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Court : Rajasthan

Decided On : Jan-27-1999

Reported in : 1999WLC(Raj)UC388; 1999(1)WLN155

Judge : P.P. Naolekar, J.

Appeal No. : SB Civil Revision Petition Nos. 1298 of 1994 and 220 of 1996

Appellant : Pratima

Respondent : Shiv Narain and ors.

Disposition : Petition dismissed

Judgement :

P.P. Naolekar, J.

1. Plaintiff petitioner Pratima filed a suit against Shiv Narain, Harak Chand brother of Lal Chand, Sarya Prakash and Smt. Kastoori Bai, for cancellation of the sale deed executed by Shiv Narain in favour of one Lal Chand, Satya Prakash and Smt. Kastoori Bai. Harak Chand, respondent No. 2, was added as party in the suit being the brother of Lal Chand. Chand Mal, respondent No. 5, filed an application under Order 1 Rule 10 CPC for adding him as party defendant to the proceedings on the ground that the deceased, Lal Chand, had executed a Will in his favour in regard to the suit property and also that the interest in property in suit has been

devolved upon him after the death of Lal Chand. The trial judge after hearing the arguments of parties, permitted Chand Mal to be added as party by order dated 17.9.1994. Thereafter the trial court permitted Chand Mal, the newly added defendant, to file his written-statement by order dated 3.1.1995. The orders dated 17.9.1994 and 3.1.1995 are challenged by the plaintiff by filing two separate revision petitions (they are numbered as 1298/94 and 220/96).

2. It is contended by the counsel for plaintiff petitioner that the interest of Lal Chand was sufficiently represented by his brother Harak Chand who is already party to the suit. Apart from this, Chand Mal appeared all-through as power of attorney holder for respondent No. 2 Satya Narain and Smt. Kastoori Bai and, therefore, after seventeen years of the pendency of suit, the court should not have permitted him to be added as party defendant nor should have permitted him to file his own written- statement and he should have been bound by the written-statement already submitted by Harak Chand. The argument of learned Counsel was although very attractive but in deeper scrutiny, does not stand the test of law. The argument would have been accepted had it been the case that Lal Chand did after institution of the suit whereby his brothers, Chand Mal and Harak Chand, have been claiming interest in the property as legal representatives. In that event the test would have been the representation of estate by parties in the proceedings, and Harak Chand, brother of Chand Mal, already being on record there would not have been any necessity of adding Chand Mal as a party. But that is not the case here. Here the case is the Lal Chand died prior to the institution of suit and thus the property devolved by succession on all the persons who have interest in it by virtue of Hindu Succession Act, 1956. After the death of Lal Chand, Chand Mal gets an interest in the property of his own by virtue of law, if not under the Will. That being the case, at the time of institution of the suit for cancellation of sale-deed of which Lal Chand was one of the purchasers, all the persons on whom, interest in the property was devolved by succession would be necessary parties to the proceedings for cancellation of the sale-deed. As Chand Mal got interest on account of the death of Lal Chand prior to the institution of suit under the Succession Act, he was rightly directed to be added as party under Order 1 Rule 10 CPC. Chand Mal having independent interest in the property, was naturally entitled to file his own defence and in that view of the matter, to court has

rightly permitted him to file his written- statement. Both the revision petitions are without any substance and are dismissed.

3. However, considering the fact that the matter is pending for last seventeen years and although Chand Mal was appearing as power of attorney holder of some of the defendants who did not choose to file application for addition as party expeditiously, I direct that the parties shall appear before the trial court on 8.2.1999 and the court shall fix a date for recording evidence of all the witnesses of the defendant within a month from that date. It shall be the responsibility of newly added defendant to produce all his witnesses on the date to be fixed by trial court and the court shall not adjourn the matter for recording evidence of the witnesses of Chand Mal at his request. The trial court shall also grant opportunity to the plaintiff to lead evidence in rebuttal thereafter.

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