
(2000) 06 MP CK 0050

In the Madhya Pradesh High Court

Case No : Civil Revision No. 582 of 1994

Urmila Patel (Smt.) and Another

APPELLANT

Vs

Smt. Laxmibai and Others

RESPONDENT

Date of Decision : 20-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10, 115
Transfer of Property Act, 1882 — Section 52

Citation : (2001) 1 JLJ 202 : (2001) 1 MPLJ 480

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : T.S. Ruprah, for the Appellant;

Final Decision : Allowed

Judgement

Dipak Misra, J.

Invoking the civil revisional jurisdiction of this Court u/s 115 of the CPC (hereinafter referred to as "the Code") the Petitioners have called in question the propriety of the order dated 23.6.1994 passed in Civil Appeal No. 4A/89 by the learned Additional District Judge, Narsinghpur.

The facts as have been unfolded are that the Respondent No. 1. Laxmibai purchased a plot in the year 1942 at Village Kandeli in the name of her minor son Jagdish Sharan by a registered sale-deed. At the time of execution of this sale-deed Jagdish Sharan was only 13 years of age. In 1947 Smt. Laxmibai constructed rooms over the said plot. In the year 1950 Jagdish Sharan became major and was married to Smt. Siyarani. Jagdish Sharan expired in the year 1950 itself. Smt. Siyarani deserted the house of her in-laws and on 16.8.1956 Smt. Laxmibai sold the house in question to the Respondent Nos. 3 to 5 and delivered them the possession of the same. In the year 1976 Smt. Siyarani appeared and in collusion with Smt. Laxmibai filed a suit for declaration that the sale-deed executed on 16.8.1956 was without consideration and was obtained by

playing a fraud upon her. In Civil Suit No. 144-A/82 the Respondents No. 3 to 5 herein, averred that the sale-deed was valid one and the property in question belonged to Smt. Laxmibai who had purchased it in the name of her minor son Jagdish Sharan.

The learned trial Judge considering the facts in entirety dismissed the suit. After the dismissal of the suit Laxmibai and Smt. Siyarani preferred a Civil Appeal No. 4-A/89 which is pending in the Court of First Additional District Judge, Narsinghpur for adjudication. During the pendency of the appeal the Respondent Nos. 3 to 5 sold the instant suit property by two separate sale-deeds dated 24.5.1990 to the Petitioners and also put them in physical possession of the property. The applicants thereafter filed an application under Order 1 Rule 10 of the Code praying that they be impleaded as parties to the appeal. The application was rejected by the lower appellate Court on the ground that the Plaintiff is the dominus litis and it was open to her to implead the parties and the Court cannot compel to implead someone whom she did not want to implead. Feeling aggrieved by the aforesaid order the present civil revision has been preferred.

I have heard Mr. T.S. Ruprah, learned Counsel for the Petitioners. Mr. Ruprah has submitted that there was no order of injunction to alienate the property and the Petitioners are the bona fide purchasers of the property and they have to defend their action and. therefore, they should be impleaded as parties otherwise it would lead to multiplicity of proceedings. To buttress his submission he has placed reliance on the decision rendered in the case of Devisahai Premraj Mahajan Vs. Govindrao Balwantrao and Others, wherein it has been held as under:

There is no bar of the transferee pendente lite being impleaded as a party under Order 22, Rule 10 at the appellate stage. However, the question will be one of due diligence. But if he is guilty of unreasonable delay and waits and watches the proceedings without making an attempt to be impleaded, and later on files an application at a very late stage, unless he explains the delay or shows some justifiable reason for having remained silent. his prayer to be impleaded at a late stage can evidently not be allowed.

(Quoted from the placitum)

In the case of Khemchand Shankar Choudhari and Another Vs. Vishnu Hari Patil and Others, the Apex Court held as under:

6. Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject-matter of a suit from any of the parties to the suit will be bound in so far as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of party from whom he has acquired that interest. Rule 10 of Order 22 of the Civil P.C. clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is

made. It may be trial if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceeding. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate Court where he is not already brought on record. The position of a person on whom any interest had devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an official receiver who takes over the assets of such a party on his insolvency....

In the case of *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others*, the Apex Court held that in the matter of addition of necessary parties the Court has the judicial discretion which it has to exercise looking at the facts and circumstances of the case. In exercise of its discretion the Court can direct the Plaintiff though dominus litis to implead the person as a necessary party. Their Lordships elaborating the same in paragraph 8 expressed as under:

8. The case really turns on the true construction of the rule in particular the meaning of the words "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." The Court is empowered to join a person whose presence is necessary for the prescribed purpose and not under the rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the Plaintiff relating to the subject-matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of action.

In this context, I may profitably refer to the decision rendered in the case of *Razia Begum Vs. Sahebzadi Anwar Begum and Others*, where in the Apex Court laid down as under:

The question of addition of parties under Rule 10 of Order 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the Court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case, but in some cases, it may raise controversies as to the power of the Court, in contradiction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in Section 115 of the Code. 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 litigation....

(Quoted from the placitum)

Recently in the case of *Savitri Devi Vs. District Judge, Gorakhpur and Others*, their Lordships of the Apex Court distinguished the rulings laid down in the case

of Surjit and others Vs. Harbans Singh and others etc. etc., and came to hold that purchasers are necessary parties to the suit and their impleadment is necessary for deciding questions whether sales were committed in contempt and disregard of injunction and whether purchasers were bona fide transferees. Their Lordships also observed that in such a case multiplicity of suits can be avoided. To quote their Lordships:

The plea raised by the Respondents 3 to 5 that they were bona fide transferees for value in good faith may have to be decided before it can be held that the sales in their favour created no interest in the property. The aforesaid questions have to be decided by the Court either in the suit or in the application filed by the Respondents 3 to 5 for impleadment in the suit. If the application for impleadment is thrown out without a decision on the aforesaid questions, Respondents 3 to 5 will certainly come up with a separate suit to enforce their alleged rights which means multiplicity of proceedings. In such circumstances, it cannot be said that Respondents 3 to 5 are neither necessary nor proper Parties to the suit.

In view of the aforesaid enunciation of law laid down by the Apex Court it is graphically clear that the present purchasers are to be impleaded as necessary parties to the appeal as they have to defend their sales. In any case, they, can avoid multiplicity of proceedings. In view of this, the order passed by the learned appellate Judge, rejecting the prayer for impleadment is set aside and the Petitioners are permitted to be impleaded as Respondents in the appeal.

The civil revision is accordingly allowed. However, there shall be no order as to costs.