

Dara Singh and ors. Vs. Mrs. Chanda Kaur Singh and ors.

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SooperKanoon Citation : sooperkanoon.com/911977

Court : Kolkata Appellate

Decided On : Mar-07-2011

Judge : Harish Tandon, J.

Appeal No. : C.O. No. 1048 of 2007.

Appellant : Dara Singh and ors.

Respondent : Mrs. Chanda Kaur Singh and ors.

Advocate for Def. : Mr. Dulal Chandra Roy, Adv

Advocate for Pet/Ap. : Mr. Gopal Chandra Ghosh, Adv

Judgement :

1. This revisional application is directed against an order no. 218 dated May 11, 2006 passed by Sri P.K. Chakraborty, learned Judge, 2nd Bench, City Civil Court at Kolkata in Title Suit no. 1003 of 1976.

2. This case has a chequered history. The litigation started sometimes in the year 1967 with the initiation of the suit being Title Suit No. 6 of 1967 filed by the opposite party no. 12, Life Corporation of India against one Sarjan Singh, the original defendant no. 2 in the instant suit treating him as trespasser and claiming recovery of possession. The said suit was decreed. The predecessor-in-interest of the present petitioners instituted title suit no. 1003 of 1976 against the Life Corporation of India as principle defendant and incorporated one Sarjan Singh and Punaya Singh as the defendant no. 2 and 3. The relief claimed in the said suit was

in respect of a tenancy belonging to the premises of the Life Corporation of India which was initially held by one Pujan Singh who being bachelor and having died intestate, the tenancy was inherited by the original plaintiff along with the original defendant no. 2 and 3 being the brothers. Further declaration was sought therein that the decree passed in Title Suit No. 6 of 1967 in favour of the Life Corporation of India is not binding and is bad, illegal and void.

3. The said suit was contested by the original defendants. The defence taken by the original defendant no. 2 and 3 namely Sarjan Singh, since deceased and Punaya Singh was to the effect that the original defendant no. 2 Sarjan Singh being the karta of the joint Hindu family is the only person to represent the tenancy and the original plaintiff was allowed to carry on the business for and on behalf of the said defendant no 2. During the pendency of the suit the original plaintiff namely Ram Narayan Singh died and the present plaintiffs/opposite parties were substituted. The plaintiffs/opposite parties sought for withdrawal of the said suit and made an application under Order 23 Rule 1 of the Code of Civil Procedure on the pretext that on discovery of the certain documents it appears that the said tenancy is in fact not a joint tenancy of the original plaintiffs and the original defendant no. 2 and 3, but the said tenancy is an exclusive tenancy of the original plaintiff as he was carrying on the business from the said shop room as proprietor.

4. The said application, on being opposed by the original defendant no. 2 and 3, was rejected as not pressed.

5. Subsequent to the rejection of the said application for withdrawal of the suit filed by the present plaintiffs/opposite parties, an application for amendment of the plaint under Order 6 Rule 17 of the Code was taken out by the plaintiffs/opposite parties deleting the paragraphs wherein it was stated that the said tenancy devolves upon the original plaintiffs and original defendant no. 2 and 3 as joint tenants and incorporating the fact that the business was being carried in the said shop room by the predecessor-in-interest of the present plaintiffs/opposite parties as proprietor and as such the tenancy cannot be termed as a joint tenancy but is an exclusive tenancy of the predecessor-in-interest of the plaintiffs/opposite parties. The said application was however contested by the original defendant no.

2 and 3 but was eventually allowed. In spite of the amendment being allowed whereby the claim of the joint tenancy was taken of by the original plaintiffs and was substituted by the claim of an exclusive tenancy of the plaintiffs the original defendant no. 2 and 3 were still the parties and the names were not struck off from the plaint.

6. On the death of the original defendant no. 2 the petitioners herein were substituted on the basis of an application under Order 22 Rule 4 of the Code filed by the plaintiffs/opposite parties. In the meantime the original defendant no. 3, Punaya Singh also died and their heirs and legal representatives were duly substituted.

7. Having felt that the presence of the legal heirs of the original defendant no. 2 and 3 may embarrass the carriage of the proceeding and the relief claimed, the plaintiffs/opposite parties filed an application under Order 6 Rule 17 of the Code for amendment of the plaint by deleting the names of the heirs and legal representatives of the original defendant no. 2 and 3 on the ground that no relief has been claimed against them. Though the said application was contested but the same was eventually allowed holding that if any decree is obtained by the plaintiffs/opposite parties the same shall not be binding on the deleted parties.

8. Thereafter the heirs and legal representatives of Sarjan Singh the original defendant no. 2 filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure for being impleaded as the party in the said suit. The plaintiffs/opposite parties contested the said application. Eventually the said application was dismissed. The petitioners assailed the said order in this revisional application.

9. Mr. Gopal Chandra Ghosh, learned Advocate appearing for the petitioners submits that the impugned order cannot be sustained as the trial court has committed error in holding that after the allowing an application for amendment deleting the name of the petitioners the present application is not maintainable. He strenuously argued that allowing an application for amendment does not robbed away the right of the present petitioners to assert that they are necessary and proper party and any order passed in the suit would highly prejudice their right, title and interest in the property. He further submitted that when allowing an application

for amendment by which the name of the petitioners was deleted, liberty was given to move under Order 1 Rule 10 by the trial court and as such the petitioners cannot be precluded from asserting their rights to be impleaded in the said suit.

10. Mr. Dulal Chandra Roy, learned Advocate appearing for the plaintiffs/opposite parties disputed the contention of the petitioners. It is submitted that the petitioners has no semblance of right in respect of the property in suit and they cannot be added. He further argued that the plaintiffs are dominus litis and it is the plaintiffs choice to implead and not to implead any party.

11. Mr. A. K. Das, learned Advocate appearing for the opposite party no. 12, Life Insurance Corporation of India submits that his client, in spite of getting the decree for recovery of possession way back in the year 1971, is unable to get the possession of the said property in view of prolonged pendency of the instant suit.

12. Considering the submissions made at the bar there is no dispute that the suit is pending since 1967 and the parties have successfully dragged the litigation for more than 33 years. In order to consider an application for addition under Order 1 Rule 10 (2) of the Code, the party applying has to demonstrate before the court that he is either necessary or a proper party meaning thereby the court cannot effectively adjudicate the dispute involved in the suit or in absence of such party no effective decree can be passed. It appears that the parties are litigating and asserting their right, title and interest in respect of the suit property. It is really an assertion of their title in respect of the property in question. The dispute involved in the suit is the claim of tenancy which if granted shall have a vital impact on the right and title of the petitioners. In case where dispute as to the title is involved the person who shall be prejudicially affected by any adjudication made in the said suit are necessary parties. I find support of the contention from the judgment of the apex court in case of Razia Begam v. Sahebzadi Anwar Begum & Ors. reported in AIR 1958 SC 886. The apex court while dealing with an application for addition of a party in respect of a suit relating to a property was pleased to hold that the party applying for addition should have a direct interest as distinguished from a commercial interest in the subject matter of the litigation. Such is also the proposition laid down in case of Kasturi v. Iyyamperumal & Ors. reported in (2005)

13. Even after allowing an application for amendment the subject matter which is required to be adjudicated appears that the plaintiffs denied the right of the predecessor-in-interest of the petitioners. It would be profitable to quote paragraph 4, 5 and 6 of the plaint.

4. At present the defendant no. 2 after the demise of the said Pujan Singh falsely represented himself as Karta of the estate of Pujan Singh and as Karta of the joint Hindu family business in Hekimi by swearing false affidavit dated 25.1.63 before the Rent Controller, Calcutta started depositing rents in respect of the aforesaid tenancy in the name of the defendant no. 2 although the said rents were paid by the plaintiff to the said defendant no. 2 for payment to the defendant no. 1 and the plaintiff is in occupation of the said shop room and is carrying on with the business there.

5. It further appears that the defendant no. 1 brought a suit against the said Pujan Singh, deceased, and the defendant no. 2 for a declaration of title and khas possession in respect of the aforesaid shop room and the same was registered as Title Suit No. 6 of 1967 in the City Civil Court at Calcutta at Calcutta and subsequently by Order No. 7 dated 4.7.1967 the name of the said Pujan Singh was struck out, but the names of the plaintiff and the defendant no. 3 were substituted.

6. It further appears that in the said suit the defendant No. 2 resisted the claim of the defendant no. 1 by filing a written statement wherein the defendant no. 2 stated that Pujan Singh since deceased, has left him surviving the defendant no. 2, Sarjan Singh, as Karta of the joint Hindu family and the business in the above shop room in Hekimi medicines which was run by the said Pujan Singh, deceased, as the then Karta of the joint Hindu family as a joint Hindu family business and that after the demise of the said Pujan Singh the defendant no. 2, Sarjan Singh as much Karta has succeeded to the above tenancy under the defendant no. 1.

14. A meaningful reading of the amended plaint containing the paragraphs as quoted above, the plaintiffs/opposite parties sought to deny the title of the

predecessor-in-interest of the petitioners contending that the said predecessor was asserting his right as the karta of the joint Hindu family business and it is further contended that the said assertion is wrong, false and is not tenable. The very existence of such assertion in an amended plaint manifest the denial of the right, title and interest of the petitioners and in case there is a dispute as to the title the person asserting the title is a necessary party as he shall be vitally affected by any decision taken in the said suit. The petitioners have a direct and substantial interest in the subject matter of the suit and not a mere commercial interest. An assistance can be taken from a judgment of the Kerala High Court in case of Skaria Joseph v. Eliayamma Joseph reported in 1996 AIHC 5035. The apex court while dealing with the case of an addition as in this case, observed that the controversy raised in the suit between the parties to the litigation should be the controversy based on which the relief is claimed and not the controversy which may arise between the parties to the suit. [see (2005) 6 SCC 733]. It is further held that if the subject matter is a declaration as regards to the title are legal character then in such case it would be better to add a party for factual and complete adjudication of the controversy. Since the petitioners have a claim in respect of the property in question, it cannot be said that they have no direct interest in respect of the subject matter involved in the said suit. If the plaintiffs/opposite parties are declared as the only heirs and legal representatives to have inherited the said property in question, the petitioners shall be effected thereby.

15. In view of the discussion as above I have no hesitation to hold that the trial court has acted illegally and with material irregularity in rejecting the application for addition of a party filed by the petitioner. Thus the order impugned is set aside. The application filed by the petitioner for addition of party is allowed. The trial court is directed to take note of such addition and to take consequential steps. The revisional application is allowed. However there shall no order as to costs.

16. Urgent xerox certified copy of this order, if applied for, shall be given to the parties on urgent basis.