

Dalip Singh Vs. Roop Singh and ors.

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Court : Himachal Pradesh

Decided On : Sep-06-1982

Judge : V.P. Gupta, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 115 - Order 1, Rule 10

Appeal No. : Civil Revn. No. 183 of 1980

Appellant : Dalip Singh

Respondent : Roop Singh and ors.

Advocate for Def. : Pawan Kumar, Adv.

Advocate for Pet/Ap. : M.L. Sharma, Adv.

Disposition : Revision allowed

Judgement :

ORDER

V.P. Gupta, J.

1. Aggrieved from the order Dt. 7-6-1980 passed by the Senior Sub-Judge, Mandi, the petitioner/plaintiff has filed this revision petition.

2. The facts briefly are that the plaintiff (now petitioner) filed a suit on 27-10-1975, in the Court of Senior Sub-Judge, Mandi, for a decree of declaration to the effect

that he had perfected his title as an owner of the disputed land (described in the plaint) by adverse possession or in the alternative for declaration that he was entitled to the benefit of Rule 21 of the Himachal Pradesh Nautor Rules, 1954. Only State of Himachal Pradesh (now respondent No. 4) was a defendant and the suit was contested by the State denying the plaintiff's claim.

3. Issues in the case were framed on 26-12-1977 and five witnesses of the plaintiff were also recorded. On 24-10-1979, the plaintiff was allowed last opportunity to produce his remaining evidence, and the case was adjourned to 26-12-1979.

4. On 17-12-1979, Roop Singh (now respondent No. 1) filed an application under Order 1, Rule 10 read with Section 151 C.P.C. praying that he along with his brothers Mani Singh and Kashmir Singh (now respondents 2 and 3) be impleaded as plaintiffs in the suit or be allowed to participate in the proceedings. This application was contested by the petitioner but the learned Senior Sub-Judge vide his order Dt. 7-6-1980 allowed this application,

5. Shri M.L. Sharma, the learned counsel for the petitioner (plaintiff) contended that the order of the learned Senior Sub-Judge is not sustainable in law and should be set aside. It was contended that the learned Senior Sub-Judge has exercised his jurisdiction illegally and the order is without jurisdiction.

6. Shri Pawan Kumar, the learned counsel appearing on behalf of respondent No. 1, contended that the order of the learned Senior Sub-Judge is justified in the circumstances of the case. In support of his contention he relied upon the judgments in Razia Begum v. Sahebzadi Anwar Begum (AIR 1958 SC 886), P.R. Nallathambi Goundan v. Vijaya Raghavan (AIR 1973 Mad 25) and State of Himachal Pradesh v. Sohan Singh (AIR 1955 Him Pra 43).

7. I have considered the contentions of the learned counsel for the parties and have also gone through the records of the case.

Order 1, Rule 10 C.P.C. reads as follows:

'Rule 10, Suit in name of wrong plaintiff.

(1) xxxxxxxxxxxxxx

Court may strike out or add parties.

(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.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent. Where defendant added, plaint to be amended.

(4) and (5) xxxxxxxxxxxxxx' In the present case the allegations in the application of Roop Singh (respondent No. 1) are that Besar Singh was his father and petitioner (Dalip Singh), and respondents Nos. 2 and 3 (Mani Singh and Kashmir Singh) are his brothers. Besar Singh died in the year 1959 and all his four sons, i. e. the petitioner and respondents Nos. 1 to 3, constituted a Hindu coparcenary with Besar Singh. The present suit was filed by the plaintiff on behalf of his brother also, who constituted Hindu coparcenary. As the relations between the petitioner and respondent No. 1 have now become strained, therefore, the respondent No. 1 is denying the title of the petitioner and respondents Nos. 2 and 3. On these grounds respondent No. 1 prayed that he be im-pleaded as a party along with his brothers (respondents 2 and 3). The petitioner contested this application and denied all the facts.

8. There is nothing on record to prove that the petitioner along with respondents Nos. 1 to 3 (brothers of the petitioner) formed a Hindu coparcenary. The petitioner filed the suit on the simple allegations that he was in possession of the disputed property for the last more than 30 years and had thus perfected his title by adverse possession.

9. From the allegations in the plaint or the written statement of the respondent No. 4 (State of Himachal Pradesh), it is not proved as to how the respondents Nos. 1 to 3 are interested directly or indirectly in the result of the suit. On the records of the case there is nothing to prove that the presence of respondents Nos. 1 to 3 is necessary to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.

10. In P.R. Nallathambi Goundan (AIR 1973 Mad 25) (supra), the facts were that one Venkatesa Iyengar had filed two suits for specific performance on the basis of two agreements. During the pendency of the suit Venkatesa Iyengar died and his son Sadagopan was impleaded as a legal representative. Both the suits were dismissed. Appeals were preferred by Sadagopan and the appeals were allowed. Defendants filed appeals in Supreme Court but the same were dismissed. Sadagopan applied to the trial court to grant final decrees. In the meantime Sadagopan appears to have executed some release deed regarding his rights in favour of defendant and defendant prayed for grant of final decree in terms of release deed and obtained such decrees. V. Raghavan along with his two brothers (sons of Sadagopan) filed a suit challenging the relinquishment deed executed by Sadagopan and prayed (1) for a declaration that the final decrees passed in the aforesaid suits and orders recording full satisfaction of the final decrees were, fraudulent and collusive and void and not binding on the plaintiffs; (2) for a decree setting aside the same; and (3) for partition and separate possession of the plaintiffs' three fourths share out of the half share in the family properties and for payment of interim mesne profits of Rs. 13,553/- and future mesne profits at the rate of Rs. 1,545/- per year from the date of suit till delivery of possession. Sadagopan was also impleaded as a defendant in the suit. This suit was contested by Sadagopan and other defendants. The trial court decreed the suit of V. Raghavan and others and one of the findings was that the first defendant (Sadagopan) had inherited from his father the right to enforce specific performance of the agreement of sale and that right which ripened into two decrees for half share in the suit properties was undoubtedly ancestral property, in which the plaintiffs acquired a three-fourth share by birth. An appeal was filed in the High Court and in the light of these facts it was observed as follows (at p. 35):--

'In all cases of litigation which are governed by Explanation VI to Section 11, C.P.C., it is settled law that Explanation VI to Section 11 applies to a proceeding by or against the managing member of a joint family, common sense and natural justice require that persons, whose interests would be affected by the result of the litigation, would be entitled to come on record to protect their interests in the further prosecution of the litigation, especially when their complaint is that the party already on record in a representative character is either not taking necessary and proper steps in the further prosecution of the proceedings or threatens to do something which would jeopardise their interests. Order 1, Rule 8, C.P.C. specially enables a party so represented, if he so desires, to come on record. It would be a travesty to justice to hold that a party who is bound by, the result of a litigation though not eo nomine a party to the litigation, shall be denied an opportunity to draw the attention of the Court to some step, which seeks to prejudice his interests behind his back. In all such cases, it is the plain duty of the court to implead the parties concerned either under Order 1, Rule 10. or in exercise of its undoubted, inherent power under Section 151, C.P.C.'

Thus this case is quite distinguishable and is not applicable to the facts of the present case.

11. In *State of Himachal Pradesh v. Sohan Singh* (AIR 1955 Him Pra 43) (supra), the learned Judicial Commissioner refused to interfere with the order of the Sub-Judge and observed (at p. 44): --

'As the learned Subordinate Judge has pointed out the provisions of Order 1, Rule 10, confer a wide discretion on the Court to implead any person, whose presence it may consider necessary to adjudicate upon and settle all the questions involved in the suit. It cannot, therefore, be said that the Subordinate Judge's order was without jurisdiction or that he acted in the exercise of his jurisdiction with material irregularity.'

This judgment also does not help the respondents because it is not disputed that if a discretionary order is passed by a court then it should not be interfered with unless the court had acted in the exercise of its jurisdiction illegally or with material irregularity.

12. In *Razig Begum v. Sahebzadi Anwar Begum* (AIR 1958 SC 886) (*supra*), (relied upon by both the counsel), the learned Judges have held as follows (at p. 8951: --

'(1) That the question of addition of parties under Rule 10 of Order 1, C.P.G.. 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 to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in Section 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 where 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 Sections 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 a 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 Section 43 of the Specific Relief Act, is not exactly a rule of *res judicata*. It is narrower in one sense and wider in another.'

13. The present case is clearly covered by conclusion No. 2 as given in the judgment of Razia Begum (AIR 1958 SC 886) (supra). For being added as a party respondents Nos. 1 to 3 had to prove that they have a direct interest in the subject-matter of the litigation.

14. I have already stated that there is nothing on the record to show that the respondents have any interest in the subject-matter of the litigation, on the other hand, the suit as framed by the plaintiff only shows that the plaintiff is claiming exclusive interest in the property against the State of Himachal Pradesh. The respondents are no party to the litigation and they will not be bound by any adjudication in the present suit.

15. In view of the above discussion, I am of the view that the Senior Sub-Judge has acted in the exercise of its jurisdiction illegally or with material irregularity in allowing the application of Roop Singh respondent No. 1 and ordering the impleading of respondents Nos. 1 to 3 as defendants in the suit. As a result, this present revision petition is accepted and the order Dt. 7-6-1980 passed by the Senior Sub-Judge, Mandi is set aside. The application of Roop Singh respondent No. 1 is dismissed. The parties are left to bear their own costs.

16. The parties are directed to appear in the Court of Senior Sub-Judge, Mandi on 5th Oct., 1982. Shri Pawan Kumar, Advocate Mandi. counsel for Roop Singh respondent be informed.