
(1964) 05 PAT CK 0001
In the Patna High Court
Case No : Civil Revision No. 171 of 1964

Ram Prasad Choudhary and Others

APPELLANT

Vs

Mst. Fulia and Others

RESPONDENT

Date of Decision : 14-05-1964

Acts Referred:

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

Citation : AIR 1964 Patna 508

Hon'ble Judges : U.N. Sinha, J

Bench : Single Bench

Advocate : Janeshwar Singh and Brahmanand Singh, for the Appellant; K.B.N. Singh and Dinesh Charan, for the Respondent

Final Decision : Dismissed

Judgement

U.N. SINHA, J.—This application has been filed by pro-forma defendants Nos. 3 to 5, and it is directed against an order passed by the learned trial Judge, refusing to transpose them to the category of plaintiffs. The facts are as follows:- One Mosst. Fulia has filed a title suit for recovering possession of certain properties of one Dukhit, together with mesne profits on the allegation that she is the daughter of Lachman, brother of Dukhit. The suit was filed against principal defendants Nos. 1 and 2, calling them strangers to the family of Dukhit and Lachman. Pro forma defendants Nos. 3 to 5 were described in the plaint as the plaintiff's sons. According to the contesting defendants, the plaintiff was not the daughter of Lachman. According to them, Lachman had a daughter named Budhia, who was dead. It was, however, admitted that defendants Nos. 3 to 5 were sons of Budhia. According to the contesting defendants, further, Khisi, father of Dukhit and Lachman had a brother named Muneshwar, who had a son named Bilat, father of defendant No. 1. Defendant No. 2 happens to be the son of defendant No. 1. The defendants further stated that Dukhit's widow named Marjharja had surrendered the properties in dispute to defendant No. 1, and therefore, the suit was bound to fail.

2. Upon the pleadings of the parties, issues were framed and oral and documentary evidence were adduced by the parties, one of the proforma defendants having been examined as a witness for the plaintiff. Arguments on behalf of the contesting defendants were advanced in full and thereafter an application was made under Order 1 Rule 10 of the CPC by pro forma defendants Nos. 3 to 5 praying that they may be transposed to the category of plaintiffs. This application was apparently filed as a controversy arose during the course of the argument as to whether the Hindu Succession Act 1956 Act 30 of 1956 would apply to the facts of the case or whether the devolution was governed by the Hindu law existing prior to 1956, when the Hindu Succession Act had come into force. Of hearing the parties, the learned trial Judge has rejected the prayer for transposing defendants Nos. 3 to 5 to the category of plaintiffs and hence this application.

3. After stating the facts of the case in detail and the arguments advanced on the applicability of the Hindu Succession Act, 1956, the learned trial Judge has mentioned that transposition of defendants Nos. 3 to 5 to the category of plaintiffs will change the character of the suit and defendants Nos. 3 to 5 as plaintiffs will make out a completely new case for themselves. In view of these conclusions, the prayer of defendants No. 3 to 5 has failed.

4. Learned counsel for the petitioners has relied upon some decisions to be referred presently, and has contended that the learned trial Judge has committed material irregularity in the exercise of his jurisdiction, in refusing to transpose pro forma defendants Nos. 3 to 5 as they had prayed. The first decision upon which reliance is placed is the case of AIR 1931 162 (Privy Council) . Learned counsel is relying upon the observation of their Lordships of the Privy Council where they have stated that in the case before their Lordships the pro forma defendant should have been added as a co-plaintiff, when it was necessary for a complete adjudication of the question involved in the suit and to avoid multiplicity of proceedings. But, in my opinion, this decision is quite distinguishable on facts. Their Lordships stated, on the facts of the case that all the members of the family were parties to the suit, and were at least jointly entitled to the whole. The proforma defendant had asked that a decree should be passed in favour of the appellant, who was the plaintiff. In view of these observations, their Lordships stated that if there was a technical objection, the Court had power to add proforma defendants as co-plaintiffs with the original plaintiff.

In the instant case, the learned trial Judge has rightly pointed out that the proforma defendants do not wish to adopt the plaintiff's case, but, on the other hand, they want to fight their own battle, if the plaintiff fails on the ground that the old Hindu Law applies. The next decision upon which reliance has been placed is the case of AIR 1939 170 (Privy Council) . In my opinion, the proposition of law laid down by their Lordships of the Privy Council is unassailable, but the decision cannot be held applicable to the facts of the instant

case. In the instant case, there is competition between the original plaintiff and proforma defendants Nos. 3 to 5, and if these defendants are transposed to the category of the plaintiffs, the scope of the original suit will be altered to a large extent. Learned counsel for the petitioners has also relied upon a decision in the case-of Virappa Chettiar Vs. Kathayee Ammal and Another, . This decision is also not of any assistance to the petitioners. It is difficult to hold that Mosst. Fulia had instituted the suit in the manner in which she instituted it, due to a bona fide mistake.

If a question of interpretation of Section 8 of the Hindu Succession Act, 1956 arises in the suit, the question will be decided as between the plaintiff and the contesting defendants, but it is difficult to hold that the suit was instituted by Mosst. Fulia alone, under some bona fide mistake, teamed counsel has also relied upon a decision of this Court, in the case of Lal Narain Singh and Others Vs. Ugeshwardhari Singh and Another, . This decision is also not of much assistance to the learned counsel. There is no doubt that where it is necessary for a complete adjudication of the questions involved in the suit, parties may be added or transposed, but the learned trial Judge has considered this aspect of the matter, and in his opinion,, the scope of the suit will be altered by addition of the proposed plaintiffs, it is difficult to hold that any question of jurisdiction arises in this case or that the learned trial Judge has committed such a material irregularity in the exercise of his jurisdiction that interference is called for.

5. The conclusion must be that this application has no merit. It is therefore, dismissed with costs. Hearing fee is assessed at Rs. 55/-.