

Ram Gopal Vs. Pravin Kumar Mehta

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Court : Jharkhand

Decided On : Jul-13-2017

Appellant : Ram Gopal

Respondent : Pravin Kumar Mehta

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (C) No. 3023 of 2007
Ram Gopal son of late Triveni Sahu, by faith Hindu, by occupation business,
resident of Nazir Ali Lane, Church Road, Ranchi P.O. and P.S. Lower Bazar, Dist.
Ranchi Petitioner Versus 1.Pravin Kumar Mehta 2.Sri Sudhir Kumar Mehta both
sons of late Suraj Prakash Mehta resident of Defence Colony Opposite Mulchand
Hospital, P.O. and P.S. Malvinagar, New Delhi Respondents --- CORAM :
HON'BLE MR. JUSTICE RAJESH SHANKAR --- For the Petitioner : Mr. J.J.

Sanga, Advocate For the Respondents : Mr. A.K. Shukla, Mr. Arvind Kumar,
Advocates --- 10/13.07.2017 Present writ petition has been filed for quashing of
order dated 19.04.2007 in Title Suit No. 173 of 1997, passed by Sub-Judge, I,
Ranchi, whereby the application dated 25.01.2007 filed on behalf of the
plaintiff/petitioner under Order VI Rule 17 and under Order I Rule X read with
Section 151 of the Code of Civil Procedure,1908 (hereinafter referred as C.P.C.)
has been rejected.

2. Learned counsel for the petitioner submits that an agreement was executed on
27.05.1990 between the petitioner and one Sushila Kumari Mehta (since

deceased) through her son and holder of power of attorney Sudhir Kumar Mehta (respondent no.

2) for sale of her land, but she failed to execute the same. Thereafter the petitioner filed a suit for specific performance against the respondents. During the pendency of the suit, said Sushila Kumari Mehta in connivance with respondent no. 2 executed general power of attorney in favour of one Man Rakhan Mahto on 20.09.2002 and on the pretext of said power of attorney, Man Rakhan Mahto executed two registered sale deeds on 03.03.2004 one in favour of his son Manoj Kumar and other in favour of his wife Smt. Urmila Devi. It is further submitted that the petitioner filed application on 25.01.2007 under Order VI Rule 17 and under Order I Rule 10 read with Section 151 of the C.P.C. to make Man Rakhan Mahto as well as Manoj Kumar and Urmila Devi as party defendants in the said suit, as they were also liable to execute sale deed in favour of the petitioner due to subsequent development taken place during the pendency of the suit. However, the said application of the petitioner was dismissed vide order dated 19.04.2007 passed by learned Sub Judge-I, Ranchi holding inter alia that the petitioner had the knowledge of execution of power of attorney by Sudhir Kumar Mehta much earlier and therefore there had been no diligence on the part of the petitioner to carry out the amendment in the plaint at the right stage. It was also observed inter alia by the learned Sub Judge-I, Ranchi that in the suit for specific performance, only enforceability of the contract entered into between the parties is to be determined and therefore the proposed defendants are not the necessary parties to the suit as any effective decree could be passed even in their absence. Learned Sub Judge-I also held that since the plaintiff has already examined three witnesses and failed to establish that he had no knowledge about the subsequent development taking place during the pendency of the suit, the amendment application cannot be allowed after commencement of the trial. Learned counsel for the petitioner puts emphasis on the fact that though he had knowledge of execution of power of attorney by Sudhir Kumar Mehta (respondent no.

2) in favour of one Man Rakhan Mahato, yet he did not have any knowledge regarding the execution of the sale deed by said Man Rakahan Mahato in favour of his son Manoj Kumar and wife Urmila Devi. In fact, after execution of the sale

deed by Man Rakhan Mahato, it become imperative on the part of the petitioner to implead Man Rakhan Mahato as well as Manoj Kumar and Urmila Devi as party defendants in the suit in whose absence, the decree prayed for by the petitioner being plaintiff in the suit, will have no consequence and thus their addition in the suit as defendants is necessarily required for effective adjudication of the suit.

3. Learned counsel for the respondents while defending the impugned order dated 19.04.2007 passed by learned Sub Judge-I, Ranchi submits that the learned court below has considered all the factual aspects advanced on behalf of the petitioner during the hearing of the application filed under Order VI Rule 17 and Order I Rule 10 read with Section 151 of the C.P.C. and thereafter reached a conclusion that the plaintiff/petitioner had knowledge of execution of power of attorney by the respondent no. 2 in favour of Man Rakhan Mahato and therefore such application after framing of issues and examination of three plaintiff 3 witnesses cannot be allowed. Learned court below has also rightly observed that Man Rakhan Mahto and Urmila Devi are not the necessary defendants in the suit, as they were not the party to the agreement executed by Sushila Kumari Mehta through her power of attorney holder respondent no.

2. It is therefore submitted by learned counsel for the respondents that the impugned order dated 19.04.2007 passed by the learned Sub Judge-I, Ranchi does not warrant any interference by this Court.

4. Having heard the submissions of learned counsels for the parties and on going through the relevant documents placed on record, it appears that on 27.05.1990, an agreement was entered into between the petitioner(plaintiff in the suit) and Sushila Kumari Mehta through her son and power of attorney holder Sudhir Kumar Mehta (respondent no.

2) for the land in question. On 10.11.1997, the petitioner filed Title Suit No. 173 of 1997 against Sushila Kumari Mehta and Sudhir Kumar Mehta (respondent no. 2 herein) (defendant nos. 1 and 2 respectively in the suit) for specific performance of contract dated 27.05.1990. On 13.08.2001, the said title suit no. 173 of 1997 was decided ex-parte in favour of the petitioner. Thereafter Sushila Kumari Mehta and Sudhir Kumar Mehta (respondent no.

2) filed an application on 05.06.2003 under Order IX Rule 13 of the C.P.C. which was registered as Misc. Case No. 13 of 2003. The said Misc. Case No. 13 of 2003 was dismissed vide order dated 13.07.2004. Aggrieved by the said order, Misc. Appeal No. 12 of 2004 was filed by Sushila Kumari Mehta and Sudhir Kumar Mehta (respondent no.

2) in the court of A.J.C. IV, Ranchi which was allowed vide order dated 28.02.2005 by restoring the title suit no. 173 of 1997 to its original file. Subsequently the petitioner filed Civil Revision No. 46 of 2005 before this Court, but the same was dismissed vide order dated 28.06.2005. Thereafter the petitioner filed a petition in the Court of Sub Judge-I, Ranchi under Order VI Rule 17 and Order I Rule 10 read with Section 151 of the C.P.C. to bring on record the additional facts that the respondents by way of connivance, executed general power of attorney on 20.09.2002 in favour of one Man Rakhan Mahto and said Man Rakhan Mahto also sold the land by way of two sale deeds dated 03.03.2004 to his son Manoj Kumar and wife Urmila Devi. However, vide impugned order dated 19.04.2007, the learned Sub Judge-I, Ranchi has rejected the said application of the petitioner dated 4 25.01.2007 seeking amendment in the pleading and to implead Man Rakhan Mahato, Manoj Kumar and Urmila Devi as defendants primarily on the ground that the petitioner had the knowledge about the execution of power of attorney in favour of Man Rakhan Mahto at the time of hearing of Misc. Case No. 13 of 2003 which is evident from the objection filed by the petitioner in the said case.

5. On perusal of the documents placed on record it appears that the petitioner did not make any statement in the objection filed in Misc. Case No. 13 of 2003 to the effect that he had the knowledge of execution of sale deeds by Man Rakhan Mahato in favour of his son Manoj Kumar and wife Urmila Devi. In fact, the knowledge of the execution of the said sale deeds had given cause of action to the petitioner to implead them in the suit proceeding as party defendants in whose absence no effective decree could be passed by the learned trial court, as the prayer for specific performance originally made in the plaint would shift to the said proposed defendants. Thus, on perusal of the impugned order it appears that the learned court below overlooked the fact that the petitioner never stated any fact

regarding the execution of sale deed by Man Rakhan Mahato in favour of Manoj Kumar and Urmila Devi in Misc. Case No. 13 of 2003. Moreover, the application filed by the petitioner on 25.01.2007 was also under Order I Rule 10 of the C.P.C. For better appreciation of the issue, Order I Rule 10 (4) of C.P.C. is quoted as under:- (4) Where defendant added, plaint to be amended- Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

6. On plain reading of the provisions of Order I Rule 10 (4) of the C.P.C., it would be evident that where defendant is added, the plaint shall be amended in such a manner as it may be necessary. In the present case, addition of Man Rakhan Mahato, Manoj Kumar and Urmila Devi had become imperative on the part of the petitioner in the suit due to execution of the sale deeds by Man Rakhan Mahato and therefore the plaint was also required to be amended accordingly.

7. The Hon'ble Supreme Court in the case of Salem Advocate 5 Bar Association, Tamil Nadu versus Union of India reported in (2005) 6 SCC344 while considering the objects and propositions of Order VI Rule 17 of C.P.C. has held as under:- 27. Order VI Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision.

8. On the basis of ratio laid down by the Hon'ble Apex Court in the case of Salem Advocate Bar Association, Tamil Nadu versus Union of India (supra), it can be construed that the object of Order VI Rule 17 after Amendment Act 22/2002 is to

prevent frivolous applications which are filed to delay the trial. However, in the facts of the present case, it cannot be said that there had been any intention on the part of the petitioner to delay the trial of the suit. Moreover, it was specifically pleaded by the petitioner in the application filed under Order VI Rule 17 and Order I Rule 10 read with Section 151 C.P.C. before the learned court below that he came to know about the execution of the sale deed by Man Rakhan Mahato in favour of his son Manoj Kumar and wife Urmila Devi only in the month of December 2006. Moreover, if the amendment is not allowed as sought by the petitioner, the suit filed by him for specific performance of the contract shall be of no effective purpose.

9. The Hon'ble Supreme Court in the case of *Kasturi vs. Iyyamperumal and others* reported in (2005) 6 SCC 733 has held as under:- 7. In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) 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 affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. 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.

13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

10. Reiterating the same principle in the case of Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd. reported in (2010) 7 SCC417 the Hon'ble Apex Court in paragraph no. 19 has observed thus:- 19. Referring to suits for specific performance, this Court in Kasturi, held that the following persons are to be considered as necessary parties: (i) the parties to the contract which is sought to be enforced or their legal representatives; (ii) a transferee of the property which is the subject-matter of the contract. This Court also explained that a person who has a direct interest in the subject-matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under Order 1 Rule 10 CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the contract, but a person who claims a title adverse to that of the defendant vendor will not be a necessary party.

11. Again the similar issue has been discussed by the Hon'ble Supreme Court in the case of Robin Ramjibhai Patel vs. Anandibai Rama @ Rajaram Pawar and Others in Special Leave to Appeal (C) No. (s) 31087/2014 has held as under:- In the aforesaid context, this Court also considered the provisions of Order I Rule 10 CPC and in paragraph 7 it expressed its view that the relevant provisions 7 show that the necessary parties in a suit for specific performance of a contract for sale are not only parties to the contract or their legal representatives but also a person who had purchased the contracted property from the vendor. It was further elaborated that 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 affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party.

12. Considering the aforesaid facts and circumstance, I find that the impugned order cannot be legally sustained and consequently, the order dated 19.04.2007 passed by Sub-Judge, I, Ranchi in Title Suit No. 173 of 1997 is hereby quashed and set aside. The writ petition is accordingly allowed. The interim order dated

29.06.2007 is hereby vacated. (Rajesh Shankar, J.) Binit/A.F.R.

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