

Asha Devi and ors. Vs. Ram Krishan Agarwal and ors.

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Court : Patna

Decided On : Sep-03-1997

Judge : N. Pandey, J.

Appeal No. : Civil Revision No. 1901 of 1990

Appellant : Asha Devi and ors.

Respondent : Ram Krishan Agarwal and ors.

Disposition : Application Dismissed

Prior history : N. Pandey, J. 1. Tile instant civil revision application under Section 115 of the Code of Civil Procedure is directed against the order of the Subordinate Judge. Motihari, in F.D. (P.S.) 235/1 of 1975/84, whereby the petition of the opposite party under Order I, Rule 10 of the Code was allowed and Shyam Sunder Agarwal Duroshotum Agarwal and Om Prakash Agarwal were added as defendants. Although by the said order the petition filed on behalf of defendant Ram Krishna Agarwal under Order XXXIX, Ru

Judgement :

N. Pandey, J.

1. Tile instant civil revision application under Section 115 of the Code of Civil Procedure is directed against the order of the Subordinate Judge. Motihari, in F.D.

(P.S.) 235/1 of 1975/84, whereby the petition of the opposite party under Order I, Rule 10 of the Code was allowed and Shyam Sunder Agarwal Duroshotum Agarwal and Om Prakash Agarwal were added as defendants. Although by the said order the petition filed on behalf of defendant Ram Krishna Agarwal under Order XXXIX, Rule 1 of the Code was also disposed of but the present petition has been confined against that part of the order only whereby the opposite party were added as defendants.

2. The opposite party newly added defendants are the purchasers of certain lands, (detailed in Schedule f of the petition under Order I, Rule 10, C.P.C.) through different sale-deeds from Bhagwan Das and some other defendants, who were party to the suit from the very beginning. According to them, since by virtue of the sale-deeds from the co-shares of the parties, they have stepped into the shoes of such vendees, therefore, they are entitled to be added as defendants in order to defend their claim with regard to the lands covered by the sale-deeds.

3. It appears, no objection was raised by the plaintiffs or the defendants about the addition of parties i.e. Shyam Sunder Agarwal and others but an objection was raised on behalf of Nirmala Devi, Shanti Devi and Sheoji Prasad (petitioners of this case). According to them, the petition filed under Order I. Rule 10 of the Code was not at all maintainable as no final decree was pending on the day of filing of such application. Therefore, no order for addition of party can be recorded in a suit or proceeding which was already disposed of. In any view of the matter, since Shyam Sunder Agarwal and others were not party to the suit, they cannot challenge the validity of the preliminary decree or final decree even it was found against their interest.

4. Mr. Ghose, Senior Counsel, contended that the preliminary decree in this case was passed on 10.3.1986 and final decree on 21.9.1987. Therefore, the learned Subordinate Judge has no jurisdiction to allow the petition under Order I, Rule 10 of the Code. He further contended that even otherwise also the preliminary decree or final decree can only be challenged by a party to the suit and not by a stranger. Therefore, on this count also even the opposite party are added as defendants to the suit, they cannot be allowed to challenge the validity of the decree. He further

contended that it is well settled that only in two circumstances, a person can be added as party to the suit under Order I, Rule 10 of the Code-(C) when he ought to have been joined as a plaintiff or defendant and is not so joined or, (b) when, without his presence the questions in the suit cannot be completely decided. There is, therefore, no jurisdiction to add a party to a suit in any other case. In support of his contention, Mr. Ghose placed reliance to a decision of this Court in the case of Mot ham Roshanlai Coal Co. (P) Ltd. v. District Committee Dhanbad and Ors. : AIR1962 Pat357 , where in the facts and circumstances of the case, it was held that the plaintiff cannot be compelled to add a person party defendant against his wishes and if such a person was neither a necessary party nor property, the Court cannot force the plaintiff in such circumstances, to add a person who are not even remotely interested or necessary party.

5. In my view, the ratio laid down in the aforementioned case may not have any application to the facts of the present case. In the case before me, admittedly Shyest Sunder Agarwal and others had Purchased different lands through different sale-deeds by the cosharers who were party to the suit at a time when even the judgment of the case was not delivered. Therefore, it is wrong to contend that Shyam Sunder Agarwal and others were neither interested party nor necessary party.

6. Mr. Prameshwar Prasad, appearing for the opposite party, besides his submission about the merit of the case also raised a preliminary objection regarding maintainability of the revision petition. He contended that Nirmala Devi and Ors. (petitioner in this case) being not a party to the suit could not be entitled to raise objection with regard to the petition filed under Order I, Rule 10 of the Code, particularly, when neither the plaintiff nor other defendants raised any objection. He further contended that undisputedly, the vendors of these interveners are cosharers of the plaintiff. Therefore, the moment the sale-deeds were executed, the transferees became necessary party to the suit. He next contended that a bare reference to the impugned order would indicate that the sale-deeds were executed by the defendants in favour of these intervenors on 8.12.1981 and the judgment was delivered on 10.3.1986 and the preliminary decree was passed thereafter, Therefore, the sale-deeds were executed much

before the passing of the judgment and preliminary decree.

7. From a bare perusal of the judgment, it would appear that the vendors of these interferers had equal share in the suit land. He further contended that it is well settled that in a partition suit, there can be more than one preliminary as well as final decrees. Reference in this regard was made to a decision of the Full Bench of this Court in the case of *Indradeo Prasad Singh and Anr. v. Shivnath Pd. Singh and Anr.* : AIR1980 Pat201 .

8. Mr. Prasad, apart from the aforesaid decision placed reliance to a decision of the Apex Court in the case of *Shankar Balwant Lokhande v. Chandrakant Shankar Lokhande and Anr.* : (1992)IILLJ18SC , to submit that until a final decree determining the rights of the parties is drawn up and it is engrossed on stamp paper supplied by the parties, there is no executable decree. Passing of final decree in respect of share of one of the parties would not amount to passing of final decree in respect of share of other parties. It was further held that as per Sub-rule (2) of Rule 18 of Order XXII of the Code, one can safely infer that there can be more than one final decree.

9. Having regard to the facts noticed above as well as the authoritative pronouncements of this Court as well as the Apex Court, in my view, the Court below was quite justified while allowing the petition for addition of parties filed by Shyam Sunder Agarwal and others since in view of the purchase of the lands through registered sale-deed on 2.7.1981. they are necessary party to the suit.

10. Accordingly, this revision application is dismissed as devoid of any merit. But in the circumstances of the case, there shall be no order as to costs.

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