

Krishnan Vs. K. Dharmar and Others

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Court : Chennai

Decided On : Feb-10-1995

Reported in : AIR1996Mad173

Judge : S.S. Subramani, J.

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

Appeal No. : C.R.P. Nos. 1076 and 1077 of 1994

Appellant : Krishnan

Respondent : K. Dharmar and Others

Advocate for Def. : Mr. Viswanathan, Adv.

Advocate for Pet/Ap. : S. Palanisamy, Adv.

Judgement :

ORDER

1. Petitioners are plaintiffs in O.S. No. 419 of 1989, on the file of the District Munsuf's Court, at Thirumangalam.

2. The reliefs sought in the plaint are as follows :--

'(a) declaring that the defendant has no right of any kind to run the rice mill in the suit property in view of the permit given to the plaintiff alone;

(b) for a permanent injunction to restrain the defendant, his men and agents, etc., from running the rice mill and hulling paddy to the prejudice of the plaintiffs,

(c) to direct the defendant to pay damages for the loss caused to the tune of Rs. 8,000/-.'

3. There is only one defendant in the suit against whom the reliefs are sought.

4. The defendant filed I.A. No. 1232 of 1989 praying that respondents 2 to 4 herein be impleaded as additional defendants in the suit. The same was objected by the petitioner herein. Repelling the objection, the Court below allowed the application. This revision is filed challenging the said Order.

5. The main reason that is stated in the petition is that the defendant has filed another suit in respect of the same subject-matter against the petitioner and the respondents 2 to 4 as O.S. No. 420 of 1987 and, to enable him to have a joint trial, respondents 2 to 4 are to be impleaded. According to him, respondents 2 to 4 in this Revision are necessary parties for arriving at proper decision. The court below accepted the said contention of the first respondent herein.

6. Impleading of a party to the suit is provided under Order 1, Rule 10, Code of Civil Procedure, which reads as follows :--

'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, as added.'

The Apex Court has decided the circumstances under which an additional party may be impleaded, in AIR 1992 SCW 846 (Ramesh Hiranand Kundanmal v. Municipal Corporation of Greater Bombay). That is a case where the plaintiff sought an injunction against the Municipal Corporation. The plaintiff therein was in possession of a service station erected on a land held by the Hindustan Petroleum

Corporation Limited as a lessee. The service station consisted of a petrol pump in the ground floor and a structure with an open terrace for parking vehicles. Possession of the plaintiff was as licensee of the Hindustan Petroleum Company under a dealership agreement. The plaintiff therein put up two chattels on the terrace. Notice of demolition was issued by the Municipality on the ground that it is an unauthorised construction. The plaintiff challenged the suit, questioning the validity of the notice of demolition. Hindustan Petroleum Corporation Limited, who was the lessee of the premises and who (was?) also interested in the demolition, sought impleadment in the case, on the ground that the Petroleum Corporation, being a lessee of the property, is interested in the suit. The Court below allowed the application which was challenged by the plaintiff before the Apex Court. While considering the said question, their Lordships held that a person who may be impleaded as a party to the suit should have direct interest in the subject-matter of the litigation, whether it be the questions relating to movable or immovable property. Their Lordships construed the words '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.' The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the Rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject-matter of the existing action, the court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions. After considering the above, their Lordships held thus :--

'As regards the question of addition of parties to suit under O. 1, R. 10, a clear distinction has been drawn between suits relating to property and those in which the subject-matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary is a party. What makes a person

a necessary party is not merely he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action.'

7. The said decision was again followed by the Supreme Court in the decision reported in : (1994)1SCC402 (New Redbank Tea Co. Pvt. Ltd. v. Kumkum Mittal). In that case, an agreement holder wanted to get himself impleaded in a suit for which the plaintiff in that case had no objection. The defendant objected regarding the impleading on the ground that the agreement holder is not a necessary party. The Calcutta High Court allowed the application, and it was challenged before the Supreme Court. In paragraphs 9 to 11, their Lordships of the Supreme Court held as follows :--

'The application for being impleaded as a defendant was moved by respondent 11 under O. 1, R. 10(2), CPC which provides as under :

'(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.'

The said provision empowers the Court to implead as a party to a suit person (i) who ought to have been joined, whether as plaintiff or defendant; or (ii) whose presence before the Court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit. It is not the case of respondent 11 that they ought to have been joined as a defendant in E.O. Suit No. 1 of 1985. Their application has been allowed by the Division Bench of the High Court on the ground that presence of respondent 11 is necessary for effectual and complete adjudication of the matter in dispute. We find it difficult to agree with this view of the High Court.

'In the leading English case of Moser v. Marsden, Lindly L. J. has held that a party who is not directly interested in the issues between the plaintiff and the defendant but is only indirectly or commercially affected cannot be added as a defendant because the court has no jurisdiction under the relevant rule to bring him on record even as a proper party. The position is not different under the Indian law. As laid down by this Court, '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'. (See Razia Begum v. Sahabzadi Anwar Begum). In Ramesh Hirachand Kun-danmal v. Municipal Corpn. of Greater Bombay this Court has held (SC p. 531, para 14) :

'It cannot be said that the main object of the rule is to prevent Multiplicity of actions though it may incidentally have that effect.... It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will effect him legally that is by curtailing him legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action.'

8. After holding that the agreement holder is not a necessary party, their Lordships further held that the addition of the said person or company may cause prejudice to the rights of the appellant in the suit. Taking that view, the Order of the High Court was set aside. That is also a case where another suit was pending regarding the same subject matter and the person sought to be impleaded had also filed a suit for specific performance making the appellant before the Supreme Court as

parties to the action. In spite of other proceedings pending regarding the same subject-matter, their Lordships refused to implead the agreement holder as a party to the suit. In this case also, the main purpose for impleadment as averred in the affidavit filed in support of the application is that the defendant has filed a suit against the plaintiff and the other respondents therein, and, to enable a joint trial, respondents 2 to 4 herein are necessary parties. The only purpose mentioned is joint trial. Even according to the saying of the defendant, respondents 2 to 4 are necessary parties. Here, we are not concerned about the validity of the licence given by the plaintiff. What he wants is only a declaration that the defendant in the suit has no right to run the rice mill so long as he is not holding any permit. The question whether the defendant is holding a valid permit and whether he can run a rice mill without a permit can be adjudicated even without impleading respondents 2 to 4 as parties. The plaintiff is now compelled to make respondents 2 to 4 as parties only to suit the convenience of the defendant. Since the Court below has acted illegally and has violated the mandatory provisions of the Civil Procedure Code and also the law declared by the Apex Court. I set aside the order of the Court below. The Civil Revision Petitions are allowed. I hold that the respondents 2 to 4 in this Revision Petition are not necessary parties both in the suit and in the interim application. No costs.

9. Petitions allowed.