

Mahinder Ahuja Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Jul-14-1995

Reported in : 1995IIIAD(Delhi)477; 1995(3)Crimes658; 60(1995)DLT541a; 1995(34)DRJ303

Judge : Mohd. Shamim, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 1, Rule 10

Appeal No. : Civil Miscellaneous Appeal Nos. 320 and 1185 of 1993

Appellant : Mahinder Ahuja

Respondent : Delhi Development Authority and ors.

Advocate for Pet/Ap. : Maninder Kaur,; Ravinder Sethi,; Jaspreet Sareen,;

Judgement :

Mohd. Sharnim, J.

(1) The petitioner through the present revision petition has taken exception to an order dated March 4,1993 passed by Sub Judge, Delhi whereby he dismissed an application under Order I Rule 10 of the Code of Civil Procedure moved by one Mahinder Ahuja (hereinafter referred to as the petitioner) for his impleadment as one of the parties in Suit No. 19/89, Smt. Makhani Devi Juneja vs. Delhi Development Authority.

(2) It has been urged for and on behalf of the petitioner that Smt. Makhani Devi and Shri Vilayat Juneja (hereinafter referred to.as respondents Nos. 2 & 3) filed a suit against Delhi Development Authority i.e. Suit No. 19/89, for a declaration and permanent injunction. They through the said suit prayed for a restraint order against the Dda not to give effect to the cancellation order dated January 2,1989 whereby the allotment order dated July 1,1975 was cancelled in respect of Stall No. 22, C-4E, Janakpuri, New Delhi (hereinafter referred to as the disputed shop). The petitioner through the present application wants his impleadment in the above suit on the ground that respondents Nos. 2 & 3 have sold a part of the above said disputed shop in favor of Smt. Savitri Devi, mother of the applicant, for a valuable consideration and executed quite a good number of documents including an agreement to sell, general power of attorney, will etc. Smt. Savitri Devi on the basis of the said documents got into possession of the disputed shop. Later on the said shop was transferred in favor of the petitioner and his brother Sanjay Ahuja. Smt. Savitri Devi to witness the said transfer also executed certain documents such as agreement to sell, power of attorney and other documents in favor of Shri Sanjay Ahuja. The possession over half portion of the disputed shop was also handed over to him. Since then the petitioner has been running his business in the half portion of the said shop of readymade garments under the name and style of Ess Emm Readymades. Thus in case the impugned allotment is cancelled by the Dda it would be the petitioner who would suffer irreparable loss and injury. Hence the petitioner is a necessary and proper party for the complete adjudication of the controversy in the suit alluded to above. The above said plea did not find favor with the learned lower court and rejected the application vide order dated March 4,1993.

(3) Aggrieved and dis-satisfied with the said judgment and order the petitioner has approached this Court.

(4) Learned counsel for the petitioner Mrs. Maninder Kaur has vehemently contended that since the petitioner has been running the business in the half portion of the disputed shop in his own independent right by virtue of an agreement to sell executed in his favor by his mother Smt. Savitri Devi who was the owner in possession of half of the disputed shop, it is he who would suffer

irreparable loss and injury in case the allotment in respect of the disputed shop is cancelled. The petitioner would be thrown on the road. He would not be in a position to earn his bread and thus to maintain his family. The petitioner, is, thus very much a necessary party.

(5) Learned counsel for the respondents have urged to the contrary. .

(6) Learned counsel for the respondent Dda, Mr. Ravinder Sethi, Senior Advocate, on the other hand has urged to the contrary. According to him, the allotment is neither in favor of Smt. Savitri Devi, mother of the present, petitioner, nor the petitioner. Thus there is no privity of contract in between the Dda and the petitioner. The next limb of his argument is that no permission was sought from the Dda in order to sub-let any part of the disputed premises and no un-earned increase paid to the DDA. Admittedly, the present suit has been filed by Smt. Makhani Devi Juneja and Vilayat Juneja. They have got a right to choose the parties whom they want to implead as defendants. No party who is a stranger to the proceedings can be thrust upon them.

(7) Since we are concerned with the construction of Order I Rule 10(2) of the Code of Civil Procedure which deals with the powers of the Court to strike out or add parties, it would be just and proper to examine the said provision before proceeding any further in the matter. It is in the following words:-

'(2)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'.

(8) It is manifest from the relevant provisions of law alluded to above that the Court at the instance of any of the parties may implead any person as a party to the proceedings in case it comes to the conclusion that his presence is very much necessary or required to adjudicate fully and finally the matters in controversy

before the Court. Thus the acid test to join a person as a party to the proceedings is that his presence must be necessary to finally and fully adjudicate upon the matters concerning the parties before the Court. The said provisions are not wide enough to embrace within their domain or fold a stranger to the proceedings who has got nothing to do with the subject-matter of the suit and the points involved therein inasmuch as he would be neither a necessary nor a proper party to adjudicate upon the pleas raised in the said suit.

(9) The question with regard to the interpretation of the provisions of Order 1 Rule 10 of the Code of Civil Procedure came up for interpretation before their Lordships of the Supreme Court as reported in *Razia Begum v. Sahebzadi Anwar Begum and others*, : [1959]1SCR1111 . Their Lordships laid down the following principles for the guidance of the courts below:-

'(1)The question of addition of parties under R.10 of O.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 contradistinction of its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in S. 115 of the Code;

(2)That 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 the litigation;

(3)Where the subject-matter of a litigation, is a declaration as regards status or a legal character, the rule of present, or direct interest may be relaxed in a suitable case whether the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy;

(4)The cases contemplated in the last proposition, have to be determined in accordance with the statutory provisions of Ss. 42 and 43 of the Specific Relief Act;

(5) In cases covered by those statutory provisions, the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon a clear proof apart from the admission;

(6) The result of declaratory decree on the question of status, such as in controversy in the instant case, affects not only the parties actually before the Court, but generations to come, and in view of that consideration, the rule of 'present interest', as evolved by case law relating to disputes about property does not apply with full force; and

(7) The rule laid down in S. 43 of the Specific Relief Act, is not exactly a rule of rest judicata. It is narrower in one sense and wider in another'.

(10) With the above background let us now see as to whether the petitioner in the instant case is either a necessary or proper party to the present proceedings? The petitioner has stated in para 3 of his application that an agreement to sell and a power of attorney were executed in favor of his mother Smt. Savitri Devi who on her turn later on executed the same documents in favor of the petitioner (vide paras 3 & 5 of the application). The petitioner on the basis of the said documents claims to be in possession over a part of the disputed shop. Curiously enough for the best reasons known to the petitioner none of the said documents has been placed on record in order to substantiate the said contention. The mere fact that the petitioner is in possession over any portion of the disputed shop would not make any difference and does not come to his rescue. There is admittedly no privity of contract in between the petitioner and the Dda who are the lesser of the disputed property.

(11) The only pertinent point which is to be adjudicated upon in order to dispose of the suit pending decision before the learned lower court is as to whether the respondents herein have violated the terms and conditions of the lease deed. Admittedly, neither the petitioner nor his mother Smt. Savitri Devi is the lessee in respect of the disputed shop. Neither any allotment letter nor a lease deed has been issued to them. Thus they have got absolutely no concern whatsoever with the disputed shop.

(12) A matter very much akin to the matter in hand came up before a Single Judge of this Court as reported in Smt. Tulsi Devi and .another v. Municipal Corporation of Delhi and another, : AIR1985 Delhi353 . According to the facts of the said authority the plaintiff filed a suit for permanent injunction restraining the Municipal Corporation from demolishing the structure of the plaintiff on the ground that he was neither served with a show cause notice nor with a demolition notice. The tenant who was in occupation of the said structure applied under Order I Rule 10 for being impleaded as a defendant. It was held that the tenant was neither a necessary nor a proper party to the said suit.

(13) There is yet another aspect of the matter. Whosoever files a suit is the controller of the said proceedings i.e. dominus litis. It is his discretion to implead any one whomsoever he thinks proper as a party to the said proceeding in order to enable him to have a relief. No other person can trust himself upon him and force him to implead him as a party unless it is shown to the Court that his presence is required for a full and proper adjudication of the matters involved therein. It has already been observed above that the petitioner in the instant case has miserably failed to show as to in what way he has got an interest in the disputed shop in as much as he is neither the lessee nor the licensee of the same.

(14) Furthermore, the petitioner has already filed a suit against the respondents herein, Suit No. 767/90, to the effect that he should not be dispossessed otherwise than in due course of law. Similarly, respondents Nos. 2 & 3 have Filed a suit for recovery of possession against the petitioner and his mother Smt. Savitri Devi and Sanjeev Ahuja, Suit No. 112/91. Moreover, the respondent Smt. Makhani Devi has also filed yet another suit for perpetual injunction against , petitioner restraining him from further encroachment in the disputed shop, Suit No.83/90.

(15) In the above circumstances I do not see any force in the present revision petition. Dismissed.

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