

(1995) 12 GUJ CK 0012
In the Gujarat High Court

Savitaben Balkrishna Maniar

APPELLANT

Vs

Ajanta Estate Agency and Others

RESPONDENT

Date of Decision : 05-12-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115, 115(1), 115(1)

Citation : (1997) 1 GLR 122

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—Heard learned Counsels for the parties. This Civil Revision Application is directed by the petitioner against the order dated 1-2-1994 passed by the Second Joint Civil Judge (S.D.), Junagadh. Under the order dated 1-2-1994, the petitioner herein was directed to be joined as defendant No. 7 in Spl. Civil Suit No. 73 of 1988 filed by the plaintiff-opponent No. 1 herein.

2. The learned Counsel for the petitioner contended that the petitioner is neither a necessary nor a proper party to the suit and as such, the learned trial Court has committed serious error of jurisdiction in passing the impugned order. It has next been contended that merely because the opponent No. 1 is desirous of filing application for attachment before judgment of the property of the petitioner, on this ground alone, the trial Court could not have impleaded the petitioner as party to the suit. On the other hand, the learned Counsel for the respondents contended that the petitioner is a necessary party as she has got the property from Smt. Chandraprabha Vahuji Maharaj who was the executor of the agreement to sale of the property in dispute in favour of the plaintiff-opponent No. 1 and in the suit an alternative prayer has been made for recovery of the amount paid together with interest. It has next been contended that the petitioner is one of the legal representatives of Late Smt. Chandraprabha Vahuji Maharaj and as such she is necessary party to the suit. Further contention has been made that all other legal heirs of Smt. Chandraprabha Vahuji Maharaj have already been impleaded by the plaintiff-opponent No. 1 as a party to the suit.

Smt. Chandrababha Vahuji Maharaj has given part of the property to the petitioner by way of will which the plaintiff-opponent No. 1 is questioning.

3. Lastly, it is contended that the case of the petitioner does not fall under the provisions of Section 115, Civil Procedure Code, 1908 and as such this revision petition is not maintainable. In support of his contentions, the learned Counsel for the respondent placed reliance on the decision of the Supreme Court in the case of Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others, and Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, .

4. The opponent No. 1 filed Spl. Civil Suit No. 73 of 1988 in the Court of Civil Judge (S.D.), Junagadh for specific performance of the agreement dated 6-12-1978. This agreement was executed by Smt. Chandrababha Vahuji Maharaj in favour of the plaintiff-opponent No. 1 in respect of the land S.No. 290 paiki 6,000 sq. metres. In the suit the alternative prayer made was for decree of Rs. 11,26,111/- together with interest from the personal property of defendants. The defendant No. 1 in the suit is Goswami Shri Kishorchandra Purushottamlal Maharaj in his personal capacity as well as trustee of Moti Haveli, Junagadh. The defendant Nos. 2 to 5 are the daughters of Late Smt. Chandrababha Vahuji Maharaj. The defendant No. 6 is the power-of-attorney holder of Late Chandrababha Vahuji Maharaj. In paragraph (16) of the plaint, the plaintiff-opponent No. 1 stated that the defendant No. 1, the sole trustee of the Haveli and adopted son of Chandrababha Vahuji Maharaj is bound to execute and perform Satakhat in respect of lands and accordingly added as a party to the suit. In respect of defendant Nos. 2 to 5 the plaintiff-opponent No. 1 stated that they are the daughters of Late Smt. Chandrababha Vahuji Maharaj and in that way they are heirs of deceased and so they have also been added as party to the suit. The defendant No. 6 was added as a party to the suit as he was power-of-attorney holder of Late Smt. Chandrababha Vahuji Maharaj and he has administered recovery of all the amounts in the agreement to sell transaction. The petitioner is the wife of Balkrishna Sunderlal Maniar who is the defendant No. 6 in the suit. It is not in dispute between the parties that the property land bearing S. No. 292 which is the subject-matter of the agreement to sale was held to be the property of the trust in the litigation which has been finally decided by the Supreme Court. There was a dispute in respect of this property whether it is a public trust property or the personal property of Late Smt. Chandrababha Vahuji Maharaj and it was earlier held to be the property of the trust. In view of these facts, the alternative prayer has been made for the decree of the amount as stated earlier. The learned Counsel for the respondents contended that now in view of the decision of the Supreme Court where the property has been held to be public trust property in the eventuality if the decree for specific performance is not granted by the Court below and the decree of the amount has been passed, then the question may arise for recovery of this amount from the property of Late Smt. Chandrababha Vahuji Maharaj and as such all the legal heirs or the person to whom the personal property of the said Smt.

Chandraprabha Vahuji Maharaj has devolved by testamentary or intestate are the necessary party to the suit. From the application filed by the plaintiff-opponent No. 1 under Order 1 Rule 10, CPC it comes out that under the will dated 30th March, 1980, Smt. Chandraprabha Vahuji Maharaj has willed out some of her personal property to the petitioner Smt. Savitaben Balkrishna Maniar who is the wife of the defendant No. 6 in the suit. The plaintiff-opponent No. 1 stated in the application that they are not accepting the legality of this will and Balkrishna Sunderlal Maniar in his capacity as power-of-attorney holder with a view to serve his ulterior motives got prepared this will by coercion. In paragraph No. 2 of the application, the plaintiff-opponent No. 1 stated that yet by way of attachment before judgment we have to attach the said property and if this will is believed to be genuine one and if Smt. Savitaben Balkrishna Maniar is held to be the heir of late Smt. Chandraprabha Vahuji Maharaj by virtue of said will, in those circumstances, she is required to be impleaded as a party.

5. It is not in dispute that the suit is at the preliminary stage. It is true that the order passed by the trial Court is not happily worded but on this ground alone, the order cannot be set aside. One thing is clear from the reading of the order of the trial Court that Savitaben-the petitioner herein is held to be necessary party. Section 2(11) of the CPC defines: "legal representative" means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in the representative character the person on whom the estate devolves on the death of the party so suing or sued. Savitaben-the petitioner has received the property by will from Smt. Chandraprabha Vahuji Maharaj and she represents the estate of the said lady. The petitioner is the legal representative of late Smt. Chandraprabha Vahuji Maharaj but being a legal representative of late Smt. Chandraprabha Vahuji Maharaj would not be liable for any sum beyond the value of the estate of the deceased in her hands. The plaintiff-opponent No. 1 can lay hand on the property received by the petitioner for the recovery of the amount decreed in the suit by the Court. Not only from the petitioner but this recovery can be made from the other legal representatives of the deceased Chandraprabha Vahuji Maharaj, namely, the defendant Nos. 2 to 5. The plaintiff-opponent No. 1 has impleaded the daughters of the deceased Smt. Chandraprabha Vahuji Maharaj and in case it would have been in the knowledge that the said lady has willed out some property to the petitioner herein she could have also been impleaded. It is only subsequently when the plaintiff-opponent No. 1 has got this knowledge it moved an application for impleading the petitioner herein as a party. Looking to the nature of the relief prayed for in the suit and the fact that other legal representatives of late Smt. Chandraprabha Vahuji Maharaj have been impleaded as a party, the Court below has not committed any error by directing the plaintiff to implead the petitioner as defendant to the suit. The Supreme Court in the case of Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, held:

The definition of "legal representative" is inclusive in character and its scope is

wide, it is not confined to legal heirs only instead it stipulates a person who may or may not be heir, competent to inherit the property of the deceased but he should represent the estate of the deceased person. It includes heirs as well as person who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. If there are many heirs those in possession bona fide, without there being any fraud or collusion, are also entitled to represent the estate of the deceased.

6. The plaintiff-opponent No. 1 has a right to move an application for attachment before judgment of the property of late Smt. Chandrabhabha Vahuji Maharaj which may include the property which has been received by the petitioner from that lady under a will. It is true that the petitioner has a right to contest that the property is not attachable or she may not be made liable for any liability of late Smt. Chandrabhabha Vahuji Maharaj. Looking to these facts, it is in larger interest of the petitioner also that she may be impleaded as a party to the suit. The learned Counsel for the petitioner has not disputed either before the trial Court or before this Court that the petitioner has received the property under the will from Smt. Chandrabhabha Vahuji Maharaj. When admittedly, the petitioner got part of the estate of late Smt. Chandrabhabha Vahuji Maharaj under a will and admittedly she (Smt. Chandrabhabha Vahuji Maharaj) was party to the agreement, which is subject-matter of the suit, the Court below has not committed any illegality whatsoever, much less, any illegality in exercise of the jurisdiction in passing of the impugned order. Order 1 Rule 10 of the CPC provides that the Court may order the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit to be added. Looking to the nature of the agreement to sell, the prayer made in the suit and the fact that admittedly the petitioner got the property of late Smt. Chandrabhabha Vahuji Maharaj by the will, the Court below has rightly considered it to be a fit case where the petitioner has to be impleaded as a defendant. The learned Counsel for the petitioner has failed to point out any error of jurisdiction or illegality in exercise of jurisdiction made by the trial Court in passing of the impugned order. u/s 115, CPC interference can be made by this Court in the order of the subordinate Court only where the said Court has failed to exercise jurisdiction so vested or to have acted in exercise of its jurisdiction illegally or with material irregularity. It cannot be said to be a case of want of jurisdiction or failure to exercise the jurisdiction so vested. So far as the last requirement is concerned, the illegality should have been in exercise of jurisdiction which I do not find in the present case. The provisions of Section 115, CPC have been amended and a proviso has been added to this section by CPC Amendment Act, 1976 with effect from 1-2-1977. The said proviso reads as under:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other

proceeding, except where

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

7. A further rider had been put by the Parliament on the exercise of powers of this Court u/s 115 of the Civil Procedure Code. Even if the Court held that the case falls under any of the Clauses (a), (b) or (c) of Sub-section (1) of Section 115 of the Civil Procedure Code, it will not vary or reverse the said order except where it is satisfied that the order if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it was made. It is for the petitioner to state and make out a case that in case the order passed by the trial Court and which is subject-matter of the challenge in this revision petition is allowed to stand, it would occasion a failure of justice or cause irreparable injury. I have gone through the contents of the revision petition. In the revision petition even it has not been mentioned what to say to make out a case that in case the impugned order is allowed to stand, it will occasion a failure of justice or will cause irreparable injury to the petitioner. Not only this, during the course of arguments also the learned Counsel for the petitioner has not advanced argument on this question. Looking to the provisions as contained in the proviso to Sub-section (1) of Section 115, Civil Procedure Code, 1908 it is obligatory on the part of the petitioner, who approached this Court under its revisional power to state in the revision petition itself and to give out the reasons and grounds how in case the impugned order is allowed to stand will result in failure of justice and cause irreparable injury to her.

8. In the result, this revision petition fails and the same is dismissed. Rule is discharged. No order as to costs. The ad inertim stay granted earlier stands vacated.