
(2010) 04 GAU CK 0011

In the Gauhati High Court

Case No : Civil Revision Petition No. 62 of 2009

Sudhir Ranjan Chakraborty and Others

APPELLANT

Vs

Ashish Upadhyay and Others

RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)
Constitution of India, 1950 — Article 227
Specific Relief Act, 1963 — Section 42, 43

Citation : (2010) 4 GLR 591 : (2010) 4 GLT 570

Hon'ble Judges : T.NK. Singh, J

Bench : Single Bench

Advocate : D.K. Biswas, for the Appellant; K. Roy, for the Respondent

Final Decision : Allowed

Judgement

T. NK. Singh, J.—This Revision Petition (under Article 227 of the Constitution of India) is directed against the order of the learned Civil Judge (Junior Division), Agartala dated 4.4.2009 allowing the petition filed by the respondent, Shri Nityananda Chakraborty under Order 1, Rule 10(2) of the CPC to implead him as defendant No. 5 in the T.S.No. 49/2007 filed by the present petitioners and also order of the learned Civil Judge (Jr. Division) Court 2, Agartala dated 2.7.2009 (impugned order) rejecting the Review Petition filed by the present petitioner for reviewing the earlier order dated 4.4.2009 (impugned order).

2. Heard Mr. D.K. Biswas, learned Counsel appearing for the petitioners and also Ms. K. Roy, learned Counsel appearing for the respondent No. 5, Nityananda Chakraborty. None appears for the respondents 1, 2, 3 and 4 without showing any cause.

3. The present petitioners, as plaintiffs, filed the Title Suit No. 49/2007 in the Court of Civil Judge (Jr. Division) Court 2 West Tripura, Agartala against the principal respondent Nos. 1 to 4 as the defendants. The relief sought for in the Title Suit No. 49/2007 filed by the present petitioners/plaintiffs are:

(i) Pass a decree declaring that the defendants, their agents, associates and representatives under the banner of "Gram Unnayan Yuva Sanstha" or "Narendra Smrity Pathagar" are all trespassers/illegal possessors of the suit land;

(ii) Pass a decree of recovery of possession by evicting the defendants, their agents and associates by demolishing the house with Brick Walls and Tin Roof situated within the suit land;

(iii) Pass orders as to cost and any Order or Orders as may be deemed fit and proper for ends or justice.

4. In the plaint of the Title Suit No. 49/2007, the petitioners/plaintiffs pleaded that the land described in the schedule to the plaint is in illegal possession of the defendants. The petitioners/plaintiffs seek recovery of possession of the suit and from the defendants. The suit land originally belonged to one Narendra Chandra Bhattacharjee, who died on 6.11.1990 whereupon his only legal representative Smt. Kiran Prabha Bhattacharjee (wife) became the owner by succession and she also died after two years, i.e., on 20.8.1992.

5. The said Narendra Chandra Bhattacharjee and Kiran Prabha had no issue. During the life time of Narendra Chandra Bhattacharjee, petitioners/plaintiffs at different times were invited to live with them and accordingly petitioners/plaintiffs lived in different parts of the land belonging to said Narendra Chandra Bhattacharjee without any rent or expenses. After death of Narendra Chandra Bhattacharjee, his widow Kiran Prabha continued to allow the plaintiffs to keep up their possession in various parts of land belonging to her and the deceased owners did not transfer any part of their land in favour of anybody. After the death of Kiran Prabha, the holder of title in possession the plaintiffs continued their possession. Kumud Bandhu Chakraborty was the brother of Kiran Prabha, who is now deceased. The petitioner/ plaintiff No. 1 Shri Sudhir Ranjan Chakraborty is the brother of late Kiran Prabha while the petitioner/plaintiff Nos. 2, 3, 9 and 4 are sisters and plaintiff Nos. 5 and 6 are son and daughter of predeceased sisters of late Kiran Prabha. Thus, after the death of Kiran Prabha on 20.8.1992, the petitioners/plaintiffs jointly became successors in interest with regard to the property left by Kiran Prabha.

6. In September 2004 the principal defendants approached the petitioners/plaintiffs No. 1 and petitioner/plaintiff No. 5 to take permission to hold Durga Puja on a part of their land which was vacant. The petitioners/plaintiffs had collectively decided to allow the principal respondents/defendants to use the said land for performing Durga Puja, i.e., the suit land. Next year also similar request was repeated and similar permission was granted. Thereafter principal respondents/ defendants with their agents stated performing Durga Puja festival on the suit land every year and after the Durga Puja was concluded principal respondents/defendants along with some other boys of the locality started to raise a construction on a part of the suit land to which the plaintiffs seriously protested. Thus, since 18th and 19th of October, 2.005 the principal defendants/

respondents started possessing the suit land forcefully by constructing a house on a part thereof.

7. In spite of protest, principal defendants/respondents, their agents and associates are in possession of the suit land by constructing a house on a part thereof identifying it as of the "Gram Unnayan Yuva Sanstha" and its Library named, "Narendra Smriti Pathagar". Hence, the said T.S. No. 49/2007 for the reliefs mentioned above.

8. While the said suit was pending in the Court of Civil Judge (Jr. Division) court 2 West Tripura, the respondent Nityananda Chakraborty filed the said application under Order 1, Rule 10(2) of the CPC to implead him as defendant No. 5 in the T.S. No. 49/2007. In the said application, it is mentioned that the father of the petitioner, i.e., respondent No. 5 (Shri Nityanana Chakraborty) was one of the brothers of the deceased, Kiran Prabha Bhattacharjee and on the death of Kiran Prabha Bhattacharjee, the plaintiffs by furnishing wrong particulars with the issuing authority of survival certificate, managed to obtain a Survival certificate vide No. F.36(2)-SDM/SDR/GL/06/480 dated 17.4.2006.

9. It is also pleaded in the said application that the petitioner/defendant, Nityananda Chakraborty is legally entitled to get some share of the suit land and, therefore, the petitioner/defendant is interested in the suit land. In the said proceeding, the petitioners/plaintiffs also filed written objection stating that the petitioner/defendant, Nityananda Chakraborty, in no way related to late Kiran Prabha Bhattacharjee. He is understood to be hired by the defendants in their scheme to get the land behind the appearance of the club and make undue profit out of it.

10. The learned Civil Judge (Jr. Division) vide impugned order dated 4.4.2009 directed to insert the name of the petitioner/defendant, Nityananda Chakraborty, as defendant No. 5 in the suit. Against that, petitioner/plaintiff also filed application for reviewing the said order dated 4.4.2009 which has been rejected by the learned Civil Judge (Jr. Division) Court 2 vide order dated 2.7.2009. For easy reference, Order 1, Rule 10(2) is quoted hereunder:

10. Suit in name of wrong plaintiff. - (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 bona fide 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) 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.

11. On bare perusal of Order 1, Rule 10(2), it is crystal clear that the court at any stage of the proceedings either upon or without the application of either party, order that the name of any person, who ought to have been joined whether as a plaintiff or the defendant, for whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all the questions involved in the suit be added. It is clearly settled that application for addition of the party under Order 1, Rule 10(2) of the CPC is to be decided on the touch stone of Order 1, Rule 10(2) which provides only a necessary or a proper party may be added. For adding parties in the suit, it is required to see the subject-matter of the suit and requirement of presence of the party who seeks for impleading as a party in the suit in a proper adjudicating the subject-matter of the suit. A party without whom an effective order can be made is neither proper party nor necessary party in the concerned suit. It is also equally well settled that plaintiff is "dominus litis" and, therefore, cannot be forced to join any party as defendant. Therefore, it is the discretion of the plaintiff to decide who would be the necessary party against whom the relief is to be sought for. A person cannot seek for impleading him as defendant only for the reason that the litigation/suit may lead to a result, which will affect him legally.

12. In the T.S. No. 49/2007 the subject-matter is the illegal possession of the suit land by the principal defendants and the reliefs sought for are that the principal respondents/defendants, their agents, associates and representatives are the trespassers and/or illegal possessors of the suit land and also for demolishing the structures standing on the suit land constructed by the principal defendants/respondents. No doubt, the petitioner of the said application under Order 1, Rule 10(2) of the CPC, Shri Nityananda Chakraborty, may have the interest in the suit land. But, as stated above, the subject-matter of the suit is the illegal possession of the suit land.

13. If the petitioner is really interested in the suit land of T.S. No. 49/ 2007, he could file a suit for declaration of his rights and interest in respect of the suit land. The Apex Court in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, , held that the court cannot direct the plaintiff to add lessee as defendant in the suit as the lessee is neither necessary party nor proper party and addition of the lessee would enlarge the subject-matter of the suit, which is not related with the lessee. The fact in that case is that the appellant, Ramesh Hirachand Kundanmal, was in possession of service station under a dealership agreement on the land held by the respondent No. 2 (Hindustan Petroleum Corporation) as lessee. Respondent 1, the Municipal corporation issued a notice u/s 351 of the Bombay Municipal Corporation Act to the appellant for demolition of two chattels on the terrace of the premises on the

ground that these are unauthorized structures. The respondent No. 2 (Hindustan Petroleum Corporation) as lessee applied for being impleaded as additional defendant in the suit on the ground that it had material to show that the structures were unauthorized and that it was necessary party to the litigation. The Apex Court held that the respondent No. 2 is not concerned with the subject-matter of the suit, i.e., notice issued u/s 351 of the Bombay Municipal Corporation Act to the appellant for demolition of the two chattels on the terrace of the premises on the ground that these two were unauthorized structures. Paras 4, 12, 13, 14 and 18 of the SCC in Ramesh Hirachand's case (supra) read as follows:

4. Three grounds have been urged by the learned Counsel for the appellant against the sustainability of the order. The plaintiff was dominus litis and, therefore, cannot be forced to join respondent 2 as defendant. Respondent 2 is neither a necessary nor a proper party to the suit. The addition of the respondent would enlarge the issue in the suit. Reliance was placed on the decision of this Court in Razia Begum v. Anwar Begum.

12. Sinha, J speaking for the majority said that a declaratory judgment in respect of a disputed status will be binding not only upon parties actually before the court but also upon persons claiming through them respectively. The court laid down the law 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. Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy. In cases covered by the statutory provisions of Sections 42 and 43 of the Specific Relief Act, the court is not bound to grant the declaration prayed for on a mere admission of the claim by the defendant. If the court has reasons to insist upon a clear proof apart from the admission, the result of a declaratory decree on the question of status such as the controversy in that suit affects not only the parties actually before the court but generations to come and in view of that consideration, the rule of present interest as evolved by case law relating to disputes about property does not apply with full force. Apply the propositions enunciated to the facts of the case, the court came to the conclusion that the courts below did not exceed their power in directing the addition of respondents 1 and 2 as parties defendants in the action nor it could be said that the exercise of the discretion was not sound.

13. A clear distinction has been drawn between suits relating to property and those in which the subject-matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party.

14. It cannot be said that the main object of the rule is to prevent multiplicity of

actions 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 advance. 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. It is difficult to say that the rule contemplates joining a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.* (1956) 1 All ER 273 wherein after quoting the observations of Wynn-Parry, J in *Dollfus Miegiet Compagnie S.A. v. Bank of England* (1950) 2 All ER 605 that their true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J has stated:

The test is "May the order for which the plaintiff is asked directly affect the intervenor in the enjoyment of his legal right.

18. The courts below have assumed that the subject-matter of the litigation is the structure erected by the respondent or in other words the service station which has been allowed to be operated upon by the plaintiff under the terms of the dealership agreement. The notice does not relate to that structure but is in relation to the two chattels stated to have been erected by the present appellant unauthorisedly. According to the appellant these chattels/structures are moveables on wheels and plates where servicing and/or repairs are done and used for storing implements of the mechanics. Respondent 2 has no interest in these chattels and the demolition of the same in pursuance to the notice is not a matter which affect the legal rights of the respondent. The courts below, therefore, failed to note that respondents has no direct interest in the subject-matter of the litigation and the addition of the respondent would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which is required to be adjudicated and settled. The joining of the party would embarrass the plaintiff and issues not germane to the suit would be required to be raised. The mere fact that a fresh litigation can be avoided is no ground to invoke the power under the rule in such cases. (emphasis supplied)

14. For the reasons discussed above, in T.S. No. 49/2007 wherein the subject-matter of the suit is the illegal possession of suit land by the principal defendants/respondent Nos. 1 to 4, the applicant, Shri Nityananda Chakraborty, is neither necessary nor a proper party and also that his presence is not at all required for passing the effective judgment and decree in the said suit. Accordingly, interference to the impugned order 4.4.2009 passed by the learned Civil Judge (Junior Division.2) Agartala allowing the petition filed by the respondent, Shri Nityananda Chakraborty under Order 1, Rule 10(2) of the CPC to implead him as defendant No. 5 in the T.S. No. 49/2007 filed by the present petitioners/plaintiffs and also order of the learned Civil Judge (Jr. Division) Court 2 Agartala dated 2.7.2009 rejecting the Review Petition on filed by the present petitioner for reviewing the earlier order dated 4.4.2009 are called for and are hereby set aside.

15. It is made clear that passing of this order shall not cause any prejudice to the applicant, Nityananda Chakraborty, in approaching any court of competent jurisdiction by filing civil suit for declaring his rights and interest over the suit land or/the said land.

16. Revision petition is allowed.

17. Registry is directed to send back the LCR immediately and the parties are directed to appear before the learned Civil Judge (Jr. Division) Court 2, West Tripura, Agartala on 2.6.2010.