

Banshidhar and ors. Vs. Phed and ors.

Banshidhar and ors. Vs. Phed and ors.

SooperKanoon Citation : sooperkanoon.com/770080

Court : Rajasthan

Decided On : Feb-08-2000

Reported in : 2000(4)WLC724; 2000(2)WLN455

Judge : Arun Madan, J.

Appeal No. : S.B. Civil Revision Petition No. 1720 of 1999

Appellant : Banshidhar and ors.

Respondent : Phed and ors.

Disposition : Petition dismissed

Judgement :

Arun Madan, J.

1. The plaintiffs-petitioners have come up by way of this revision petition against the order dated 30.9.1999 passed by the learned Civil Judge (Junior Division) Behror District Alwar in Civil Misc. Case No. 112/99 (Suit No. 120/99) whereby the application of the defendant-respondent filed under Order 1 Rule 10 CPC was allowed.

2. On 31.7.1999. the plaintiffs-petitioners had filed a suit for permanent prohibitory and mandatory injunction against the respondent No. 1 claiming relief to the effect that the said respondent be restrained from dispossessing the petitioners from the

land in dispute described in para No. 2 of the plaint and also from interfering with their possession either by raising any construction of a water tank over the disputed land and also the relief of mandatory injunction to the effect that the defendant PHED should not get any sale deed executed in its favour in respect of the disputed property. The petitioners further averred in the plaint that the land bearing Khasra No. 146 (old) measuring 15 biswas and present Khasra No. 188 situated in village Vijay Singh Pura, Tehsil Behror has been described in the revenue record as Gair Mumkin Abadi which has been in possession of the ancestors of the petitioners, who had already raised construction of the houses thereon and since then they are in possession and of its use. The disputed land was regularised vide order dated 9.7.1975 in favour of father of petitioner No. 1 and grand father of petitioner Nos. 2 and 3 and an order had also been passed for issuance of Patta of the said land to the petitioners which had been in their possession since time immemorial. Their further case is that respondent No. 1 allegedly in collusion with the authorities had started to raise construction of water tank over the disputed land. Since, the disputed land does not belong to any authority or respondent No. 1 as such, the said respondent was not entitled to seek execution of any Patta of the land in question from any local authority. Alternatively, it was pleaded that if respondent No. 1 had got any legal document executed in its favour from any local authority, then the same would not be binding or legal and is null and void.

3. In pursuance of the regularisation of the land in question in favour of father of petitioner No. 1, the Tehsildar recommended the land being regularised and thereafter the same having been regularised in favour of ancestors of petitioners, the premium amount of Rs. 566.50 having already been deposited, consequently an order for issuance of Patta was done in favour of petitioners' ancestors.

4. During the pendency of the proceedings before the trial Court, the Gram Panchayat Rodwal Panchayat Samiti Neemrana (applicant respondent No. 2) moved an application for its impleadment under Order 1 Rule 10 CPC on the grounds inter-alia that being a necessary party to the proceedings, the plaintiff should not have omitted the said applicant from being impleaded earlier in the suit and since the applicant being the local body was very much concerned with the

land in question over which the PHED (respondent No. 1) had been permitted to construct water tank and was in possession of the revenue records which is a reliable documentary evidence in its possession regarding execution of the Patta in favour of the PHED: hence it was a necessary party to be impleaded to the proceedings since the documentary evidence could be proved only by impleading the said applicant as party respondent being in possession of the revenue records in respect of the disputed land.

5. During the course of hearing, learned Counsel for the petitioners vehemently contended at the bar that the trial Court had passed an order dated 30.9.1999 erroneously in disregard to the provisions of Order 1 Rule 10 CPC by allowing the impleadment of Gram Panchayat Neemrana notwithstanding the fact that it had no concern or relevance to the matter at issue nor it had any right or authority in respect of the allotment of the land in question i.e. area of 30x30 feet to PHED department by issuing a Patta in its favour.

6. I have heard learned Counsel for the petitioners at length and perused the finding recorded by the trial Court and also the legal position on the subject. Prima-facie, I am of the considered opinion that since the applicant respondent had made out a prima facie case for its impleadment as a necessary party to the proceedings as per the requirements of Order 1 Rule 10 CPC, it was not open to the plaintiff petitioner to challenge its impleadment and the learned trial court was justified in having rightly allowed the impleadment of Gram Panchayat (applicant/respondent No. 2) to the proceedings and the discretion had been fairly exercised. I am of the considered opinion that it is open to the Gram Panchayat and its local bodies to allot any Patta regarding a strip of land to any department of the State provided legal rights are established for issuance of such Patta. The findings recorded by the trial Court are well reasoned and do not call for any interference. I am fortified in my observations from the ratio of the decision of the Apex Court in the matter of *M/s. Aliji Monoji and Co. v. Lalji Mavji and Ors.* : AIR 1997 SC64 .

7. In the matter of *M/s. Aliji Monoji and Co.* (supra) the similar question which had arisen for consideration of the Apex Court. The controversy was that landlord who

had a direct and substantial interest in a particular property before its demolition, was a necessary party to be impleaded to the proceedings since in the event of demolition of the property held by him, his right, title and interest to the property would be adversely effected? The Apex Court observed that under the circumstances, the landlord was a necessary and proper party to the proceedings though the relief sought for was against the Municipal Corporation for perpetual injunction restraining it from demolishing the building. It was held by the Apex Court that notwithstanding the fact that the contesting respondents were necessary and proper party to be impleaded under Order 1 Rule 10 CPC, yet, its provisions would not be attracted to the case unless it was established that the landlord was having direct and substantial interest in the demised premises before its demolition.

8. In the instant case the relevant finding recorded by the trial Court is that plaintiff had filed a suit for permanent injunction alongwith application for temporary injunction against PHED to restrain its from constructing any water tank over the disputed property, while the plaintiff had asserted ownership over the disputed piece of land. The applicant Gram Panchayat had also asserted its claim over the said land on the basis of a document that 30x30 feet piece of land was allotted by it to PHED for construction of water tank.

9. The law is well established that if the presence of any party is necessary for factual and complete adjudication of the questions involved in the suit, there is no bar to its impleadment to the proceedings. The ratio of the judgment of the Delhi High Court in the matter of Gurmauj Saran Baluja v. Mrs. Joyce C. Salim and Ors. AIR 1990 Delhi 13 as well as the decision of this Court in the matter of Suninderjeet Singh and Ors. v. State of Rajasthan and Ors., 1994 (1) RLW (Raj.) 265 are also fully attracted to this case.

10. As a result of above discussion, I find no merit in this revision petition and the same is accordingly dismissed at the admission stage itself.