

Anil Kumar Das Vs. Dinesh Kumar

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Court : Madhya Pradesh

Decided On : Jun-19-2012

Appellant : Anil Kumar Das

Respondent : Dinesh Kumar

Judgement :

1 W.P.

No.

11326/2011 HIGH COURT OF MADHYA PRADEESH JABALPUR (Writ Petition No.11326/2011 Anil Kumar Das Vs.

Dinesh Kumar PRESENT : HONBLE SHRI JUSTICE SANJAY YADAV Counsel for Petitioner Shri Arun Choubey and Shri Parag Chaturvedi, Advocate Counsel for respondent No. 1 Shri L.N. Sakle, Advocate Counsel for respondent No. 2 Shri Lalit Joglekar, Panel Lawyer O R D E R (19/6/2012) PER SANJAY YADAV, J This petition under Article 227 of the Constitution of India is directed against the order dated 17.1.2011 passed by First Additional District Judge, Harda in Civil Suit No.

31A/2009; whereby, an application under Order 1 Rule 10 read with Section 151 Code of Civil Procedure, 1908 filed by respondent No.

3 seeking impleadment in the suit has been allowed.

2.

Suit by the petitioner is for specific performance of contract dated 26.7.2007 which is an agreement for sale of property bearing Khasra No. 52/1 area 2 acres or in the alternative for refund of entire sale consideration along with compensation suit is valued at Rs.5,00,000/.

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Suit allegations are that, the respondent No. 1 claiming himself to be the owner of 14.71 acres of agricultural land situated at village Nimachkala, Patwari Circle No. 31 Khasra No. 52/1, Tahsil Timarni, District Harda, entered into an agreement with the petitioner for sale of 2 acres of agricultural land for a consideration of Rs.5,00,000/ of which Rs.4,32,000/was paid on the date of registration of agreement of sale. Remaining amount, as per term of agreement was to be paid at the time of execution of sale deed which was to be by 31.12.2007. It is alleged that on 31.12.2007 the petitioner purchaser appeared before the Sub Registrar, however, the respondent No. 1 seller did not turn up whereon a legal notice on 1.1.2008 was served on him. Despite whereof he did not execute the sale deed which compelled the petitioner to file the suit in question.

4.

In the said suit an application under Order 1 Rule 10 Code of Civil Procedure, 1908 came to be filed by respondent No. 3 for her impleadment on the allegation that the respondent No. 1/defendant was not the sole owner of the suit property and that merely on the basis of his name being entered into revenue record will not confer the right, title and interest over the suit as would entitle him to enter into a sale agreement. It was also contended that a separate suit for declaration against respondent No. 1 was also filed vide Civil suit No. 121 A/2009 in the Court of Civil Judge Class II, Harda.

The application was objected at by the petitioner/plaintiff that being a suit for specific performance, the respondent No. 3 is an alien to the contract, i.e., agreement for sale of immovable property and therefore, she is neither a necessary nor a proper party to the suit.

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Trial Court on recording a finding that, the entire property, i.e., Khasra No. 52/1 being recorded in the name of Bhuri W/o Pannalal and Ramgopal S/o Pannalal in the revenue record of 200102 to 200405 and 200607 to 200809 and it was only in the year 200304 it was recorded in the name of the respondent No. 1 and that for the year 2001, 200405 the name of one Shishir Kumar S/o Upendranath was recorded without there being any mention as to his relationship with Bhuribai or Ramgopal, observed that, the applicant, i.e., respondent No. 3, must get an opportunity to present her case in the suit and accordingly allowed the application for her impleadment in the suit by impugned order.

6.

Challenging the same, it is contended by the learned counsel for the petitioner that, the trial court committed grave folly in allowing the application as the applicant being a total alien to the suit for specific performance as no contract was entered into between the petitioner/plaintiff and the applicant/respondent No. 3 as would make her a necessary or even a proper party.

Placing reliance on a decision in Panna and another v.

Jeewanlal and another 1976 MPLJ 170 : 1976 JLJ 84 AND Kasturi v. Iyyamperumal and others [(2005) 6 SCC 733], it is contended that the order passed by the trial court being contrary to the law settled vide above decisions, deserves to be set aside.

7.

Learned counsel appearing for the respondent No.

1 on his turn, supports the impugned order on the ground that the respondent No. 3 since has claimed the right, title and interest in the suit property is a necessary party and not an alien to the cause and, therefore, was rightly directed to be impleaded. The trial court, it is 4 W.P.

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11326/2011 contended, being well within its jurisdiction in allowing the application for impleadment o respondent No. 3 as defendant. It is contended that the petition deserves to be dismissed.

8.

The issue as to whether a person who is not a party to the contract is a necessary or proper party in a suit for specific performance of contract is no more res integra.

9.

In Panna and another v. Jeewanlal and another (supra), Full Bench of this Court after taking into consideration the decision by Supreme Court in Deputy Commissioner v. Ram Krishna: AIR 1952 SC 521; Razia Begum v. Sahebzadi Anwar Begum and others: AIR 1958 SC 886 as to whether a person not a party to a contract can be impleaded as defendant in a suit for specific performance of said contract has held: 16 The question referred to us is: Whether in a suit for specific performance of a contract for sale, a third person intervenor, who contends that the suit property is a joint property of the applicant and he is also the coowner of that property, would be made a party (defendant). Our answer is: Strangers to the contract making a claim adverse to the title of the defendant (vendor) contending that they are the coowners of the contracted property are neither necessary nor proper party and are therefore, not entitled to be joined as parties to the suit. 10.

In Kasturi (supra) it is held by their lordships

7. In our view, a bare reading of this provision namely, second part of Order 1 Rule 10 sub-rule (2) of the CPC would clearly show that the necessary parties in a suit

for specific performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor.

In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties.

A purchaser is a necessary party as he would be 5 W.P.

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From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party.

Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party.

8.

We may look to this problem from another angle.

Section 19 of the Specific Relief Act provides relief against parties and persons claiming under them by subsequent title.

Except as otherwise provided by Chapter II, specific performance of a contract may be enforced against :- (a) either party thereto; (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract; (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant; (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company; Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

9.

We have carefully considered sub-sections (a) to (e) of Section 19 of the Act.

From a careful examination of the aforesaid provisions of sub-sections (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but they were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of section 19 of the Specific Relief Act. 6 W.P.

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In the case at hand indisputably respondent No.

3 is not a party to contract, i.e., agreement of sale dated 26.7.2007, entered into between the petitioner and respondent No.

1 and intends to put forth the claim adverse to respondent No.1 Merely because the respondent No. 3 claims her title over the suit property being the daughter of Ramgopal, may entitle her to bring a separate suit to establish her right over the suit property, which eventually she has already filed, but being an alien to the contract in question subjected to specific performance, she is neither a necessary nor proper party as could seek impleadment as a defendant.

12.

In view whereof the order impugned deserves to be and is hereby quashed. An application under Order 1 Rule 10 CPC filed by respondents No.3 is rejected. 13.

In the result, petition is allowed; however, there shall be no costs.

(SANJAY YADAV) JUDGE Vivek Tripathi

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