
(2018) 07 JH CK 0039

In the Jharkhand High Court

Case No : Writ Petition Civil No. 3466 of 2017

Sunil David Kachhap

APPELLANT

Vs

Beronika Lalundia

RESPONDENT

Date of Decision : 20-07-2018

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46

Bihar Building (Lease, Rent and Eviction) Control Act, 1982 — Section 15

Code of Civil Procedure, 1908 — Order 1 Rule 10, Order 1 Rule 10(2), Order 22 Rule 4

Citation : (2018) 07 JH CK 0039

Hon'ble Judges : SHREE CHANDRASHEKHAR, J

Bench : Single Bench

Advocate : Rahul Gupta, J.N. Upadhyay, Rohitashya Roy, K. Panda

Final Decision : Allowed

Judgement

1. The petitioner-plaintiff is aggrieved of order dated 19.04.2017 passed in Eviction Suit No.24 of 2006 by which an application filed by sister of the original defendant under Order-I Rule 10(2) CPC has been allowed.Â

2. Issue raised in the present proceeding is whether the intervener who has been made respondent no.1 in the writ petition is a necessary, or a proper party in the eviction suit, or in the counter-claim raised by her brother in the eviction suit seeking a declaration that the sale-deed dated 21.03.2003 is null and void.Â

3. Briefly stated, Eviction Suit No.24 of 2006 was instituted by the petitioner-Sunil David Kachhap for ejection of the defendant on the ground of default in payment of rent.Â The plaintiff has pleaded that the suit property was sold by the defendant to him through saledeed dated 21.03.2003 and delivery of possession was given to him.Â The vendor who is defendant in the

eviction suit was an employee under TISCO. After he superannuated from service entered into a tenancy agreement in respect of the suit schedule property which was transferred by him to the plaintiff through sale-deed dated 21.03.2003. Initially, the agreement was for a period between 01.04.2003 to September, 2006. Rent was payable by the tenant on the 1st day of each month. It is pleaded that a notice was issued to the defendant on 08.05.2006 to vacate the premises, however, when he did not vacate the suit premises, the plaintiff was constrained to institute the suit for his ejection. The defendant submitted his written statement with a counter-claim, taking a stand that the suit is liable to be dismissed for non-joinder of State of Jharkhand which is a necessary party. Further stand taken by the defendant is that transfer of the suit property is hit by section 46 of C.N.T. Act, 1908, for he belongs to Ho community and the tenancy agreement dated 01.04.2003 was a fraudulent agreement and infact the plaintiff is neither the owner nor in possession of the suit schedule property. By way of counter-claim a decree for declaration that sale-deed dated 21.03.2003 is null and void has been sought by the defendant.

4. Issues were framed on 11.03.2008 and the plaintiff's evidence was closed on 15.09.2009. Since no witness was examined by the defendant his evidence was closed on 20.11.2009 and the suit was fixed for arguments. It appears that in the counter-claim deficit court-fee was not deposited by the defendant and finally it was deposited on 11.02.2010. Thereafter, challenge to pecuniary jurisdiction of the court by the defendant failed on 28.09.2010. It further appears that the application under section 15 of Bihar Building (Lease, Rent and Eviction) Control Act, 1982 was allowed by an order dated 25.01.2012 and when the defendant did not comply with the order under section 15, his defence was struck-off.

5. After death of the defendant on 30.06.2012, his legal heirs and successors were substituted under Order-XXII Rule 4 CPC and they filed their written statement-cum-counter claim on 12.08.2013. They have also taken identical stand what was taken by the original defendant in his written statement-cum-counter claim. Thereafter, the suit was again posted for arguments. At this stage, the substituted defendants filed an application for adducing evidence which was rejected as not pressed by an order dated 17.02.2016. About five months thereafter and ten years after the suit was

instituted, precisely on 29.07.2016, an application under Order-I Rule 10(2) CPC was filed by Beronika Kalundia claiming that the suit schedule

property was originally allotted to her father namely, Kalyan Kalundia by TISCO Limited who died leaving behind her and Kedar Kalundia, her

brother. She has asserted that the suit property was never partitioned and it has remained in jointness.Â Claiming that she has right, title and interest

over half of the suit property and if she is not made a party in the suit any decision in the suit would adversely affect her, she filed an application for

her impleadment in the suit; it is not clear whether this application was filed in the eviction suit or the counterclaim. Further plea taken by the

intervener is that her brother-Kedar Kalundia has no right, title and interest over the entire property comprised under Holding No.1247A and,

therefore, the sale-deed dated 21.03.2003 executed by her brother in favour of the plaintiff is null and void.Â Â Â Â Â Â

6. Who is necessary party and who can be a proper party has been explained by the Supreme Court in â??Udit Narain Singh Malpaharia vs.

Additional Member, Board of Revenue, Bihar and Anr.â? reported in AIR 1963 SC 786. It has been held that the one whose presence is necessary

for complete adjudication of the dispute is a necessary party and the one in whose absence the issue in controversy cannot be decided effectively and

completely is a proper party.Â

7. Claim of the intervener that she has half share in the suit property being legal heir of the original allottee namely, Kalyan Kalundia is not an issue

which is required to be adjudicated either in the eviction suit or in the counter-claim raised by her brother. The learned counsel for the respondent no.1

submits that in his rejoinder to the application under Order-I Rule 10 CPC the plaintiff admits that the intervener is sister of the original defendant and

while so, her claim over the suit schedule property stands admitted. I am not inclined to accept this submission. For claiming that she has right, title and

interest over half of the suit schedule property, the intervener is required to first get a declaration from a competent court of civil jurisdiction on her

right in the suit property.Â What can be the stand of other defendants on this claim of the intervener, that she has a right over the suit schedule

property, is not known. Only issue involved in the counter-claim is whether the sale-deed dated 21.03.2003 has been validly executed by the original

defendant in favour of the plaintiff or not. For adjudicating this issue presence of the intervener is not necessary. For deciding validity of the sale-deed

dated 21.03.2003 and for all the issues involved therein, completely and effectively, it is not necessary that the intervener's claim also should be

decided in the counter-claim. Her claim over the suit property is an independent claim, which would not affect validity of the sale-deed. At best,

if it is finally found that she has right over half of the suit property, all that would follow is that the plaintiff can claim only half of the suit property, but

on that ground sale-deed dated 21.03.2003 cannot be declared invalid. Moreover, this sale-deed is not binding on her and, thus, she is not even a

proper party in the suit.

8. The learned counsel for the respondent no.1 has relied on a decision in Pankajbhai Rameshbhai Zalavadiya vs. Jethabhai Kalabhai Zalavadiya

& Ors. reported in (2017) 9 SCC 700 to contend that any decision in the suit more particularly in the counter-claim would adversely affect the

intervener and if the intervener is not impleaded in the suit, it would lead to multiplicity of litigation. The stand taken on behalf of the respondent no1

is that if the sale-deed dated 21.03.2003 is finally found valid, it would definitely affect her right, title and interest over the suit schedule property. A A

9. In the first place, the decision in Pankajbhai Rameshbhai Zalavadiya is an authority to the proposition that dismissal of an application under

Order-22 Rule 4 CPC without adjudicating merits of the matter would not be a bar for impleadment of the legal heirs and successors of a party under

Order-I Rule 10(2) CPC. About half a century ago in British Railways Board vs. Herrington reported in (1972) 1 All ER 749, Lord Morris

has held, There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to

be remembered that judicial utterances are made in the setting of the facts of a particular case. By now it is well settled that a decision is an

authority for what it actually decides. One sentence here or there would make a world of difference in the final outcome of the case. On multiplicity

of litigation, all I need to indicate here is that to avoid multiplicity of proceedings one is impleaded in a suit only when it is found that on admitted facts

the party seeking impleadment has a commonality of interest with a party to the suit. The intervener has claimed that being the legal heir and

successor of late Kalyan Kalundia she has right, title and interest over half of the suit schedule property. But this claim is not admitted by the plaintiff or the legal heirs of her brother. Her claim over the suit property can be adjudicated in a separate proceeding, but not in the eviction suit or the counter-claim raised by her brother. In the context of the eviction suit it is pertinent to mention that even on her own saying that she has right, title and interest in the suit property, she is not required to be impleaded there. Whether the defendant was a tenant under the plaintiff or not is an issue which can be conclusively decided in the absence of the intervener. And, the counter-claim raised by her brother cannot be converted into one for declaration of her right, title and interest in the suit property. If her impleadment in the counter-claim is permitted, nature of the counter-claim would change; two diametrically opposite cause of action would be clubbed together.

10. The trial Judge by the impugned order dated 19.04.2017 has allowed the application under Order-I Rule 10(2) CPC observing that the intervener is a necessary party. Under Order-I Rule 10(2) CPC the Court has powers to struck-off a party who has been improperly added and to add a party in the suit whose presence is necessary. From the facts noticed hereinabove, it is apparent that the intervener is neither a necessary party nor a proper party in the eviction suit or the counter-claim. The trial Judge has evidently committed a serious error in law. It has exercised a jurisdiction which is not vested in it by law.

11. In the above facts, finding serious infirmity in the impugned order dated 19.04.2017, it is set-aside.

12. The writ petition stands allowed.

13. The trial court shall proceed in the matter, in accordance with law.