
(2010) 09 CAL CK 0044
In the Calcutta High Court
Case No : C.O. No. 3020 of 2010

Shyamal Kumar Chatterjee and Others APPELLANT
Vs
Bally Investment Trust (P) Ltd. and Others RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 21 Rule 101

Citation : (2010) 09 CAL CK 0044

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the plaintiffs and is directed against the order No. 17 dated July 12, 2010 passed by the learned Civil Judge (Junior Division), First Court, Howrah in Title Suit No. 96 of 2009 thereby allowing an application under Order 1 Rule 10(2) of the CPC filed by the third parties.

2. The plaintiffs filed the suit for declaration, permanent injunction and for eviction of the defendant No. 1 from the premises in suit, as described in the schedule of the plaint. The plaintiffs contend that their grandmother was the owner of 5 Cuttah 8 chittaks land, as described in the schedule "A" to the plaint. Their grandmother conferred 4 cuttah and 5 chittaks lands, as described in the schedule "B" to the plaint as thika bemeyadi on lease in favour of one Kalipada Jana. Thereafter, the grandmother of the plaintiffs transferred the schedule "A" property and other properties to her three sons, namely, Ganesh, Kartick and Parbati Charan, the predecessors-in-interest of the plaintiffs. The transfer was made by virtue of a deed of sale in 1937. Thus, the predecessors-in-interest of the plaintiffs became the joint owners of the said property absolutely and they became the intermediaries in respect of the said Kalipada Jana who paid khajna to them without any objection whatsoever. Thereafter, the Kalipada Jana transferred his tenancy to one of Jasoda Bala Ghosh in 1945 not seeking any

permission from the predecessors-in-interest of the plaintiffs. Then, the defendant No. 1 approached predecessors-in-interest of the plaintiffs for payment of arrears of rent and the current annual rent on the basis of deeds of transfer and asked them to attorn its tenancy. The defendant No. 1 paid rents to the predecessors-in-interest to the plaintiffs till 1979. Thereafter, it stopped payment. In the meantime, one Raj Kumar Mukherjee claiming to be a sub-tenant under the defendant No. 1 was raising construction over a portion of the suit property. Thereafter, the plaintiffs sent notice to the defendant No. 1 on March 19, 2009 determining the Bemeyadi lease and intended to take possession of the leasehold property. The plaintiffs thereafter filed the suit for the reliefs as stated above.

3. The defendant Nos. 1 & 2 entered appearance in the suit. Subsequently, the defendant Nos. 3 & 4 filed an application under Order 1 Rule 10(2) of the C.P.C. praying for adding them as defendants in the suit. That application was allowed by the impugned order. Being aggrieved this application has been filed by the plaintiffs.

4. Mr. J.R. Chatterjee, learned senior Advocate appearing on behalf of the petitioners, submits that the 2 other persons filed the application under Order 1 Rule 10(2) of the C.P.C. for adding them as defendants (henceforth they shall be referred to as interveners). But, in fact, they have no locus standi to file the same. Admittedly, the defendant No. 1 was a lessee under the plaintiffs and it paid rent up to 1979 to the plaintiffs but the fact remains that the defendant No. 1 had no right to sell the property and so the transferees of the defendant No. 1 cannot have any right to be impleaded as a party to the suit. But the learned Trial Judge has failed to take note of the real dispute between the parties and so it has committed a wrong by impleading the interveners in the suit. So, the order impugned should be set aside.

5. On the other hand, Mr. S. Basu, learned senior Advocate appearing on behalf of the opposite parties, submits that in fact the predecessors-in-interest of the plaintiffs had no right, title and interest in the suit property and in fact, they had the right to collect rents in respect of the suit property only. Kalipada Jana was recorded as non-agricultural tenant in respect of the suit property. He transferred his non-agricultural tenancy to the other person by deeds of conveyance. The defendant No. 1 transferred its right, title and interest in the suit property to one Raj Kr. Mukherjee and then Raj Kr. Mukherjee transferred his right, title and interest in the suit property in favour of the interveners on September 21, 2007. Thus, they have acquired interest in the suit property and in fact they are in possession of the same. They mutated their names with the Bally Municipality and in fact, they got a sanctioned plan for construction on the said property. So, they are the necessary parties in the suit. The learned Trial Judge has rightly allowed the application for addition of parties.

6. Therefore, the point that emerges for decision in this application is whether the learned Trial Judge was justified in allowing the application for addition of

parties filed by the interveners.

7. Upon hearing the learned Advocate for the parties and on perusal of the materials on record, I find that the interveners have claimed that in 2007 they got the suit property by way of the deed of conveyance executed by Raj Kr. Mukherjee who got the same from the defendant No. 1 in 1988. Admittedly, the Kalipada Jana was a non-agricultural tenant under the plaintiffs and previously he paid rents to the predecessors-in-interest of the plaintiffs. Thereafter, he sold the properties to other person who had sold the same to the interveners by registered deed of sale. It is the contention of the interveners that they are in possession of the suit property and they obtained sanctioned plan from the Bally Municipality. From the above facts, it is apparent that the interveners had acquired an interest in the suit property by way of deed of conveyance and they are in possession of the same.

8. Mr. Chatterjee has referred to the decision of Pallav Kumar Banerjee and Ors. v. Asit Kumar Ghosh and Anr. reported in 2001 (1) CHN 490 and submitted that in case of a sub-tenancy, he is not a necessary party to the suit for eviction filed by the landlord against the tenant. The remedy of the sub-tenant lies either by filing a fresh suit for declaration of his tenancy right or to resist the decree being obtained by way of adjudication under Order 21 Rule 101 of the C.P.C. The sub-tenant is neither a necessary party nor a proper party in the suit for eviction of a tenant.

9. On the other hand, Mr. Basu has referred to the decisions of Savitri Devi Vs. District Judge, Gorakhpur and Others, (particularly paragraph 9), Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, and Sumtibai and Others Vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) Thru Smt. Mankanwar Chordia (Dead) and Others, and thus, he submits that the interveners having acquired interest in the property by a registered deed of conveyance, they should be added in the suit for proper adjudication of the dispute in its perspective in the instant suit.

10. Upon due consideration of the relief sought for and the fact that prima facie the interveners have acquired interest and possession in the suit property, in view of the decisions referred to by Mr. Basu particularly in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, , they are the necessary parties for proper adjudication of the matter in dispute. They are also necessary parties to settle all the questions involved in the suit. Since the interveners claim ownership over the suit property on the basis of a registered deed of conveyance, I am of the view that the decision of 2001 (1) CHN 490 will not be applicable in the instant case.

11. Therefore, I am of the view that the learned Trial Judge was justified in allowing the application under Order 1 Rule 10(2) of the C.P.C. The impugned order should be sustained.

12. Accordingly, this application has no substance. It is dismissed.

13. Considering the circumstances, there will be no order as to costs.

14. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.