

(1981) 01 PAT CK 0001
In the Patna High Court
Case No : C.R. No 200 of 1979

Sri Basudeo Hisaria and Others

APPELLANT

Vs

Brij Mohan Tibrewal and Others

RESPONDENT

Date of Decision : 03-01-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 115

Citation : (1981) 29 BLJR 703

Hon'ble Judges : Shivanugrah Narain, J

Bench : Single Bench

Judgement

Shivanugrah Narain, J.—This application by defendant Nos. 3 and 4 of Title Suit No. 5 of 1978, pending in the Second Court of Munsif, Begusarai, is directed against the order dated 23-8-1979 of learned Munsif by which he has allowed the plaintiffs (opposite party Nos. 1 and 2 to this petition) to amend their plaint by deleting the, names of the defendant Nos. 3 and 4 and by making certain other amendments consequential upon the deletion from the plaint of the names of these defendants.

2. The relevant facts are these: Opposite Party Nos. 1 and 2 instituted the aforesaid title suit for eviction of the defendants from a house bearing Holding Nos. 7 and 8, in Ward No 8 (numbered formerly as 4) of Begusarai Town and also for arrears of rent due from 16-8-1977 to 31-12-1977. The persons impleaded as defendants besides the petitioners, who were arrayed as defendants 3 and 4, were defendant Nos. 1 and 2 (Opposite Party Nos. 3 and 4 to this petition; Plaintiffs claimed to have become landlords of the premises in question by virtue of purchase of the premises by a registered sale-deed dated 10-8-1977 from Shri Bihari Lall Maskara under whom defendant Nos. 1 and 2 were admittedly tenants. According to the plaintiffs, at the time of the purchase defendant Nos. 1 and 2 had agreed to vacate the suit premises, as the plaintiffs had purchased the suit premises for their own use and occupation, the premises being needed for running their own business. But defendants 1 and 2 did not vacate the suit

premises, as agreed upon by them, and illegally sublet the suit premises to defendant Nos. 3 and 4, who were impleaded as defendants 2nd party. They had also failed to pay rent from 16-8-1977 to 31-12-1977 the total rent due in respect of the aforesaid period being Rs. 562. 50 paise. The plaintiffs sued for eviction on the ground of personal necessity and also on the ground that defendants not having paid the rent for the aforesaid period had defaulted in payment of rent. Both sets of defendants, namely defendants 1st and 2nd party filed separate written statements. The cases of both these sets of defendants were substantially the same. According to the defendants, there was no relationship of landlord and tenant between the plaintiffs and defendants 1st party because prior to the purchase by the plaintiffs, the defendants 1st party had parted with their interest in the suit premises. According to these defendants, by virtue of a private partition prior to 4-4-1977, the interest of defendant No. 2 in the suit premises and the business had devolved upon defendant No 1 and on 4-4-1977 defendant No. 1 had entered into a partnership business with defendant Nos. 3 and 4, which continued till 30-7-1977 and on 31-7-1977 defendant No. 1 sold his entire interest in shop to defendant Nos. 3 and 4 it was further the case of the defendants that the sale had taken place with the knowledge and permission of the vendor of the plaintiffs. Defendant Nos. 3 and 4 in their written statement specifically asserted that the vendor of the plaintiffs had accepted the defendants 2nd party as his tenants. Both sets of defendants denied the plea of personal necessity of the plaintiffs. Defendant Nos. 3 and 4 also asserted that they were not defaulters as, on refusal by the plaintiffs to accept the rent, they were regularly remitting rent to the plaintiffs by money order, which was also refused.

3. It appears that the plaintiffs filed an application u/s 13 of the Bihar Building Control (Lease, Rent and Eviction) Act, 1977 (hereinafter called the Act), for a direction to defendant Nos. 1 and 2 to deposit arrears of rent and also the current rent at the rate of Rs. 125/-per month Upon that petition, by his order dated 3-10-1978, the learned Munsif passed an order directing defendants 1st party to deposit the arrears of rent at the rate of Rs. 125/per month from the date of the institution of the suit up-to-date and also to deposit in future the monthly rent at that rate by the 15th of the following month. It appears that the defendants 1st party did not comply with that order. Defendant Nos. 3 and 4 filed an application for permission to deposit the rent and by his order dated 22-11-1978, over-ruling the objection of the plaintiffs, the Court below permitted these defendants to deposit the rents if they so choose. In pursuance of that order, a deposit of Rs. 2, 000/- was made by defendant Nos. 3 and 4.

4. On 21-12-1978-vide order No. 21 of that date the plaintiffs filed a petition stating that the House Controller, Begusarai, had fixed the rent of the house in question at Rs. 204/- from 10-11-1978 and prayed that the defendants be ordered to deposit rent at that rate by December, 1978. The application was opposed by the defendants. The learned Munsif on 0-3-1979 ordered that this matter would be considered at the time of the decision of the case.

5. On 20-7-1979, the plaintiffs filed a petition for amendment of the plaint by expunging the names of defendants 2nd party, i e., defendant Nos. 3 and 4 and making the following amendments;

(a) in para No. 6 in place of "defendant 2nd party" the following words "to his men" may be written.

(b) in para No. 7 after the word "Schedule B" the words "defendant 2nd party" may be penned through and "to his men" may be written and further in the last.

(c) in para No. 8 the words "and further notice was. also sent to the defendant 2nd party No. 3 to vacate the suit property" and further "and defendant 2nd party" in the 6th line may be penned through.

(d) in para 11 (b) the words "jointly and severally" may be penned through and in its place "or who soever be in possession on behalf of the defendant 1st party" may be written.

The learned Munsif, has already stated, allowed the amendment as prayed for and expunged the names of the defendants 2nd party, namely, defendant Nos. 3 and 4 at the risk of the plaintiffs.

6 Shri Tara Kant Jha, the learned Advocate for the petitioners, contends that the learned Munsif acted illegally and with material irregularity in exercise of its jurisdiction in expunging the names of defendants 2nd party from the record. In my opinion, this contention is correct and must prevail. I have already set out the amendments prayed for and allowed and it is clear that the application was in essence of an application for striking out the name of the defendant Nos. 3 and 4 from the plaint, The other amendments, which I have set out are incidental to, and consequential upon the striking out of the names of the defendants Nos. 3 and 4 from the plaint. In my opinion, the question whether a person, who has been impleaded as a party to a suit, should be struck out or not is governed by Order 1 Rule 10 of the CPC (hereinafter referred to as "the Code"), which so far as relevant, runs thus "(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name, of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bonafide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just (2). 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". The question of addition or striking out of parties is, therefore, specifically dealt with by Order 1 Rule 10 of the Code. Order VI Rule 17, no doubt, gives a very wide power to the Court to allow any party to a suit to amend his pleadings in such manner as may be just. The power of amendment of pleadings conferred upon the Court by Order VI Rule 7 of the Code is a general power, and read in isolation the power is wide enough to include amendment of pleadings by addition or striking out of parties to the suit. But in the context of Order 1 Rule 10 of the Code, which deals specifically with the subject of addition or striking out of parties on record of the suit, on the principle *generalia specialibus non-derogant*, in my opinion, it should be held that the question of addition or striking out of the parties must be decided with regard to the provisions of Order 1 Rule 10 and not Order VI Rule 17 of the Code.

7. Now, it is manifest from Sub-rule (2) of Rule 10 of Order 1 of the Code that the power of the Court of striking out any party to the suit is confined to striking out "any party improperly joined". Order 1 Rule 10 of the Code does not confer upon the Court any power to strike out any party, who has not been improperly joined. In *D.Venkatachalapathi v. Surya Ptakashrao and Ors.* AIR 1957 A.P. 939 it was observed that the impropriety referred to in the expression "improperly joined" under Order 1 Rule 10 (2) of the Code "is in introducing a party who has no connection with the relief claimed in the plaint". At any rate, a person who is either a necessary, or a proper party to a suit can never be said to have been improperly joined as a plaintiff or defendant. As pointed out in *Bhikulal and Others Vs. Kisanlal and Others*, , if persons, who are not necessary but proper parties, are joined, their names may not be struck out.

8. Now, can it be said that these defendants, namely, defendant Nos. 3 and 4 were not proper parties to the suit. Admittedly, these are the defendants who are now in possession of the suit premises. According to the defendants, they are the tenants accepted by the plaintiff's vendor, and, therefore, tenants under the plaintiffs. According to the plaintiffs, these defendants are sublessees. In paragraph 6 of the plaint it is stated that defendant 1st party has "further sublet the suit shop to defendants 2nd party who are continuing his business" and possession of the defendants 2nd party are that of a trespassers". The allegation about subletting to defendants 2nd party is repeated in paragraph "7" of the plaint. Further, the relief against the eviction claimed in the original plaint was against the defendants jointly or severally. According to the amended plaint also, the decree for eviction is claimed against the defendants "or whosoever be in possession on behalf of the defendants 1st party". Therefore, on the pleadings, as it stood prior to the amendment, according to the plaintiffs, these defendants were sublessees of defendants 1st party and relief for eviction was claimed against them also. In these circumstances, it cannot be doubted that the presence of these defendants before the Court was "necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit".

9. I find support for this conclusion in the following observations of Calcutta High Court in *Bholanath Chatterjee and Another Vs. Somendra Chandra Nandi and Others*, :

The plaint discloses that these persons have been made parties as according to the plaintiffs, they have been in possession of portions of the premises as illegal assignees, transferees or Sub-lessees. In a suit for recovery of possession it is competent for a plaintiff to pray for relief against such persons as may be in actual possession of the suit premises. There is, therefore, nothing illegal in the plaintiffs making these appellants parties in this suit as admittedly they have been in occupation of portions of the same".

In the present case, the plaint discloses that these defendants are in possession illegally as Sub-lessees and, therefore, in this suit for eviction there is nothing illegal in the plaintiffs having made them parties. Further defendants 3 and 4, being on the allegations in the plaint, Sub-lessees in possession of the suit premises would be found by a decree for eviction. The decree in a suit for eviction filed against the lessee, in the absence of fraud and collusion, binds the Sub-lessee even if the Sub-lessee has not been joined as a party. See the decision of the Supreme Court in *Rup Chand Gupta Vs. Raghuvanshi Private Limited and Another*, . Moreover, as persons in possession of the suit property, these defendants have a direct interest in the suit property, and a person who has a direct interest in the suit property is a proper party to the suit, *Razia Begum Vs. Sahebzadi Anwar Begum and Others*, . In these circumstances, it is idle to contend that these Sub-lessee defendants viz. defendants 3 and 4 are not even proper parties to the suit though they may not be necessary parties thereto.

10. Even if I am not right in my view that the question of amending a plaint by deleting the name of a defendant is governed by Order I Rule 10 of the Code and not by Order VI Rule 17, the amendment by striking out defendant Nos. 3 and 4 would be illegal. In my opinion, where under Order VI Rule 17 of the Code, the pleading is sought to be amended by the deletion of the name of a person, who has been joined as a party to the suit, the Court is bound to take into consideration the circumstance whether he is, or is not, a necessary or proper party to the suit and the Court must refuse to delete a necessary or proper party to the suit. If the person who is sought to be deleted would be affected by the result of the suit, as in the present case, leave to amend by deleting the names of the said defendants may not legally be granted under Order VI Rule 17 of the Code. Under Order VI Rule 17, a Court has power to alter or amend the pleadings in such manner..."as may be just". It would never be just to amend the pleadings by deleting the name of a defendant who would be affected adversely by the decree passed in the suit in his absence. As I have said, if the plaintiffs' case is accepted, the defendants would be sublessees and the decree passed against the defendants 1 and 2 would bind them and they would be liable to be evicted if the relief of eviction, as prayed for in the amended plaint is granted, for on the plaintiffs case being Sub-lessees, they would be persons in possession on

behalf of the defendants 1st party. Further, the real question in controversy between the parties on the pleadings was whether defendants 1st party were the tenants of the plaintiffs or the defendants 2nd party, and that question could not be completely and effectually adjudicated in the absence of the defendants 2nd party.

11. The Court below did not consider the question whether these defendants were necessary or proper parties to the suit or not, and, therefore, it allowed the amendment merely because of its opinion that the nature of the suit was not changed. It thus exercised its discretion without taking into account all relevant consideration, and, therefore, acted illegally and with material irregularity in exercise of its jurisdiction. These defendants would certainly suffer irreparable loss and there would be a failure of justice if their names are expunged from the record: they would not be able to contest the suit at all and still they would run the risk of being evicted from the suit premises if the suit is decreed. It is, therefore, a fit case for interference u/s 115 of the Code and the argument to the contrary of the learned Advocate for the plaintiffs-opposite parties cannot be accepted.

12. It remains now to consider the decisions relied upon on behalf of the plaintiffs opposite parties. In *Shri Ramjhari Nath alias Ramjhari Mahadeo and Anr. v. Shri Dwarika Sah and Ors.* 1968 P.L.J.R. 232 this Court set aside the order of the Court below refusing the plaintiff's prayer to delete the names of defendants 2 to 5 from the plaint in a suit for eviction. But in that suit, the plaintiffs had claimed no relief against defendants 2 to 5. and defendant No. 1 did not deny the existence of relationship of landlord and tenant between him and the plaintiffs. It was in these circumstances that this Court held that defendants 2 to 5 were not even proper parties and ordered that their names be expunged. In the present case, defendant No. 1 denied the existence of relationship of landlord and tenant and the plaintiffs had specifically claimed a relief of eviction against these defendants also. The facts of the decisions in the other two cases relied upon. *Smt. Gauri Kumari Devi v. Chhathu Ram Horil Ram* 1958 B.L.J.R. 541 and *Urban Improvement Trust Vs. Raj Kumari and Others*, , are entirely different and they are, therefore, clearly distinguishable.

13. I would, accordingly, allow the application and set aside the order of the learned Munsif expunging the names of defendant Nos. 3 and 4 from the suit and making the other consequential amendments and alterations in the plaint. The petitioners will be entitled to their cost of this revision which would be payable by the plaintiffs-opposite parties. Hearing fee Rs. 50/- only.