
(1976) 11 PAT CK 0017
In the Patna High Court
Case No : Civil Revision No. 191 of 1976

Smt. Satyabhama Jalan and Another	Vs	APPELLANT
Murli Manohar Jalan and Others		RESPONDENT

Date of Decision : 16-11-1976

Acts Referred:

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

Citation : AIR 1977 Patna 243

Hon'ble Judges : Hari Lal Agarwal, J

Bench : Single Bench

Advocate : Janeshwar Singh, Lala Deoki Nandan Prasad, Uma Shankar Singh and Basant Kumar Singh, for the Appellant; Shreenath Singh, Sudhir Chandra Ghose, P.K. Bose, Sukumar Sinha and Akhileshwar Prasad Singh, for the Respondent

Final Decision : Allowed

Judgement

Hari Lal Agarwal, J.—By this application some of the defendants have challenged the order of the court below for addition of an intervenor defendant in the following circumstances.

2. A title suit has been filed by opposite party No. 2 for restraining the other defendants including the Patna Municipal Corporation from demolishing a part of the house which is in his occupation as a monthly tenant. On the 28th. November, 1975 an application was filed by Murli Manohar Jalan, opposite party No. 1 for his addition as a party defendant. Copy of this petition was served admittedly only on the plaintiffs and not on the contesting defendants. When this petition was taken up the plaintiff did not oppose the prayer for addition of Murli Manohar Jalan and the learned Subordinate Judge without assigning any other reason and on the sole ground that the plaintiffs did not oppose the prayer of opposite party No. 1, ordered for his addition as defendant No. 5 in the suit. In the order it has been, however, stated that the lawyers appearing for defendants nos. 1 and 2 were also heard. This fact has been controverted in paragraph 8 of

the revision petition and it has been stated that the petition for addition of party was not heard in presence of the petitioners. Although a counter-affidavit has been filed on behalf of opposite party No. 2, this assertion of the petitioners has not been controverted.

3. Be that as it may, the order cannot be sustained on a more firm ground. The provision for addition of party is contained in Rule 10 of Order 1 and sub-rule (2) empowers the court,

"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 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.

This provision requires the court to add a party not only as a matter of course but on the given conditions whether the presence of the person sought to be added is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the suit. This finding is a condition precedent for exercising the jurisdiction by a Court for addition of a party. The order, therefore, suffers from this lacuna and cannot be maintained.

4. Mr. S. C. Ghose appearing for opposite party No. 2, however, contended that the plaintiff being dominus litus it was upon him to choose any party to be added in a proceeding which has been left out by him at the time of filing of the suit and that if the plaintiff did not choose to oppose the application the court below cannot be called upon to enter into the question and record a finding as required by sub-rule (2) of Rule 10 of Order 1 as already indicated above. He placed reliance upon a decision in *Motiram Roshanlal Coal Co. (P) Ltd. Vs. District Committee and Others*, .

5. In my opinion the contention of Mr. Ghose is erroneous and the reliance placed upon the decision is entirely misplaced. In the case cited by Mr. Ghose a petition was filed on behalf of the defendant for being added as a party and the same was strongly opposed by the plaintiff. *Raj Kishore Prasad J.* (as he then was) clearly laid down that there were only two cases in which a person may be added as a party to a suit under sub-rule (2) of Rule 10 of Order 1, namely:--

(1) when he ought to have been joined as plaintiff or defendant, and is not so joined, or

(2) when without his presence the questions in the suit cannot be completely decided.

It was clearly observed in this case that if either of the two conditions is not established in a case, the Court has no jurisdiction to add a party. It is in this background that an observation was made that on a proper construction of Order 1 Rule 10 (2) a plaintiff cannot be compelled to add a person as a party

defendant against his wishes. This observation, however, cannot be construed to mean that if the plaintiff so chooses or desires he can be permitted to get any person added to the suit although the two conditions laid down under Order 1 Rule 10 (2) are not satisfied. If this astounding proposition is accepted then it will lead to two different standards for applying the provisions contained in Sub-rule (2) of Rule 10 of Order 1, namely if the application would be on behalf of the defendant or by an outsider, the two conditions as mentioned in Sub-rule (2) of Rule 10 of Order 1, as has been indicated earlier, will have to be established but if it would be on behalf of a plaintiff then the conditions need not be fulfilled. This construction is not possible as it will result in a direct violation of the provisions contained in Order 1 Rule 10 (2). Learned counsel could not cite any direct authority in support of his proposition and I have no hesitation to hold that the conditions mentioned in the said sub-rule will apply with equal force whether the application is on behalf of the plaintiff or any other person or even by an outsider without any exception.

6. For the above reasons this application must succeed and the order of the learned Subordinate Judge is set aside. In the circumstances, however, I will make no order as to costs.