

(1959) 07 MP CK 0027

In the Madhya Pradesh High Court

Case No : Civil Revision No. 327 of 1958

Sampatbai and Another

APPELLANT

Vs

Madhu Singh Gambhirji

RESPONDENT

Date of Decision : 31-07-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2)

Citation : AIR 1960 MP 84 : (1959) ILR (MP) 786 : (1959) JLJ 624 : (1959) 4 MPLJ 1162

Hon'ble Judges : P.V. Dixit, J

Bench : Single Bench

Advocate : W.Y. Pande, for the Appellant; S.D. Sanghi, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, J.

The opponent has instituted a suit against his sister-in-law (brother's wife) for a declaration that after the death of his father Gambhirji and his brother Ambaram, the husband of Sampatbai, he alone was entitled to the Pakka tenancy rights in the agricultural lands specified in para 2 of the plaint that Sampatbai had no right in them whatsoever; and that the mutation made in her favour in regard to those lands was illegal and ineffective.

The plaintiff also claimed possession of the lands in suit from Sampatbai and mesne profits. One of the objections taken by Sampatbai in defence is that Narayansingh, who is the adopted son of Ambaram, is a necessary party to the suit. The learned Civil Judge, First Class, Dhar, who is trying the suit, held on 9-7-1958 that Narayansingh was not a necessary party. Thereafter on 10-9-1958 an application was made on behalf of minor Narayansingh by Sampatbai acting as his guardian for being made a defendant in the suit. This application was rejected by the trial Court. Hence this revision petition.

Having heard learned counsel for the parties, I have reached the conclusion that

this petition must be accepted and the lower Court must be directed to determine afresh the question of Narayansingh's joinder in the suit. The learned trial Judge rejected the prayer of Narayansingh for being joined in the suit on the grounds that the grant of the application would involve an investigation into the question of Narayansingh's adoption contrary to the wishes of the plaintiff and that the question of adoption had no connection whatsoever with the dispute in the plaintiff's suit. In my opinion, these considerations cannot be said to be relevant or proper in determining the question under Order 1, Rule 10 (2), C. P. C., whether any person ought to have been joined in the suit as a defendant and whether his presence is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. Under Order 1, Rule 10 (2) C. P. C., the Court has jurisdiction to join a person as a plaintiff or as a defendant whose presence is necessary for the prescribed purpose and has no jurisdiction under the rule to join a person whose presence is not necessary for that purpose.

The test is not whether the joinder of the person proposed to be added as a defendant would be according to or against the wishes of the plaintiff or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the plaintiff. It is whether the relief claimed by the plaintiff will directly affect the intervener in the enjoyment of his rights. It is not enough that the plaintiff's rights, and rights which the person desiring to be made a defendant wishes to assert should be connected with the same subject-matter. The intervener must be directly and legally interested in the answers to the questions involved in the case. A person is legally interested in the answer only if he can say that it may lead to a result that will affect him legally -- that is by curtailing his legal rights. This is the test which has been applied in *Amon v. Raphael Tuck and Sons Ltd.* 1956 1 All ER 273, in connection with R. S. C. Order 16, Rule 11 which is similar to Order 1, Rule 10, C. P. C. Again as pointed out in *Dollfus Mieg et Compagnie S. A. v. Bank of England*, 1950 2 All ER 605 at p. 611, in determining whether or not an applicant has a proprietary right in the subject matter of an action sufficient to entitle him to be joined as a defendant

"the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established".

The question of the joinder of Narayansingh as a defendant in the suit should have been, therefore, decided with reference to these tests.

Now, here, in his application for being joined as a defendant in the suit it was stated by Narayansingh that he had been validly adopted on 20-2-1957 by Sampathbai and that in law he was the owner of the property in suit. Mr. Sanghi, learned counsel for the opponent, contended that as Narayansingh was admittedly adopted after the Hindu Adoption and Maintenance Act 1956 came into force, the adoption, even if held to be established, would be effective for all purposes only from the date of adoption; that the adoption would not have the

effect of divesting the plaintiff of the property in suit which had already vested in him before the adoption; and that, therefore, it could not be said that Narayansing had any legal right in that property.

The fallacy in the argument lies in assuming that the lands in suit vested in the plaintiff before the adoption. The questions whether the lands did or did not vest in the plaintiff and whether he has become the owner of them are precisely those which arise for adjudication in the suit on the pleadings of the parties. The question of Narayansingh's joinder as a defendant depends on whether if Sampatbai successfully defends the suit he would have a legal right to the property and whether he is legally and directly interested in the answers to the issues involved in the suit and whether those answers may lead to a result affecting him legally that is by curtailing his legal rights.

These are all matters which have to be determined on a consideration of the provisions of Section 14 of the Hindu Succession Act 1956, of Section 12 of the Hindu Adoption and Maintenance Act 1956 and of the material provisions of the relevant Tenancy Act as the property in suit is Pakka tenancy rights in certain agricultural holdings. For the purposes of Order 1, Rule 10, C. P. C., it is not necessary to go into the question whether Narayansing was or was not validly adopted. What is to be seen is the result of the subject-matter of the suit if he establishes his right.

For all these reasons, I accept this petition and direct the learned trial Judge to determine the question of joining Narayansingh as a defendant in the suit in the light of what has been stated above. There will be no order as to costs of this petition.