

(1992) 05 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12034 of 1992

Smt. Pan Kumari

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 12-05-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 22 Rule 12, Order 22 Rule 3, Order 22 Rule 4
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 202, 229D, 299B, 341

Citation : (1992) 2 AWC 1211 : (1992) RD 408

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : A.N. Varma, for the Appellant; Namwar Singh and N.D Shukla, for the Respondent

Final Decision : Allowed

Judgement

R.R.K. Trivedi, J.—In this writ petition a caveat was filed on behalf of Respondents No. 6, 7 and 8. On behalf of caveators a counter affidavit has been filed. Respondent No. 5 is represented by Sri K. B. Garg, learned Counsel for Gaon Sabha and Respondents No. 1 to 4 are represented by learned Standing Counsel. All the learned Counsel for the parties have agreed that this writ petition may be disposed of finally at this stage

2. Petitioner Smt. Pan Kumari, by means of this writ petition, has questioned the legality of the orders passed by Respondents No. 1, 2 and 3 rejecting the application moved by her husband late Sri Krishna Dev for impleadment in Suit No. 184 of 1990 u/s 229-B of UP ZA & LR Act, (hereinafter referred to as Act) Kailash Nath Tiwari and Ors. v. State of U.P. and Anr. pending in court of Sub-Divisional Officer/ Assistant Collector Ist Class, Gyanpur, district Varanasi.

3. The facts giving rise to this writ petition are that Respondents No. 6 to 8 filed suit No. 184 of 1990 on 27th December, 1990 for declaration of their rights over

plot No. 768 area 2-11-18 bighas (old No. 1471, 72) that they are bhumidhar grove holders. They have prayed that the name of Gaon Sabha in respect of the aforesaid plot in dispute be deleted and they may be recorded as bhumidhars in the revenue papers. In this suit only State of U.P. through Collector and Gaon Sabha through Chairman of Land Management Committee, Ugapur, Tahsil Gyanpur, district Varanasi were impleaded as Defendants. Late Sri Keshav Das husband of present Petitioner filed an application on 26th March, 1991 for being impleaded as a party in the suit. It was supported by an affidavit of the same date. In his application, Krishna Dev stated that he is a member of Gaon Sabha, Ugapur and he is an agriculturist of the village Plot No. 768 of village Ugapur was reserved for public purposes in consolidation proceedings and was reserved for keeping manure pits. In revenue papers also the land in dispute is recorded for the aforesaid purpose. In paragraphs 4 and 5 it was stated that for the last more than 20 years he is using the land in dispute for manure pits and has thus acquired a legal right over the land in dispute and he has vested right in the same. It has been further pleaded that for effective adjudication and for complete and proper justice it is necessary that he may be impleaded as a party. If the suit is decided in his absence he may suffer irreparable loss and injury. This application was opposed by Plaintiff Respondents No. 6 to 8 by filing an objection and affidavit which are Annexures-3 and 4 respectively to the writ petition. The impleadment sought was opposed mainly on the ground that the plot No. 768 was not property of Gaon Sabha, Ugapur and it was never reserved for public purposes that is to be used as manure pits. It was also stated that the applicant Krishna Dev has never used the land in dispute for keeping manure pits. Application has been filed only to harass the Plaintiffs. It appears that by order dated 9th April, 1991 Krishna Dev was directed to file documentary evidence if any in support of his application. Hearing of this application was postponed on some dates. However Krishna Dev died on 30th June, 1991 before his application could be decided. Petitioner moved an application through counsel intimating the court about death of Krishna Dev and also sought herself and her one son and daughter to be substituted in place of Krishna Dev. This application was filed on 30th July, 1991. The Respondent No. 3 on same day rejected the application saying that as Krishna Dev was not a party to the suit the applicants can not be substituted. However he permitted the heirs of Krishna Dev to adduce documentary evidence by 6th August, 1991. On 7th August, 1991 the application moved by Krishna Dev was rejected saying that no documentary evidence has been filed for which time was allowed. It was also said that Gaon Sabha has already filed a written statement on 2nd February 1991 and it is obligation of the Pradhan to defend the right of Gaon Sabha. It was also said that there is no justification for impleading them as a party in the suit. Against the orders dated 30th July, 1991 and 7th August, 1991 two revisions were filed before Additional Commissioner which were decided by a common order dated 30th March, 1991 and the revisions were rejected as not maintainable. It was also said by Additional Commissioner that as no relief has been sought by Plaintiffs against Krishna Dev or his heirs and as they failed to adduce evidence in support of their

rights the application has been rightly rejected. On question of substitution the learned Additional Commissioner also approved the view taken by Sub-Divisional Officer Aggrieved by aforesaid orders the Petitioner filed Revision No. 33 of 1991-92 before the Board of Revenue which has been dismissed by order dated 7th April, 1992. Hence this writ petition.

4. The learned Counsel for the Petitioner submitted that the view taken by the revenue courts that the Petitioner and her sons and daughter cannot be impleaded in place of Krishna Dev is erroneous. The application cannot be legally decided without bringing on record the heirs of the deceased applicant. It is also submitted that without substituting them and without giving them status as a party to the application, they were allowed opportunity to adduce evidence. It has been submitted that the application moved by Krishna Dev for impleadment was independent proceeding by itself and on death of Krishna Dev his widow and other heirs ought to have been impleaded under Order 22 Rule 3 Code of Civil Procedure. It has also been submitted that the courts below committed serious error of law by not giving opportunity to Petitioner to lead evidence in support of the claim mentioned in the application.

5. Sri Yatindra Singh, learned Counsel appearing for Respondents No. 6 to 8 on the other hand, submitted that as no relief has been asked in the suit against Krishna Dev their impleadment has rightly been refused. It has been submitted that the Plaintiffs are DOMINUS LITIS and no body could be impleaded against their wishes. The learned Counsel for the Respondents, referring to the provisions of Order 1 Rule 10 CPC submitted that the presence of the Petitioner was not necessary for taking upon and settle all questions involved in the suit effectively and their impleadment has been rightly refused. Learned Counsel for the Respondents has placed reliance on the cases. Banarsi Dass Durga Prashad Vs. Panna Lal Ram Richhpal Oswal and Others, , Gonsolo De. Filonnoa Luis v. Insoio Peada AIR 1977 Goa. 4 , B. Somaiah and Others Vs. Amina Begum, , Smt. Bhagwanti v. Custodian General AIR 1976 J&K. 29 , Narayan Chandra Garai and Others Vs. Matri Bhandar Pvt. Ltd. and Another, .

6. I have considered the arguments advanced by the learned Counsel for the Petitioner and Respondents and I have also perused the cases law cited. In this writ petition material questions for consideration are as under; --

(i) Whether the view taken by the courts below that the heirs of Krishna Dev could not be impleaded to prosecute the application moved by Krishna Dev is justified in law ?

(ii) Whether the application for impleadment moved by Krishna Dev has been disposed of in accordance with law ?

7. Taking the first question first, in my opinion the Sub-Divisional Officer was not justified in rejecting the application of Petitioner for being substituted as heirs and legal representative of Krishna Dev. For prosecuting the application further bringing heirs on the record was legally necessary. The court below

erroneously confused itself in assuming that the substitution sought by the Petitioner was in the suit. The application moved by Petitioner was for bringing the heirs and legal representative on record for prosecuting the application further, moved by Krishna Dev. It cannot be disputed that the misc application moved in the suit for impleadment was independent proceeding. Section 141 of CPC is very clear in this respect which says that the procedure provided in the Code in regard to suits shall be followed, as far as, it can be made applicable in all proceedings in any court of civil jurisdiction. The Explanation to Section 141 further provides that in this connection the expression proceedings includes proceeding under Order 9. There is nothing in the CPC by which it can be inferred that the provisions of Order 22 CPC have been excluded in respect of their applicability to misc. applications. Under Order 22 Rule 12 CPC the exclusion of Rules 3, 4 and 8 is confined to proceedings in execution of the decree or order, which further suggests that the provisions of Order 22 read with Section 141 CPC were applicable in respect of the application moved by Krishna Dev and after his death his heirs and legal representative ought to have been substituted in his place. In my opinion, the view taken by the trial court was manifestly erroneous and the same was illegally upheld by revisional court. The application moved by Krishna Dev after his death shall be abated by operation of law if the heirs and legal representative are not brought on record and the necessary consequence was dismissal of the application leaving nothing to be decided by the court. Thus the view taken by the courts below in this regard could not be justified in any manner. The application for substitution of the heirs was illegally rejected.

8. Now coming to the second question regarding rejection of the application for impleadment, in my opinion, courts below have failed to consider and decide the same in accordance with law. It is true that the Plaintiffs of the suit are DOMINUS LITIS and they are master of the suit but this position is not absolute and it is subject to provisions of Order 1 Rule 10 Code of Civil Procedure. Hon'ble Supreme Court in case of Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, , after considering the position of Plaintiff as DOMIUS LITIS, has observed as under:

Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the Plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touch stone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

9. If the orders passed by Respondents No. 1 to 3 are considered in the light of

the aforesaid dictum of the apex court, in my opinion, Respondents No. 1 to 3 have failed to consider and decide the application in accordance with the provisions contained in Order 1 Rule 10 (2) Code of Civil Procedure. A perusal of the application served by Krishna Dev shows that he asserted that the land in disputed has been reserved in consolidation proceedings for being used as public purposes that for keeping manure pits. He also asserted that for more than last 20 years, he is using the same as manure pits. The Plaintiffs have claimed declaration of their rights over this land as bhumidhar grove holders. The question to be considered for impleadment was as to whether claim made by Krishna Dev regarding the nature of the land and his interest therein could be jeopardised on the claim of Plaintiffs being accepted and needed adjudication in this suit and his presence was necessary for complete and final decision on the question involved in the proceedings. The application for impleadment has been rejected merely on the ground that no documentary evidence has been filed in support of the claim, no relief has been sought against the applicant for impleadment and Gaon Sabha has filed written statement for defending its rights which is obligation of Pradhan. In my opinion, none of the aforesaid grounds answered the test which was required to be applied under Order 1 Rule 10 (2) of CPC for deciding application u/s 202 to 299D of UP ZA and LR Act, the revenue court could entertain variety of claims and could adjudicate about any right in any land claimed by any person particularly u/s 229. It is clear that the revenue court could look into the rights claimed in the application moved by Krishna Dev. Use of the land for keeping manure pits is a valuable right for an agriculturist. However, it is difficult to have any documentary evidence to support such claim. The learned Counsel for the parties could not place before me any provisions under which record of such rights may be maintained by revenue authorities. The Sub-Divisional Officer being a Revenue Officer Incharge of a Sub-Division was not legally justified to ask for a documentary evidence as a condition for impleadment. It has also not been said that the claim set up by Krishna Dev in his application was already set up by Gaon Sabha in its written statement. In case Krishna Dev has cause of action against Plaintiff relating to the subject-matter of existing action, the court has power to join him so as to give effect to primary object of the order which is to avoid multiplicity of the action. Observations of Hon'ble Supreme Court in Para 14 in case of Ramesh Hiranand Kundanmal (supra) can be gainfully quoted here, which are as under:

It cannot be said that the main object of the rule is to prevent multiplicity of action though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved, that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to evidence. The only reason which makes it necessary to make a person a party to an action is so that he

should be bound by the result of the action and the question to be settled, therefore must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e. he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights.

10. It can not be disputed that by virtue of Section 341 of UP ZA & LR Act the provisions of CPC are applicable to the present suit. In my opinion courts below have committed manifest error of law on both counts and the orders impugned cannot be sustained.

11. For the reasons recorded above, this writ petition is allowed. The orders dated 30-7-91 and 7-8-91, Annexure-7 and 8 passed by Respondent No. 3 and orders dated 30-3-92 and 7-4-92 passed by Respondents No. 2 and 1 respectively are hereby quashed. Respondent No. 3 shall decide the application for impleadment and the application moved by Petitioner afresh after hearing parties in the light of the observations made above. There will be no order as to costs.