

(2013) 10 AHC CK 0216

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9008 of 1995

Smt. Raj Kumari and Others

APPELLANT

Vs

IVth Additional District Judge, Azamgarh and Others

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2013) 11 ADJ 257 : (2014) 102 ALR 178 : (2013) 121 RD 820

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Ram Niwas Singh and V.K. Chandel, for the Appellant; Ranjit Asthana, for the Respondent

Judgement

Manoj Misra, J.—I have heard Sri Ram Niwas Singh, learned counsel for the petitioners and Sri Ranjit Asthana for the contesting respondent No. 2. The petitioners instituted an Original Suit No. 160 of 1986 for permanent prohibitory injunction against Sumer (defendant No. 1) and Ram Milan (defendant No. 2) so as to ensure that they do not interfere in the possession of the plaintiffs over the land in suit and do not raise any constructions or cut away the trees standing thereon. The disputed land was described in the plaint by letters A, B, C, D alleged to be located over plot No. 2486/2, having an area of 80 Kari. It was claimed that the petitioners were owners in possession of the land in suit as well as the trees and well standing/located thereon and that the defendants had no right to interfere. The defendants filed written statement denying title and possession of the plaintiffs and claiming that the trees, etc. standing over the land in suit were owned and possessed by them. It was claimed that the land in suit was their "Sehan Abadi" over which they had been in possession since prior to abolition of "Zamindari" and, therefore, the same had vested in them by virtue of Section 9 of the U.P. Zamindari Abolition and Land Reforms Act.

2. A Survey Commissioner was appointed by the Court, who submitted a report (Annexure CA. 1) wherein it was stated that by taking two fixed points, situated in plot Nos. 2623 and 2327, the property in suit was sought to be identified but it

was not possible to demarcate the area of 80 kari pertaining to plot No. 2486. In the map appended to the Survey Commission Report, the house of the defendant and the house of Sudarshan Yadav (not party in the suit), who is the contesting respondent No. 2 herein, was shown to be located adjoining the suit property.

3. It appears that Sumer (the defendant No. 1) died and later, the petitioners (the plaintiffs to the suit) and Ram Milan (the defendant No. 2-respondent No. 3 herein) entered into a compromise where under portion towards the North of the line A-B denoted in the site plan (Paper No. 15Ga2), with standing trees thereon, was to be settled with the plaintiffs whereas the southern portion was to be settled with the defendant. The said compromise was verified by the Court but before a decree could be passed in terms of the compromise, an application (No. 79Ga2) was filed by Sudarshan Yadav (the contesting respondent No. 2) seeking impleadment as defendant. In the said application, it was stated that the applicant was the owner in possession of the land in suit and the trees, etc. standing thereon and that the defendant and the plaintiffs were in collusion with each other to grab applicant's property, therefore, the applicant being a proper and necessary party/affected person be impleaded as defendant.

4. Trial Court, vide order dated 27.1.1994, rejected the impleadment application on three grounds:

(a) that the compromise between the parties having already been verified, it was not a stage at which, impleadment application could be considered;

(b) that the plaintiff is the dominus litus (Master of the Suit) and cannot be forced to contest the suit against any person against whom he does not wish to contest; and

(c) that in a suit of prohibitory injunction, the decree would not bind a non-party and as it is always open for the non-party to file a separate suit if his rights are affected, therefore, no prejudice would be caused to the applicant on rejection of his application for impleadment.

5. The contesting respondent No. 2 challenged the order dated 27.1.1994 by filing revision. The revisional Court, vide judgment and order dated 1.11.1994, set aside the order dated 27.1.1994 and allowed the impleadment application No. 79Ga2. Against the revisional Court's order dated 1.11.1994, the instant petition has been filed.

6. Assailing the revisional Court's order, the learned counsel for the plaintiff-petitioners submitted that the revisional Court exceeded its jurisdiction by interfering with the order passed by the trial Court, inasmuch as, the respondent No. 2 was not a necessary party and, as such, had no vested right to seek for impleadment and since impleadment of a proper party is at the discretion of the Court which is seized of the matter, the revisional Court ought not to have interfered with the order of the trial Court. It was submitted that the plaintiff is the dominus litus (Master of the Suit) and he cannot be forced to contest a suit

against any person against whom he does not wish to contest. More so, when the suit was for permanent prohibitory injunction the decree would bind only the parties to the suit thereby leaving the rights, if any, of the applicant (contesting respondent), unaffected by the decree. It was also submitted that as the compromise had, already, been verified, there were not much proceedings left in the suit so as to justify impleadment of the respondent No. 2.

7. Per contra, learned counsel for the contesting-respondent No. 2 submitted that the trial Court failed to exercise its jurisdiction by rejecting the impleadment application on the ground that after verification of the compromise, the application was not maintainable, when, in fact, impleadment can be sought at any stage of the proceedings and as, admittedly, no decree was passed in terms of the compromise, therefore, the proceedings were pending and, therefore, rejection of the impleadment application on the said ground amounted to refusal to exercise jurisdiction vested in the Court and, as such, the revisional Court was legally justified in entertaining the revision and setting aside the order passed by the trial Court. It was further submitted that from the map appended to the Survey Commission Report, which was to be made basis of the compromise, it is clear that the house of Sudarshan Yadav (the contesting respondent No. 2) was adjoining the house of the defendant and in front of his house, the land in suit, shown by letters A, B, C, D, was located, therefore, from the site plan itself it was clear that the contesting respondent had interest in the subject-matter of the suit and, as such, he was a proper party, if not the necessary party. It was further submitted that the doctrine of dominus litus cannot be overstretched, inasmuch as, under sub-rule (2) of Rule 10 of Order 1 of the Code of Civil Procedure, the Court has discretion to implead any person as party whose presence before the Court may be necessary in order to enable the Court to completely, effectively and adequately adjudicate upon and settle all questions involved in the suit. It was submitted that since from the map of the Survey Commission it was clear that the land in suit was situated adjoining the Abadi of the contesting respondent No. 2, to effectively and completely adjudicate upon and settle all questions involved in the suit, the impleadment of the contesting respondent was justified. It was further submitted that one of the purposes of the provision of sub-rule (2) of Rule 10 of Order 1 of the Code is to avoid multiplicity of suit and, therefore, once the Survey Commission Report had shown the existence of the contesting respondent's house adjoining the suit property and the suit property was being claimed by the contesting respondent as his own, and it was not clear from the report of the Survey Commission as to whether the suit property had fallen in Survey Plot No. 2486/2 or not, there were good reasons for the impleadment application to be allowed.

8. Before proceeding to test the weight of rival submissions, it would be useful to first examine the law laid down by Apex Court with regard to the principles governing impleadment of parties in suit proceedings. The Apex Court in the case of Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others, of the judgment, observed as follows:

13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litus, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of CPC ("Code" for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

10. (2) Court may strike out or add parties.--The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that 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, be added.

14. The said provision makes it clear that a Court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the Court may be necessary in order to enable the Court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the Court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the Court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

9. In the case of Vidur Impex and Traders Pvt. Ltd. and Others Vs. Tosh Apartments Pvt. Ltd. and Others, , the broad principles which should govern disposal of an application for impleadment have been laid down, in paragraph 41, as follows:

41.1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party,

who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

41.3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.

10. In the case of *Kasturi Vs. Iyyamperumal and Others*, , it was observed as follows:

13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

11. In the case of *Committee of Management, Ratan Muni Jain Inter College and another Vs. III Additional Civil Judge, Agra and others*, , this Court observed that the theory of dominus litis should not be overstretched in the matter of impleadment of parties because it is the duty of the Court to ensure that if for deciding the real matter in dispute, a person is necessary party, the Court can order such person to be impleaded. It was observed that merely because the plaintiff does not choose to implead a person, is not sufficient for rejection of an application for impleadment. It was observed that the powers under the provisions of Order 1, Rule 10(2), C.P.C. are very wide and extensive. In *Sumtibai and Others Vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) Thru Smt. Mankanwar Chordia (Dead) and Others*, , the Apex Court observed, in

paragraph 14, as follows:

In view of the aforesaid decisions we are of the opinion that Kasturi case is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.

12. In view of the law noticed above, it is clear that a Court can add a person as party, who is either a necessary party or a proper party. Necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against them in respect of the controversy involved in the proceedings whereas proper parties are those whose presence before the Court would be necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person. Where the Court comes to a conclusion that the person is either a necessary party or a proper party, in such a situation, the discretion vests in the Court to order impleadment of a person as a party and it is not open to the plaintiff to oppose impleadment of a person as defendant by saying that as the decree would not bind the person therefore he may not be impleaded. However, before directing impleadment, it is necessary that the Court must come to a conclusion that the person concerned is either a necessary party or a proper party, otherwise the plaintiff being the dominus litus has a right to choose the persons against whom he wants to contest and he cannot be compelled to sue a person against whom he does not wish to seek any relief.

13. A direction to add a party can be made at any stage of the proceedings. The expression at any stage of the proceedings, as occurring in sub-rule (2) of Rule 10 of Order 1 of the Code of Civil Procedure, by itself, is very clear. Which means that at any stage before the proceedings terminate. In a suit, the suit proceedings terminate on passing of a decree. Therefore, with respect to a suit, the Court can exercise the power to implead a person as a party till the passing of the final decree in the suit. In *Alluri Venkata Narasimha Raju and Another Vs. Katteboyina Yellamanda and Others*, , it has been held that by reason of the filing of the compromise petition itself in the second appeal it cannot be regarded that proceedings have come to an end. Till a compromise decree is passed, the litigation cannot be regarded to have terminated. Likewise, in *Smt. Sarwari Begum Vs. Abdul Majid and Others*, , a compromise between the parties had been verified and thereafter impleadment was ordered by the trial Court. This Court while exercising revisional powers refused to interfere in the matter. In view of the above, this Court is of the view that the Court has the power to act

under Order 1 Rule 10(2) of the Code even after a petition has been filed by the parties for passing a decree in terms of a compromise, so long as no decree has been passed in terms thereof. It is only when a suit or proceedings has been finally disposed of and there is nothing more to be done that this rule becomes inapplicable.

14. Coming to the instant case, it is found that the trial Court rejected the impleadment application by observing that the same was filed after the compromise was verified and the plaintiff, being dominus litus, cannot be forced to contest a suit against whom he is not willing to contest and further, as the suit was for permanent injunction, the decree would bind only a party to the suit, therefore, no prejudice would be caused to the applicant if his application for impleadment was rejected.

15. Applying the principles governing impleadment, as culled out above, this Court is of the view that the reasoning adopted by the trial Court in support of its order of rejection of the application cannot be countenanced because the Court had the power to implead a person as a party even after verification of the compromise so long as the final decree was not passed. It is not disputed that final decree had not been passed in the suit in question and, therefore, the suit proceedings were pending on the date of filing the application for impleadment. Further, the trial Court while applying the doctrine of dominus litus failed to even consider whether the impleadment of the applicant (the contesting respondent No. 2) was necessary to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. It is now well-settled that the doctrine of dominus litus is subject to the provisions of sub-rule (2) of Rule 10 of Order 1 of the Code of Civil Procedure. Thus, for the reasons aforesaid, the order passed by the trial Court was not sustainable in law and has been rightly set aside by the revisional Court.

16. So far as the revisional Court's order is concerned, the revisional Court dealt with the arguments of the parties and cited few judgments in its order but without recording any finding as to whether the person seeking impleadment was either a necessary party or a proper party, it not only set aside the order passed by the trial Court but also allowed the application for impleadment which, in my view, is not legally sustainable. Before allowing an application for impleadment, the Court has to record a finding as to whether the party sought to be impleaded is a necessary party or a proper party. Without recording such finding, the Court has no jurisdiction to implead a person as a party without the consent of the plaintiff, who is the master of the suit.

17. In view of the discussion made above, the revisional Court's order dated 1.11.1994 passed by the IVth Additional District Judge, Azamgarh (Annexure 1 to the writ petition) cannot be sustained to the extent it allows the impleadment application No. 79 Ga 2 without recording any finding whether the applicant was a necessary or a proper party and to this extent the order dated 1.11.1994 is quashed. However, the order of the revisional Court to the extent it has set aside

the order of the trial Court, by which the application 79 Ga 2 was rejected, is affirmed. The impleadment application 79 Ga 2 will be considered by the trial Court, afresh, in accordance with law, and in the light of the observations made herein above. The writ petition stands allowed to the extent indicated above.