
(2001) 02 CAL CK 0035
In the Calcutta High Court
Case No : C.O. No. 860 of 1991

Rameshlal Saha

APPELLANT

Vs

Sambhunath Roy

RESPONDENT

Date of Decision : 07-02-2001

Acts Referred:

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

Citation : 105 CWN 918 : (2001) 1 ILR (Cal) 266

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : S.P. Roychowdhury, A.K. Ghosal and C. Mukherjee, for the Appellant; P.K. Das, P.N. Mallick and S.K. Mal for Opposite Party No. 4(a), Haradhan Banerjee and A. Pain for Opposite Party No. 2(a) and Debasis Roy, for Opposite Party No. 1, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—This revisional application u/s 115 of the CPC is at the instance of Plaintiffs in a suit for declaration and injunction and is directed against Order No. 690 dated January 30, 1991, passed by the learned Munsif, 2nd Court, Ali pore, District South 24-parganas in Title Suit No. 507 of 1956 thereby allowing an application under Order 1 Rule 10(2) of the CPC filed by the opposite party No. 1.

2. In the suit, Plaintiffs prayed inter alia, for declaration that a registered Deed of Arpannama dated August 10, 1953 was invalid and the earlier registered Deed of Arpannama dated August 19, 1937 was subsisting and also for administration of the debottar estate.

3. On contested hearing, the learned trial Judge dismissed the suit holding that by subsequent execution of the deed of 1953, the earlier Arpannama of 1937 stood cancelled.

4. Being aggrieved, Plaintiffs preferred an appeal being Title Appeal No. 912 of 1983 which was ultimately heard by the learned Additional district judge, 5th

Court, Alipore and by the judgment and decree dated October 12, 1988, the learned first appellate court below allowed the said appeal thereby setting aside those passed by the learned trial Judge and sending the suit back on remand with a direction to the learned trial Judge to admit evidence on the point as to whether earlier Arpannama of 1937 was actually acted upon or not after framing an additional issue to that effect. By the said order the learned first appellate court below directed the learned trial Judge to give opportunity to both the sides to adduce further evidence on the aforesaid point.

5. After the matter went back to the learned trial Judge the opposite party No. 1 claiming to be a managing trustee of the deity filed an application under Order 1 Rule 10 of the CPC for being added as party Defendant.

6. It will not be out of place to mention here that after the passing of the decree by the learned first appellate court below, the Defendant No. 1 filed an application under Order 41 Rule 21 of the CPC thereby praying for setting aside the *ex parte* decree passed by the learned appellate court against him and in the said proceeding opposite party No. 1 herein appeared to depose on behalf of Defendant No. 1. But the learned court of appeal below refused to set aside the *ex parte* decree against Defendant No. 1.

7. Initially the application for addition under Order 1 Rule 10 of the CPC was rejected by the learned trial Judge.

8. Being dissatisfied, the opposite party No. 1 in the past preferred a revisional application before this Court which was, however, ultimately allowed by this Court thereby directing the learned trial Judge to give an opportunity to the opposite party No. 1 to file all documents to prove his status for the purpose of being impleaded in the suit and to dispose of the application under Order 1 Rule 10 of the CPC thereafter in accordance with law.

9. Pursuant to such direction, the opposite party No. 1 filed an affidavit along with xerox copy of the purported resolution passed on February 1978 in the meeting of the then trustees and also a purported copy of the resolution dated June 19, 1969 showing that he was appointed as *Sebait*.

10. The aforesaid application was opposed by the present Petitioners thereby disputing the genuineness of the documents filed by the opposite party No. 1 and also the authority of the persons shown to be present in the meeting to appoint opposite party No. 1 as managing *Sebait*.

11. By the order impugned herein the learned trial Judge has allowed the application thereby holding that she was *prima facie* satisfied from the documents filed by the opposite party No. 1 that he was appointed as managing trustee by resolution held on February 19, 1978. The learned trial Judge, however, held that those are to be proved by the Petitioner at the appropriate time but at that stage on the basis of those papers, the opposite party No. 1 appeared to be a necessary party. The learned trial Judge however made it clear

that the added Defendant may file his written statement if any but such statement must not be conflicting with or contradictory to the one already filed by Defendant No. 1, since deceased.

12. Being dissatisfied, the Plaintiffs have come up with the instant revisional application. The other Defendants although have not filed any separate revisional application but supported the Plaintiff and all of them in on voice have contended that for effective adjudication of the dispute involved in the suit, the added Defendant is not at all a necessary party. It is further contended that even those xerox copies filed by opposite party No. 1. do not show that he was validly appointed by the then trustees. It is further contended that after the remand by the learned first appellate court below there is no scope of addition of a new party in the proceeding thereby enlarging the scope of the suit.

13. After hearing the learned Counsel for the parties. and after going through the materials on record i am not at all impressed by any of the contentions raised by the Petitioner.

14. In this case, the opposite party No. 1 has claimed to be the present managing Sebait of the deity by virtue of the Arpannama of 1953 and in the suit the dispute is whether the earlier Arpannama of the year 1937 was acted upon or not and whether the said Arpannama really stood cancelled. Although the Plaintiff has strongly disputed the alleged appointment of the opposite party No. 1 as managing Sebait, such disputed fact cannot be finally adjudicated at the time of disposal of the application under Order 1 Rule 10 of the Code of Civil Procedure. The learned trial Judge after considering the xerox copies of the documents filed by the opposite party No. 1 was prima facie satisfied that in view of the nature of the dispute involved in the suit, he should be added. The learned trial Judge, however, did not pronounce any final verdict about the status claimed by the opposite party No. 1. The learned trial Judge also was anxious enough not to enlarge the scope of investigation involved in the suit after remand by not permitting the opposite party No. 1 to take any defense inconsistent with the ones taken by the Defendant No. 1. Thus, by adding the opposite party No. 1, a chance of multiplicity of proceeding has been avoided. After all, even rejection of the application under Order 1 Rule 10 of the Code cannot stand in the way of the opposite party No. 1 in filing a fresh suit for declaration of his status and if it is established in the long run that the opposite party No. 1 is really the managing Sebait, in that case it can be successfully contended that in the absence of proper representation of the deity in this suit, the decree passed herein will not be binding specially when one of the prayers being administration of the debottar estate.

15. Thus, the learned trial Judge having been prima facie satisfied by the documents filed by the opposite party No. 1 and having added him, I do not find any reason to interfere with the discretion exercised by her. The Plaintiffs will not suffer any irreparable loss and injury for such addition nor has such addition occasioned failure of justice justifying interference u/s 115 of the Code.

16. I am also not at all convinced by the submission of Mr. Roychowdhury that after remand by the learned first appellate court there is no scope of any further addition. I have already pointed out that the defense of the opposite party No. 1 has been restricted by the order impugned and further the order of remand was practically an open remand with some specific direction. Moreover, this plea was very much available to the Petitioners when the previous revisional application at the instance of the opposite party No. 1 against rejection of the application for addition came up for hearing before Nandy J. His Lordship remanded the matter giving opportunity to the opposite party No. 1 to produce documents in support of his claim. At that stage, this plea not having been taken, the Petitioners this time cannot take such a plea before me, sitting in a coordinate jurisdiction.

17. Mr. Roychowdhury also tried to impress upon this Court that observation of the court while rejection the application under Order 41 Rule 21 of the Code filed by the Defendant No. 1 before the learned first appellate court is binding upon the trial court. In my view, such contention is equally devoid of any substance. Firstly, the said application for rehearing of the appeal was filed by the Defendant No. 1 and the present opposite party No. 1 merely figured as a witness for the Defendant No. 1. Secondly, the, limited scope of enquiry in that proceeding was whether Defendant No. 1 was prevented by sufficient cause from appearing when the appeal was heard on merit. Thus, any observation in disposing of such a proceeding cannot be binding upon the learned trial Court while disposing of the application for addition of parties. Thirdly, the opposite party No. 1 while giving evidence in that proceeding did not come forward with any inconsistent claim but maintained that he was a managing trustee. Above all, this point was also available to the Petitioners before Nandy J. and thus the doctrine of constructive resjudicata stands in the way of the Petitioners.

18. Thus, all the points taken by the Petitioners and supported by the other opposite parties than opposite party No. 1 having failed, I dismiss this revisional application.

19. The learned trial Judge is directed to dispose of the suit positively within three months from the date of communication of this order.

20. No costs.