

**Ramit Kumar Pathak Vs. Pawan Kumar Pathak and Others**

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**Court :** Madhya Pradesh

**Decided On :** Nov-20-2014

**Judge :** B.D. Rathi

**Appeal No. :** Writ Petition No. 6603 of 2010

**Appellant :** Ramit Kumar Pathak

**Respondent :** Pawan Kumar Pathak and Others

**Advocate for Def. :** Shri. Nawal Gupta

**Judgement :**

(1) This writ petition under Article 227 of the Constitution of India has been preferred before this court on being aggrieved by the order dated 18/3/2010 passed by Fifth Additional District Judge, Gwalior (M.P.) in Civil Suit No.11A/09 (Ramit Kumar Pathak Vs. Pawan Kumar whereby the application filed by the Intervenor-Ramkishan Dubey under Order I Rule 10 of C.P.C. with the aid of section 151 of C.P.C. has been allowed by the court-below and the plaintiff/petitioner was directed to implead the intervenor-Ramkishan as respondent No.3 in the suit proceedings and the case was fixed for 26/3/2010 for filing written statement by the intervenor.

(2) It is pertinent to mention here that the proceedings of the trial court are stand still because of the order of the stay passed by Division Bench of this court on 9/11/2010.

(3) The facts, necessary for adjudication of this petition are as under:

A civil suit bearing No.11A/09 was instituted by the plaintiff-Ramit Kumar against his father-respondent No.1-Pawan Kumar Pathak s/o late Shri Heeralal Pathak and respondent No.2-Bank of Maharashtra for declaration of title and permanent injunction. The petitioner claims himself to be the son of respondent No.1-Pawan Kumar and grandson of late Shri Heeralal Pathak. It is asserted in the plaint that the petitioner and respondent No.1-Pawan Kumar owned a joint family property bearing House No.43/1816 situated in Topi Bazar, Iashkar Gwalior which was mortgaged by his father-respondent No.1-Pawan Kumar without taking prior permission from the plaintiff. It is stated that respondent No.1-Pawan Kumar is involved in anti-social activity and therefore in order to fulfill his un-lawful demand the property was mortgaged by him (Pawan Kumar) with respondent No.2-Bank of Maharashtra.

(4) In the said civil suit one intervention application was moved under Order I Rule 10 C.P.C. read with section 151 of C.P.C. by intervenor-Ramkishan Dubey, who had died during the pendency of the present writ petition and his legal representative Mohan Prasad Dubey has been brought on record. In the said application marked as Annexure-P/4 (page 21), it was pleaded that intervenor-Ramkishan was the legal heir of Heeralal, who had executed one registered Will (Annexure-P/6) on 20/12/1989 in favour of intervenor- Ramkishan Dubey. In that Will all the facts were mentioned that Heeralal had died issue-less. The brother of Heeralal and wife of both (Heeralal's wife and his brother's wife) had also died issue-less, therefore, with a view to take care of all the movable and immovable properties intervenor Ramkishan Dubey who was non else but son of the sister of Heeralal was adopted by Heeralal during the span of his lifetime. The adoption deed (Annexure-P/7 at page 30 of reply) was also executed to this effect.

(5) At this stage it may be mentioned here that against the order dated 18/3/2010 passed on the application under Order I Rule 10 C.P.C., preferred by the intervenor-Ramkishan Dubey (since deceased), the review petition was filed by the petitioner/plaintiff before the trial court which was dismissed vide order dated 17/9/2010. Under these circumstances, present has moved this court challenging

the orders dated 18/3/2010 as well as 17/9/2010.

(6) It is submitted by the counsel for the petitioner that intervenor was nowhere in picture nor has at any concern with the suit property. He was not legal heir of Heeralal and in the alleged Will (Annexure-P/6) dated 20/12/1989 disputed property was not described, therefore, according to the learned counsel for the petitioner Ramkishan was in fact a new person who could not be permitted to be joined/added in the suit proceedings against the wishes of the plaintiff. In support of his argument, learned counsel relied on the decision in the case of Anokhelal Vs. Radhamohan Bansal and others 1997(1) JLJ 252. It is therefore submitted that the orders passed by the courts-below are against the settled principles of law and are liable to be set aside by allowing his petition.

(7) Respondent No.1-Pawan Kumar more or less raised the same grounds as urged by the petitioner-plaintiff and contended that the orders are absolutely wrong on facts on the record and the petition deserves to be dismissed.

(8) On the other hand, learned counsel Shri Nawal Gupta, appearing for the respondent No.2-Bank pleads no objection to the orders passed by the courts-below.

(9) Now, this court is going to examine the grounds raised by the learned counsel for respondent No.3- Mohan Prasad Dubey (legal heir of intervenor- Ramkishan) in support of his arguments countering the submissions of the petitioner's learned counsel.

(10) It is submitted by the learned counsel appearing for the respondent No.3- Mohan Prasad Dubey that in the application preferred under Order 1 Rule 10 of C.P.C. it was specifically pleaded that Ramkishan Dubey was the legal heir of Heeralal and therefore right stood vested to the intervenor-Ramkishan Dubey in respect of interest of the property left by the deceased Heeralal by virtue of the registered Will. Though property under dispute was not mentioned in the Will but even then being son of the sister of Heeralal, Ramkishan was the legal heir as specified in Class II IV (2) of the Schedule appended to Hindu Succession Act, 1956. It is also submitted by the learned counsel that in the plaint the facts have

been suppressed by the petitioner and his father respondent No.1-Pawan Kumar that respondent No.1 Pawan Kumar was not the natural son of Heeralal but in fact Pawan Kumar was the natural son of Radhakrishna Pathak. It is also submitted that one civil suit bearing No.30A/07 was also filed by Pawan Kumar against the intervenor/respondent No.3-Ramkishan and the same is pending before the court of Fifth Additional District Judge, Gwalior. That suit was filed by Pawan Kumar showing himself to be natural son of Heeralal but in that suit, when counter claim was filed by the intervenor/defendant Ramkishan Dubey, the plaintiff moved an amendment application under Order VI Rule 17 C.P.C. that he was not the natural son of Heeralal but adopted son of Heeralal. That amendment application was not accepted by the trial court and was dismissed vide order dated 19/11/2010. Against the dismissal order of the application, the petitioner filed W.P.No.7500/10 before this court which was also dismissed as per the order dated 17/1/2011. Copies of the aforesaid orders have been filed by the intervenor alongwith the reply to the petition. It is thus submitted by the learned counsel that intervenor-Ramkishan was the legal heir of Heeralal and he was having right and interest over the suit property left by the deceased Heeralal. In such premises, it is prayed that the trial court has not committed any illegality and the petition deserves to be dismissed.

(11) I have given my thoughtful consideration to the contentions of the learned counsel for the respective parties and with their assistance, have gone through the record and pleadings of the case.

(12) Before reaching on the right and just conclusion to answer the controversy on the point of impleadment of the intervenor being necessary party to the suit, it would be relevant to reproduce the provisions given under Order 1 Rule 10(2) of C.P.C.

## **ORDER**

Parties to Suits Rule 10. Suit in name of wrong plaintiff.-

(1) xxx xxx xxx xxx

(2) Court may strike out or add parties-- 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 questions involved in the suit, be added.

(13) Having gone through the case, as discussed above, in the present case, the property in dispute was mortgaged by Pawan Kumar (respondent No.1) claiming himself to be son of deceased Heeralal. In another civil suit No. 30A/07 filed by the plaintiff Pawan Kumar (respondent No.1 herein) against the intervenor-Ramkishan showing by that Pawan Kumar was the natural son of Heeralal, when counter claim was filed and objection was raised in regard to paternity of Pawan Kumar by the intervenor Ramkishan Dubey (defendant of that civil suit), the plaintiff-Pawan Kumar moved an amendment application under Order VI Rule 17 C.P.C., to demonstrate that he was not the natural son of Heeralal but adopted son of Heeralal. Aforesaid application was dismissed up to the stage of this court whereas the intervenor-Ramkishan Dubey since very beginning pleaded that he was the legal heir of deceased Heeralal as per Class II IV (2) of the Schedule appended to Hindu Succession Act 1956. This fact prima facie appears to be correct on perusal of the Will (Annexure-P/

6), dated 20/12/1989 Admittedly, in the present civil suit it was nowhere mentioned by the plaintiff/petitioner- Ramit Kumar that his father Pawan Kumar was the adopted son of Heeralal Pathak nor it was mentioned that Heeralal had adopted Pawan Kumar from his natural father namely, Radhakrishna Pathak.

(14) It is true that the plaintiff in a suit is dominus litus and he cannot be forced, against his consent, to fight a third party other than the defendant impleaded by him but this is only the normal and general and not invariable rule, therefore, in an appropriate case a third party can be impleaded as a party.

(15) As discussed above, the intervenor-Ramkishan was the legal heir in whose favour the Will was executed. The petitioner/plaintiff-Ramit Kumar was fully aware of this fact because in Civil Suit No.30A/07 filed by his father Pawan Kumar, this fact was disclosed by the intervenor- Ramkishan Dubey, who happened to be defendant but the petitioner/plaintiff-Ramit Kumar did not disclose the same thing in his plaint averments. In the opinion of this court, it was proper and necessary for the petitioner to have impleaded the intervenor as the defendant in the present suit as without giving an opportunity of hearing to him just and fair adjudication of the civil suit is impossible. So, it cannot be laid down as an absolute proposition that a third party can never be impleaded in the suit but where the third party can show a fair semblance of title or interest he can certainly file an application for impleadment and ought to be impleaded as a party. In other sense it would avoid and prevent multiplicity of proceedings. The second part of sub-rule (2) Order 1 Rule 10 of the CPC empowers the trial court to add a person who ought to have been joined or whose presence before the Court may be necessary in order to enable the court to adjudicate upon and settle all the questions involved in the suit. This is actually the aim and object of the provision contemplated in sub-rule (2) of Rule 10 of Order 1 of C.P.C. Hence, the decision in the case of Anokhelal Vs. Radhamohan Bansal and others 1997(1) JLJ 252 cited by the learned counsel for the petitioner would not render any assistance to him.

(16) In view of the aforesaid decisions, this court is of the considered opinion that intervenor-Ramkishan Dubey (now respondent No.3-Mohan Prasad Dubey, legal heir of intervenor-deceased Ramkishan) was a necessary party to the suit and under such circumstances, the trial court has not committed any mistake of law in allowing his application. Consequently, by vacating the stay order dated 9/11/2010, the trial court is directed to proceed with the Civil Suit No.11A/09 and decide the case in accordance with law.

(17) The petition has therefore no substance and is hereby dismissed with no order as to costs.

(18) A copy of this order be sent to the concerned trial court for compliance.