

Vimla Devi Vs. Nand Lal

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Court : Rajasthan

Decided On : Feb-13-1992

Reported in : 1992(2)WLC53; 1992(2)WLN459

Judge : R.S. Kejriwal, J.

Appeal No. : S.B. Civil Revision Petition No. 18 of 1992

Appellant : Vimla Devi

Respondent : Nand Lal

Disposition : Petition allowed

Judgement :

R.S. Kejriwal, J.

1. This revision has been directed against the order date 30.10.1991, passed by Additional Civil Judge No. 3 Jaipur City, Jaipur, by which he allowed the application of the Non-Pet. Nos. 1 to 3 and impleaded them as defendants in the suit.

2. The brief relevant facts of the case are that the plaintiff petitioner filed a suit for eviction against the Non- Petitioner Nos.4 and 5. In that suit, the Non-petitioner Nos. 1 to 3, filed an application under Order 1 Rule 10 for becoming parpties on the ground that the disputed property was leased out by their father Keshar Lal

and as such they were necessary parties in the suit. The trial court allowed the application and impleaded the N.P. Nos. 1 to 3 as defendants in the suit, vide its order dt. 30.10.91. This order has been challenged by the plaintiff petitioner.

3. Council for the petitioner argued that the dispute which the non-petitioners want to raise in the present suit is regarding title which is foreign to the present suit & as such the Non-petitioner Nos. 1 to 3 can not be impleaded in the suit. The present suit has been filed by the petitioner on the basis of relationship of landlord and tenant and in this suit the question as to whether the plaintiff is owner of the property or the N.P. Nos. 1 to 3 are the owners of the property, can not be decided. In support of his arguments, he placed reliance on Ramesh Chandra v. Mukhtyar Singh (1), Achalulal v. Sumdra Kumat (2), and Remashwar Dayal v. U.I.T. Alwar and Ors. (3). He argued that the order passed by the trial court is arbitrary one and deserves to be set-aside and in case it is allowed to stand, it would occasion a failure of justice.

4. On the other hand, Mr Jain counsel for the non-petitioner Nos. 1 to 3, argued that the trial court rightly allowed their application. He argued that they are the sons of late Shri Keshar Lal, who was the owner of the property. He further argued that the plaintiff has no right or title in the disputed property and as such can not file any suit against the tenants for recovery of rent and eviction. He also argued that they are receiving the rent from the tenants and as such they are also landlords of the tenants. In support of his arguments, Mr. Jain placed reliance on Smt. Sugrabi v. Hari Ram and other (4) and Razia Begum v. Sahebzadi Anwar Begum and other (5).

5. Mr. Pradeep Singh, counsel for the non-pet. Nos. 4 and 5 (tenants) argued that the non-pet. Nos. 1 to 3 are necessary parties in the suit and in their absence suit can not be decided. He further argued that there was an agreement amongst all the legal heirs of late Shri Kesar Lal. Bhawani Shanker husband of plaintiff-petitioner was entitled for the rent for the months of January, May and Sept. & for rest of the months, the Non-petitioner Nos. 1 to 3 were entitled to recover rent. He further argued that the Non-pet. Nos. 1 to 3 also served a notice on the N.P. Nos. 4 and 5 to pay rent to them. He argued that under these circumstances, it is in the interest

of justice that the N.P. Nos. 1 to 3 will also be impleaded as defendants in the suit otherwise it would create complications. In Achallal's case (supra), the facts were that the plaintiff filed a suit against the defendant for recovery of rent and eviction. Third party was the owner of the property being impleaded as a defendant on the ground that the party was the owner of the property. The trial court rejected the said application. On revision, this Court held that the trial court rightly rejected the application. This Court further held that the dispute relating to title can not form the subject matter of the suit of arrears of rent.

6. In Rameshwar Dayal's case (supra), this Court held that addition of non-petitioner Nos. 4 and 5 as parties having the effect of enlarging scope of suit and also of adversely affecting petitioner by placing him under additional burden of dealing with matters which were not subject matter of controversy. This Court held that the trial court committed illegality and material irregularity in impleading the non-petitioner Nos. 4 and 5 as a party to the suit.

7. In Ramesh Chandra's case (supra) this Court held as under:

The non-petitioner No. 4 wants to become a party independently in his own right and wants to get the controversy determined in this very suit whether he is owner and in possession of the suit property. This kind of controversy as raised by the non-petitioner No. 4 would be totally foreign to the controversy in the suit between the plaintiff Himmat Singh and the defendant.

8. This Court allowed the revision and set-aside the order of the trial court, by which the trial court impleaded N.P. No. 4 as a party.

9. In Smt. Sugrabi v. Hari Ram and Ors. (4), the trial court rejected the application of the intervenor submitted under Order 1, Rule 10 C.P.C. The High Court held that the trial court has rightly rejected the application for being joined as a party.

10. In Razia Begum's case (supra), the Hon'ble Supreme Court held that generally the question of addition of parties under Rule 10 of Order 1 of the Code of Civil Procedure is 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. This case was also considered by this Court in Achalulal's case (supra). As held in Rmesh Chandra's case (supra) in case the N.P. Nos. 1 to 3 are impleaded in the present suit, the enquiry of the suit is likely to be, enlarged. The Court has to give a finding as to whether the plaintiff is the owner of the property in dispute or the Non-Petitioner Nos. 1 to 3 are the owners of the property. This type of enquiry is not required in a suit filed by the landlord against a tenant for eviction and recovery of arrears of rent. In my view, the order passed by the trial court is arbitrary one and in case the same is allowed to stand, it would cause a failure of justice and will create complications.

11. Consequently, I allow the revision set-aside the judgment of trial court dated 30.10.91, and dismiss the application of the Non-Pet. Nos. 1 to 3 submitted under Order 1 Rule 10 C.P.C. It is, however, observed that the decree passed in the present suit will not be binding on the Non-Petitioner Nos 1 to 3.

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