

(2014) 05 RAJ CK 0275

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5527 of 2000

Tek Chand

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2)
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18, 4, 6

Citation : (2015) 1 CDR 45 : (2015) 1 RLW 878

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : R.K. Agarwal, Suresh Pareek, Senior Advocates, Yogesh Pujari and N.C. Sharma, Advocate for the Appellant; Sudeep Mathur, Advocate for Inderjeet Singh, Additional Advocate General and Manju Joshi, Additional Government Counsel, Advocate for the Respondent

Judgement

Mohammad Rafiq, J.—This matter has come up for orders on the application under Article 226 of the Constitution of India read with order 1 Rule 10 of the Code of Civil procedure, filed by applicants Bhag Chand S/o. Son @ Sonya and Nathu Lal S/o. Son @ Sonya, seeking their impleadment as party respondents to the instant writ petition. Challenge in the writ petition is made to the notification under Section 4 of the Land Acquisition Act dated 15.03.1999 and the notification under Section 6 of the Land Acquisition Act dated 16.03.2000, which seek to acquire the land of Khasra No. 556, 557, 558, 561 and 562 of village Sukhiya, Tehsil Sanganer, District Jaipur. Writ petition was filed by Tek Chand, way back in 2000, who claimed to have purchased this land by two registered sale-deeds dated 22.02.1996; by one of sale-deeds, the petitioner purchased land bearing Khasra Nos. 561 and 562 from Shri Ladu Ram S/o. Gangaram Bagda Brahman, resident of village Sukhiya and through another sale-deed, he purchased the land bearing Khasra Nos. 556, 557 and 558, total measuring 1.18 hectares, from Shri Laduram and one Shri Nanagram S/o. Sujya and Smt. Gyarsi Widow of Sujya.

2. Shri Suresh Pareek, learned Senior Counsel for applicants, submitted that in the settlement proceedings and record of rights of Samvat 2015-34, Gangaram @ Gangalia, Son @ Sonya and Murli S/o. Mahadev, by caste Bagra Brahman, residents of village Keshwala, were recorded as khatedars of Khasra Nos. 249, 250, 2541, 252, 253, 254, 255, 256, 257 and 258, total measuring 15 bigha and 7 biswa of land. Thereafter, Khasra Nos. 256, 257 and 258 were renumbered as Khasra Nos. 556, 557 and 558 in the settlement proceedings. Mutation of the land of aforesaid khasra was attested in the name of Nanagram and Gyarsi, showing them as Sonya S/o. late Son @ Sonya and Gyarsi W/o. late Son @ Sonya, by forgery, in the year 1982. Mutation order No. 68 was attested in their favour on 30.08.1982, whereas the fact is that in the year 1982 Son @ Sonya was alive. Actually Son @ Sonya was father of present applicants and he expired in the year 2007. The said forgery was result of conspiracy hatched up by Nanagram and Gyarsi in connivance with Halka Patwari of village Sukhiya, who wrongly made a mention therein that he made enquiry and found that Son @ Sonya has expired and that Nanagram and Gyarsi are legal heirs of late Son @ Sonya.

3. According to learned Senior Counsel Shri Suresh Pareek, Mahadev had four sons, namely, Gangaram, Sujya @ Suji Lal, Son @ Sonilal @ Sonya @ Sheo Narayan and Murli @ Mool Chand @ Murliya. Sujya @ Sujilal S/o. Mahadev died issueless in the year 1947. Nanagram, who is son of Gangaliya @ Gangaram and cousin of present applicants, and Gyarsi W/o. Sujya @ Sujilal, both, got mutated the land of father of present applicants Shri Son @ Sonya, in their favour, showing him dead in the year 1982. It is submitted that Son @ Sonya, the father of present applicants, was in actual khatedari possession of the land bearing khasra Nos. 556, 557 and 558. After his death in 2007, applicants, being his legal heirs, are in possession of the land.

4. Learned Senior Counsel for applicants submitted that delay in making such application is not intentional or deliberate. In fact, the applicants had no notice of the acquisition proceedings of the land in question as no notice was served by the Land Acquisition Officer upon the applicants or their late father. The applicants were not impleaded as party respondents to the writ petition whereas in fact their rights are likely to be vitally affected by any finding to be recorded by this Court.

5. Shri Suresh Pareek, learned Senior Counsel for applicants, contended that the sale-deed allegedly executed in favour of petitioner by Laduram S/o. Gangaram, Nanag Ram S/o. Sujya and Smt. Gyarsi W/o. Sujya @ Sujilal, in respect of land bearing khasra Nos. 556, 557 and 558, is void-ab-initio. This sale-deed does not confer any right on the petitioner. Mutation proceedings pursuant to aforesaid sale-deed are also void and illegal. It is submitted that Sujya, who is a different person, is also known as Suji. But Sujya @ Suji was uncle of the applicants. Pedigree given by the petitioner in reply to the application is not correct. Learned Senior Counsel for applicants submitted that Sujya is different person. Sujya is

also known as Sujya @ Suji Lal. He is not known as Son @ Sonya. It is contended that applicant Bhagchand filed an F.I.R. No. 143/2013 with Police Station Muhana, Jaipur (East) against petitioner Tekchand, and Laduram, Nanagram and Smt. Gyarsi, who executed the sale-deed in favour of Tekchand. Although the police filed negative final report in that F.I.R. but the applicants have filed protest petition in the Court concerned. Simultaneously, the applicants have also filed a suit for cancellation of the sale-deed and for perpetual injunction. The Court of Additional District Judge No. 19, Jaipur Metropolitan, Jaipur, has ordered to maintain status quo with respect to the property.

6. Learned Senior Counsel submitted that the death certificate dated 05.06.2013 showing Sujya @ Son to have died on 02.06.1960 (Annexure-P-1 to the reply to the application) is a forged document, which has been illegally obtained from Gram Panchayat. The applicants made complaint in this regard to the B.D.O. The Tehsildar forwarded the matter to the Secretary, Gram Panchayat, Muhana, to make an enquiry. The enquiry was entrusted to Ward Panch and the Ward Panch of Ward No. 10 of Village Keshawala in his report has stated that Son @ Sonya @ Soni Lal @ Sheo Narayan is one and the same person and he died in 2007. He is survived by eleven legal heirs, out of which, three are his sons, namely Nathulal, Madanlal, Bhagchand, and eight are daughters and wife Manbhar Devi. Moolchand @ Murlya @ Murli, the fourth son of Mahadev, had died in 1995. Sujya @ Sujilal, second son of Mahadev, had died about 65-70 years ago and his widow Gyarsi Devi is alive and she has no issue. Learned Senior Counsel therefore submitted that claim by Nanagram that he was son of Sujya, is totally false. It is submitted that the mutation (Annexure-4 to the writ petition) dated 04.05.1996 is liable to be ignored.

7. Learned Senior Counsel also referred to Mutation Order No. 68 attested on 11.08.1982 in favour of Gangaram, Sujya @ Suji and Murli @ Murlya, and stated that therein it is wrongly mentioned that Son has died only one year ago. If that is accepted, time of death of Son @ Sonya would be in the year 1981, which is unbelievable. Learned Senior Counsel also referred to certain other documents to bring home his point. Learned counsel for the applicants, has, in support of his arguments, cited judgments of the Supreme Court in Savitri Devi Vs. District Judge, Gorakhpur and Others, and Union of India (UOI) Vs. Sher Singh and Others, .

8. Shri R.K. Agarwal, learned Senior Counsel appearing for the writ petitioner opposed the application and submitted that the application for their impleadment by the applicants as party respondents to the writ petition, has been filed with enormous delay. The petitioner had purchased the land in question for value from those in whose favour the mutation was attested in February, 1982. Applicants never challenged the mutation proceedings before any Court. The applicants had no share as their father had no share in the land in dispute. The land in dispute was situated in village Keshawla; in which other three sons of late Mahadev had shares whereas the applicant's father had his land in another village Keshiawala.

Applicants Bhag Chand and Nathu Lal had misrepresented themselves as sons of Son @ Sonya, as mentioned in their application. Their father's name is Shyonarayan @ Sonya. The applicants have purposely described themselves as the sons of Son @ Sonya, whereas they are the sons of Shyonarayan @ Sonya. Son @ Sojya, who was the real owner of disputed land, and was their uncle. He died on 02.06.1960. Copies of death certificates of Sojya @ Son and Shyonarayan @ Sonya have been placed on record with the reply to the application as Annexures P-1 and P-2. Reference is made to mutation orders, which are placed on record with the application as Annexure-3 and Annexure-4. It is submitted that name of Sonya @ Son appeared as khatedar along-with Gangaram and Murlya, who is not father of the applicants but is their uncle. Bhag Chand, one of the applicants, filed a first information report with the Police Station Muhana which came to be registered as F.I.R. No. 143/2013 on similar allegations. The police after investigation, has given final report in negative. It is submitted that the family pedigree given by the applicant is wrong. According to learned Senior Counsel, the correct family pedigree is the one, which is in reply to the application by the petitioner, Sojya was known as Son, whereas Shyonarayan was known as Sonya and they were two different persons. Applicant Bhag Chand has identified himself in application as S/o. Son @ Sonya. In the F.I.R. filed by him, he claimed himself to be son of Shyonarayan. It is denied that Son @ Sojya was the father of the applicants. It is also denied that the applicants were the khatedar of the land bearing Khasra Nos. 556, 557 and 558. It is contended that petitioner are presently in possession of the land in question and having a factory thereon. It is argued that since Sojya @ Son died issueless, Nanagram was adopted as son by Smt. Gyarsi widow of Sujya @ Sujilal.

9. Learned Senior Counsel submitted that if the applicants have already filed the suit for cancellation of the sale-deed and for perpetual injunction, they can pursue their remedy. In the scope of present writ petition, the applicants cannot be made as respondents to the writ petition as the petitioners have sought to challenge the acquisition proceedings of the land, which they have purchased from their lawful owners.

10. I have given my anxious consideration to rival submissions and perused the material on record.

11. Instant application has been filed by applicants Bhag Chand and Nathu Lal for their impleadment as party respondent to the writ petition with enormous delay. The writ petition was filed as far back as on 10.08.2000, challenging the validity of notification under Section 4 of the Land Acquisition Act dated 15.03.1999 and notification under Section 6 of the Land Acquisition Act dated 16.03.2000, and questioning correctness of the acquisition proceedings. The applicants have filed the application for their impleadment as party respondent to the writ petition thirteen years after filing of the writ petition. Their impleadment as respondents to the writ petition may not be necessary as eventually what is to

be decided in the writ petition is whether acquisition is bad in law and is liable to be set aside. It is not that the said question cannot be effectively decided in absence of the applicants. Joining the applicants herein as respondents possibly may not result in any order in their favour but only if eventually they succeed in Civil Suit. Their interest would not lie in dismissal of the writ petition or in not quashing the acquisition proceedings. In a case where mutation attested in favour of Gangaram, Sujya @ Suji and Murli @ Murlya, from whom the petitioner claims to have bona-fidely purchased the land in dispute in 1982, the applicants possibly cannot claim to acquire any interest unless they get the aforesaid mutation order reversed or otherwise get the sale-deed declared as void, and appropriate injunction order passed thereabout.

12. Applicants cannot be arrayed as respondents in the scope of present writ petition on mere apprehension that petitioner would enjoy the fruits of the land or otherwise withdraw the amount of compensation. Solution to that problem lies elsewhere. Besides, the police has filed final report in negative in the first information report filed by the applicant Bhag Chand. Even if the trial Court does not accept the final report or direct reinvestigation or takes cognizance of the matter against accused, that again would be an independent proceedings against accused, which would have nothing to do with the present writ petition. The applicants can get their interest safeguarded by making appropriate injunction application before the competent civil Court where they claim to have filed the suit for cancellation of the sale-deed and for perpetual injunction. If the applicants Bhag Chand and Nathu Lal are in fact proved to be sons of Son @ Sonya, the said Court would be well within its jurisdiction to pass appropriate injunction order. The question whether or not Nanag Ram was adopted son of Sonya @ Son or whether Sujya @ Suji died issueless and Nanag Ram claimed himself to be adopted son of Sujya @ Suji, is again a contentious issue, which cannot be possibly decided in the scope of writ petition. This also cannot be possibly decided in the present writ petition whether Sujya @ Sujilal died in the year 1947 or in 1960, as claimed by the respondents, or in 1981, as per the stipulation made in Mutation Order No. 68. For all aforesaid reasons therefore the applicants cannot be taken either to be necessary or proper parties to the present dispute.

13. In cited judgment of Union of India vs. Sher Singh & Ors., supra, in the context of Section 18 of the Land Acquisition Act, the Supreme Court held that if the land was acquired by the State Government for National Security Guard on the request of the Union of India, the Union of India, which ultimately would be liable to pay the compensation, would be necessary party in reference proceedings for enhancement of compensation as it would be liable to pay compensation and if not impleaded, would be deprived of opportunity to file an appeal against the enhancement of compensation. The Supreme Court held so while interpreting the words "any person interested". The aforesaid judgment is distinguishable on facts and do not apply to the present matter in any manner.

In another cited judgment of Savitri Devi Vs. District Judge, Gorakhpur and Others, , it was held by the Supreme Court that Order 1 Rule 10 of the C.P.C. enables the Court to add any person as a party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon the settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code. That judgment was rendered in entirely different fact situation obtaining in that matter and cannot be applied in the facts of the present case, but its ratio nonetheless is the same that person shall be considered as necessary party only if the matter cannot be decided in his absence and whose presence is necessary for complete and final decision on question involved in proceedings.

14. In Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, , considering this question with reference to Order 1 Rule 10(2) of the Code of Civil Procedure, it was observed by the Supreme Court that the necessary parties is one without whom no order can be made effectively and proper party is one in whose absence effective order can be made but whose presence is necessary for complete and final decision on question involved in proceedings. Addition of parties is not the question of initial jurisdiction of Court but of judicial discretion, which has to be exercised in view of all the facts and circumstances of a particular case.

15. In the facts of the present case, it cannot be said that the question with regard to validity of the notifications under Sections 4 and 6 of the Land Acquisition Act or the consequentially, award of acquisition, cannot be adjudicated upon in absence of the applicants or otherwise their presence would be required for complete and final decision on the question involved in the proceedings, the application having been filed belatedly even otherwise does not commend acceptance.

16. In Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru, , the suit was based on agreement of sale said to have been executed by the sole defendant in the suit. Subsequent interest was said to have been acquired by the respondent by virtue of a decree of the Court was held not a matter arising out of or in respect of the same act or transaction or series of acts or transactions in relation to the claim made in the suit. The question before the Court was whether the person who has got his interest in the property declared by an independent decree but was not a party to the agreement of sale, is a necessary and proper party to effectually and completely adjudicate upon and settle all the question involved in the suit. It was held that the question before the Court in a suit for specific performance is whether the vendor had executed the document and whether the conditions prescribed in the provisions of the Specific Relief Act have been complied with for granting the relief of specific performance. Sub-rule (2) of Rule 10 of Order 1 provides that the Court may either upon or without an application of either party, add any party whose presence before the Court may

be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit. Since the respondent therein was not a party to the agreement of sale, the Supreme Court observed that it cannot be said that without his presence the dispute as to specific performance cannot be determined, therefore, he was held to be not a necessary party.

17. In Thomson Press (India) Ltd. Vs. Nanak Builders and Investors P. Ltd. and Others, , the Supreme Court observed that sub-rule (2) of Rule 10 gives a wider discretion to the Court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party whose presence on the Court is essential for effective determination of the issues involved in the suit.

18. The core question again therefore would be whether the matter cannot be decided without the presence of the applicants and to decide their status as proper party whether their presence would be necessary for effective determination of the issue involved in the matter. In the opinion of this Court, the applicants in the present case would not fall in either of the categories.

19. In Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others, , it was held by the Supreme Court that the general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. This general rule is subject to the provisions of Order 1 Rule 10(2) of the C.P.C., which provides to impleadment of proper or necessary parties, according to which, 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 question involved in the suit, be added. The Supreme Court further observed as under:-

"A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "necessary party" is a party who, though not a necessary party, is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the Court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific

performance."

20. In the present case the last observation of the aforesaid abstracted part of the Supreme Court judgment, squarely applies to the facts of the present case. In the present case, even the applicants have filed a suit for setting aside the sale-deed and filed a regular first information report, in which the police has given negative final report and claim on that basis that they are likely to secure a right/interest in a suit property, after the suit is decided against the petitioner, will not make them necessary or proper party.

21. Though the Order 1 Rule 10(2) of the C.P.C. provides that a party can be impleaded at any stage of the proceedings but that does not suggest that, delay howsoever enormous it should be, ignored by the Court for considering the application for impleadment. This issue was considered by the Supreme Court in *Vidur Impex and Traders Pvt. Ltd. and Others Vs. Tosh Apartments Pvt. Ltd. and Others*, . That case arose out of a suit for specific performance filed before the Delhi High Court. An application for impleadment was filed in the suit about 11 years after execution of the agreement for sale in favour of the plaintiff. The Single Bench of the High Court dismissed the application holding that impleadment would completely alter the nature of the suit for specific performance. The Division Bench upheld the judgment of the Single Bench. Applicants claimed that an agreement to sell was executed in their favour by one of the defendants and that at the time of execution of such agreement, they were unaware about the suit filed by the plaintiff. Rejecting the argument, the Supreme Court observed that it is difficult, if not impossible, to accept their statement because the smallness of time gap between the agreements for sale and the sale deeds executed by respondent No. 2 in favour of the appellants and the execution of agreement for sale by the appellants in favour of Bhagwati Developers would make any person of ordinary prudence to believe that respondent No. 2, the appellants and Bhagwati Developers had entered into these transactions with the sole object of frustrating the earlier agreement for sale executed in favour of respondent No. 1, in respect of which the suit was pending before the Delhi High Court. Subsequent agreement was entered into in a clandestine manner despite injunction granted by the High Court. The Supreme Court in para 36 of the report, laid down six principles to be kept in view while considering such application, which are, for ready reference, reproduced here as under:--

"36. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment."

22. None of the aforesaid parameters are satisfied in the present application for impleadment and therefore this Court is not persuaded to allow the application. Application for impleadment bearing inward No. 48373 dated 07.11.2013, is therefore dismissed.