
(2011) 12 CAL CK 0061
In the Calcutta High Court
Case No : C.O. No. 2875 of 2007

Sri Probhat Kumar Gupta @ Shaw

APPELLANT

Vs

Sri Sanjay Kumar Gupta @ Sanjay Kumar Jaiswal @ Shaw
and Others

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

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

Citation : (2011) 12 CAL CK 0061

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Biswajit Basu, Ms. Ria Banerjee, for the Appellant; Asit Barun Routh, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the proposed added defendants and is directed against the Order No.30 dated July 04, 2007 passed by the learned Judge, City Civil Court, 11th Bench, Calcutta in Title Suit No.653 of 2002 thereby rejecting an application under Order 1 Rule 10(2) of the C.P.C.

2. The plaintiff / opposite party herein instituted a suit being the Title Suit No.653 of 2002 for declaration, permanent injunction and other reliefs. The defendants as mentioned therein are contesting the said suit. The plaintiff has prayed for the reliefs that the supplementary deed to trust dated June 26, 1990 is fraudulent, void, ineffective and not binding upon the plaintiff and for further declaration that the defendants or their predecessor-in-interest, Mahadeo Prasad Shaw, the Settler of the Trust Deed dated June 10, 1976 had no manner of right and/or authority to execute the supplementary deed of trust dated June 26, 1990 and other reliefs.

3. It may be mentioned herein that the proposed added party was not shown as a trustee in the deed of trust dated June 26, 1990. The suit was at the stage of

peremptory hearing and at that time, the proposed added defendants filed an application under Order 1 Rule 10(2) of the C.P.C. contending, inter alia, that by a deed of trust dated August 19, 1991, the Settler made the applicant a trustee along with other trustees and so for proper adjudication of the matter in dispute the proposed added defendant should be added as defendant no.5 in the suit. That application was rejected by the impugned order. Being aggrieved, this application has been preferred.

4. Now, the question is whether the learned Trial Judge was justified in rejecting the prayer for addition of party.

5. Upon hearing the learned counsel for the parties and on going through the materials on record, I find that the Settler, namely, Late Mahadeo Prasad Shaw executed a deed of trust dated June 10, 1976. Subsequently, he executed another deed of trust in respect of the selfsame property on June 26, 1990 and such deed is under challenge in the said suit. As per claim of the applicant, Late Mahadeo Prasad Shaw executed another deed of trust dated August 19, 1991 whereby Shambhu Nath Shaw, Pares Nath Shaw, Vishwanath Shaw, Baij Nath Shaw and Prabhat Kumar Gupta (applicant herein) were made trustees.

6. In a suit, for the reliefs already stated, it is at the absolute discretion of the plaintiff as to who would be made as parties to the suit. The deed of trust dated June 26, 1990 is under challenge and not the subsequent deed of trust dated August 19, 1991 whereby the applicant was made one of the trustees. Thus, I find that, by the deed of trust under challenge, the applicant did not acquire any interest in the property in suit.

7. During argument, Mr. Biswajit Basu, learned Advocate appearing for the petitioner has referred to the decision of Razia Begum Vs. Sahebzadi Anwar Begum and Others, and thus, he has submitted that in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation. But, in the instant case, I find that, since the applicant did not acquire any interest by the impugned deed, the lis does not involve including the applicant herein. The right, title and interest with regard to the suit property amongst the parties to the suit could well be decided amongst parties already on record. The presence of the applicant is not at all necessary to decide the lis between the parties on record.

8. Under the circumstances, the plaintiff is at his choice to decide whether any other parties should be added as parties in the suit or not. Therefore, this decision, I hold, is not applicable in the instant situation.

9. On the other hand, Mr. Asit Baran Routh appearing for the opposite parties has referred to the decision of Kasturi Vs. Iyyamperumal and Others, and the decision of Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, and thus he has contended that the decisions relating to addition of necessary parties are:-

i) There must be right to some relief against such party in respect of controversies involved in the proceedings or

ii) No effective decree can be passed in his absence.

10. Accordingly, the applicant is neither a necessary party nor proper party to the suit. Thus, he prays for dismissal of this revisional application.

11. Having considered the ratio of the decision of Kasturi (supra) and the above facts, I am of the view that the applicant is not at all a necessary party to decide the lis between the parties. An effective decree could well be passed in absence of the applicant within the framework of the suit as it is.

12. Therefore, I am of the view that the learned Trial Judge has rightly rejected the application for addition of parties. There is no scope of interference with the impugned order.

13. Accordingly, the revisional application fails to succeed. It is, therefore, dismissed.

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

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