents No. 6 and 7, filed Misc. Appeal No. 100 of 1995 which was allowed on 6.3.1997 and the order dated 16.5.1995 was set aside. Aggrieved by the same the Respondent nos. 1 to 5 filed writ petition No. 9567 of 1997 before this Hon" ble Court which

was disposed of on 7.5.1997 with the direction that the constructions, if any, made by the respondents No. 6 and 7 shall be at their own risk and subject, to the decision of the suit. Since certain constructions had been made on the plot in dispute, the plaintiff respondent nos. 1 to 5 got their plaint amended and added the prayer for demolition of the constructions raised by the respondents No. 6 and 7 and to restore the land in its original condition at the cost of the said parties. After the said amendment had been allowed, the respondents No. 6 and 7 filed a joint written statement on 18.9.1997 in which it was claimed that the land belonged to the Land Management Committee, Dadri and thereafter vested in the respondent No. 7, Nagar Palika Dadri and had been allotted to its employees vide resolution dated 5.12.1991. On 21.1.1998 the issue No. 7 regarding non joinder of parties (individual members of the Association who had been allotted the plots) had been decided in favour of the plaintiffs respondents No. 1 to 5 on the ground that the employee's association (whose members had been allotted the land), was already a party. On 13.9.2002 the hearing of suit No. 259 of 1995 was concluded and 21.9.2002 was fixed for delivery of the judgment. However, on 24.9.2002 the case was again fixed for re hearing on certain issues.

3. It was at this stage of re hearing that on 10.1.2003 the petitioners filed an application praying for their impleadment as defendants in the suit, by the impugned order dated 10.2.2003, the trial court has rejected the said application. Hence the petitioners have tiled the present writ petition. Another writ petition No. 8602 of 2003 has been filed on behalf of the Nagar Palika Dadri challenging another order of the same date i.e. 10.2.2003 by which the application under Order 6 Rule 17 C.P.C. filed by the Nagar Palika has been rejected. This Court has already dismissed the said writ petition earlier today. It is noteworthy that the same counsel has tiled both the writ petitions, one by the Nagar Palika and this one by the members of the employees' association.

4. I have heard Sri Y.K. Sinha on behalf of the petitioners as well as Sri Rajiv Gupta for the contesting respondents No. 1 to 5. Even though no notices had been issued to the respondents, but a Counter affidavit has been filed by the respondents no. 1 to 5 in March 2003. to which no rejoinder affidavit has yet been filed. With the consent of learned counsel for the parties, this writ petition is being heard and disposed of at this stage.

5. The petitioners claim them selves to be the allottees of the plots of land by Nagar Palika, Dadri. In the suit, Nagar Parishad Karmchari Mahasangh Dadri, of which all the petitioners are members, had been impleaded as a defendant along with Nagar Palika, Dadri. It is not the case of the petitioners that they were not members of the said Mahasangh. The trial court has thus rejected the application of the petitioners on the ground that since the petitioners were members of the said Mahasangh, which was a defendant in the suit, their cause was being spoused by the said Mahasangh. There is no denial in the writ petition by the petitioners that they are not the members of the said Mahasangh. The other

ground on which the application has been rejected by the trial court is that earlier vide order dated 21.1.1998 Issue No. 7 with regard to non-joinder of parties in the suit, had been decided, which was challenged by the Nagar Parishad Karmachari Mahasangh by filing Civil Revision No. 58 of 1998 which is pending before this Court, in which no interim order has been granted. On this ground also the trial court rejected the application stating that the matter has already been once decided by the trial court and the same cannot be re agitated again.

6. Impleadment of a party is necessary in law so that his interest may not be affected because of the party not being represented. Admittedly since the Mahasangh, of which all the petitioners are members, as well as Nagar Palika, Dadri, which is said to have allotted the plots in question, are both defendants in the suit, the application for impleading the petitioners as defendants was rightly disallowed by the trial court, specially keeping in view the fact that even when in the year 1997 this Court (in writ petition No. 9567 of 1997) had permitted the allottees to make constructions at their own risk which was made subject to the decision of the suit, the petitioners did not chose to file any such application for impleadment at that stage but have now, after 8 yrs of the filing of the suit and 6 years of the passing af said order by the High Court, made this application in the year 2003, which, in my view, appears to have been filed only in order to delay the decision of the suit.

7. On having perused the order impugned in this writ petition, I am satisfied that no interference is called for with the same. This writ petition is devoid of merits and is accordingly dismissed. No order as to cost.