
has no application to the mortgage suits which are controlled by Order 34 Rule 11 of the Code and Court could only exercise its discretion within the limits provided thereunder.

(24) In view of the detailed discussion, the submissions raised on behalf of the respondent/bank merit acceptance, while those raised on behalf of the petitioners need to be rejected. The learned executing Court has rightly held that the Bank was entitled to the rate of interest granted to it under the decree and such rate of interest could not be varied to 6% per annum instead of 12.5% per annum, which was decreed by the Court. The order does not suffer from jurisdictional or other error apparent on the face of the record which would call for any interference by this Court in exercise of its revisional jurisdiction.

(25) No other point was raised by either of the counsel in these proceedings.

(26) Inevitable conclusion of the above discussion is that present revision petition has no merit and the same is hereby dismissed. Though without any order as to costs.

R.N.R.

Before Swatanter Kumar, J

ANUP SINGH & ANOTHER—*Petitioners*

versus

CHANDER KANT PRUTHI & OTHERS,—*Respondents*

C.R. No. 54 of 1998

5th March, 1998

Code of Civil Procedure, 1908—Order 1 Rl.10—Suit for specific performance—Transferee purchases land from vendor—Whether can be impleaded as a party to the suit.

Held, that once the parties are already in Court and dispute relates to the same subject matter and the parties claim their interest and rights through the same party, it would be proper to adjudicate and determine the disputes completely and finally. When the Court comes to the conclusion that such a party is necessary for complete and final determination of the controversy, the applicant should normally be impleaded as party to the proceedings. Avoidance of multiplicity of litigation alone by itself may not be ground for impleadment, but it is certainly a relevant factor which must weight in the mind of the Court while deciding such an application because prevention of such unnecessary multiplicity of litigation is the very foundation and spirit of the procedural law like the Code of Civil Procedure.

(Para 6)

Ramesh Hoonda, Advocate, *for the Petitioner*

Kulvir Narwal, Advocate, *for No. 1*

Ranjeet Saini, Advocate, *for the Respondents.*

JUDGMENT

Swatanter Kumar, J

(1) This revision is directed against the order of the learned trial Court dated 19.11.1997, whereby, the application of the petitioners under order 1 rule 10 of the Code of Civil Procedure was dismissed. While impugning the said order the basic contention raised on behalf of the petitioners is that the petitioners are necessary party to the proceedings and the presence of the petitioners would help the Court in finally and effectively determining the issue in controversy.

(2) Before the Court can proceed with discussion on the merits of this contention, it would be appropriate to refer to the requisite facts.

(3) Plaintiff Smt. Chander Kanta Pruthi had filed a suit for specific performance with consequential relief of permanent injunction on 1.10.1997 against sant Lal Kitha and another. In this suit, the defendants were directed to be proceeded against *ex parte*,—*vide* order dated 8th October, 1997 by the trial Court. Having come to know the pendency of the suit, the petitioners filed an application under Order 1 rule 10 of the code of Civil Procedure alleging therein that they had purchased the suit land from the defendants,—*vide* registered sale-deed dated 10th October, 1997. The petitioners being *bona fide* purchasers of the same property would be affected prejudicially if any question is determined in the present suit. The application was contested by the plaintiff on the ground that she was in possession of the suit property for the last 16 years and the entire sale consideration has been paid earlier. It was further averred that the sale-deed in favour of the petitioners had been created with ulterior motive and to jeopardise the interest of the plaintiff. According to the plaintiff, the order of status-quo passed in the present suit was duly informed to the defendants and the sale-deed is mere **sham** transaction. It was further contended that the petitioners should not be impleaded as party to the proceedings against the wish of the plaintiff who is dominus litus of the suit.

(4) Upon hearing the learned counsel for the parties, the learned trial Court rejected this application primarily on the ground that the plaintiff has already filed a suit against the petitioners titled as *Smt. Chander Kanta vs. Anup Singh and others* and rights between them would be determined in that suit. It is further observed that in the present suit, agreement to sell is not being sought to be enforced against the petitioners herein, as such, they should not be impleaded as party. Aggrieved from this order, the present revision has been filed by the

petitioners.

(5) It is the settled principle of law that an agreement to sell, by itself, does not create any interest in the property. The suit is for specific performance of the agreement to sell filed against the defendants who had allegedly transferred their interests and title in the property in favour of the petitioner by means of a registered sale-deed. One fact which is clear from the above averments is that both the parties admit the defendants in this suit to be owners of the property and rights, if any, have come to them through one and the same party i.e. the defendants. In other words, in favour of one, the defendants had executed an agreement to sell while in favour of other, a sale-deed has been executed. The subject matter of the suit is common and there is apparent conflict of interest between the petitioners and the plaintiff. It is certainly clear that both the plaintiff and the petitioners cannot succeed in regard to the same subject matter specially keeping in mind the aforesaid averments. The plea of the plaintiff being dominus litis is not absolute principle of law. The matter must be judiciously considered by the Court in each case. If the Court is satisfied that the applicant would be necessary or proper party to the proceedings, its presence before the Court would be required for final determination of the controversy between the parties in the suit and to give effective and complete decision and further more, rights of such party are likely to be affected by any finding recorded in the suit, Court may be inclined to permit impleadment of such applicant as party to the proceedings. It is true that multiplicity of litigation, by itself, does not constitute sufficient ground for impleadment, but it is certainly relevant factor which must be kept in mind while the Court is dealing with such application. At this stage, it will be relevant to refer to the case of *Krishan Lal and another v. Sudesh Kumari & others* (1), C.R. No. 1204 of 1997, decided on 6th February, 1998 wherein it was held as under :—

“The Code of Civil Procedure provides as to how a suit has to be instituted and how would it end. The Code provides a thread of continuity, which would regulate various stages of the suit. In other words, the intention of the legislation must and has to be gathered from the various provisions of the Code read collectively and in conjunction with each other. Whereas Order 1 Rules 1 and 3 of the Code provides who are the persons who could be joined as plaintiffs and/or defendants, Rule 10 gives power to the Court to add parties to direct addition and impleadment of parties and Rule 8-A gives right to a party to approach the Court for being impleaded as a party, if the applicant has an interest in any question which directly and substantially arise in the suit. The provisions regulating impleadment of necessary and proper

parties, whose presence is necessary before the Court for proper and final adjudication, must be construed in a wider perspective, as the provisions of Order 2 Rule 1 of the Code clearly indicate that every suit, as far as practicable, be framed so as to afford grounds for final decision upon the subjects in disputes and to prevent further litigation concerning them. To hold that avoidance of multiplicity of litigation in regard to the same subject matter is not even relevant factor while considering the application for impleadment, to my mind, would be an approach not in line with the spirit of the procedural law.

In order to have a pervasive and baroque approach to the provisions of the Code which would be also in consonance with the scheme of the Code, would be to read the provisions of Order 1 and other effecting provisions of the Code collectively, rather than to read and construe order 1 Rule 10 of the Code in abstract or isolation. Interpretation of construction of procedural laws or provisions related there to must be read to achieve the ends of justice which is an indispensable object of basic rule of law. With the modern development in all spheres of life the Courts must mould the procedural laws to further the cause of expeditious disposal and determination of all questions in one proceedings, if permissible in law, rather than to direct the parties to create multiplicity of litigation.

Without being innovative and primarily on reiteration of the settled principles and in a derivative manner, it is possible to indicate certain factors which may be considered by the Court while determining such a question :—

- (a) Whether the applicant is a necessary and proper party keeping in view the facts and circumstances of the case ?
- (b) Whether presence of such a party before the Court is necessary for effectively and completely adjudicating the matter and granting a complete and effective decree to the party entitled to ?
- (c) Whether such a party interested would be directly effected as a result of culmination of such persons into decree or

it would only be effected remotely, indirectly and distantly ?

In addition to above, where the Court considers the presence of a party necessary for proper and complete adjudication, then it may well be considered relevant whether non-impleadment of such a party would result in avoidable multiplicity of litigation, then effort should be to implead a party rather than to force the party to go to a fresh litigation.

The above principles are not exhaustive but are merely indicative what may be considered by the Court in addition to such consideration, which may be appropriately considered by the Court keeping in view the facts and circumstances of a given case. The legislative intent to provide an effective protection to a party who may be affected by the questions to be determined by a Court in a suit or proceedings and to have complete adjudication is clear from the introduction of Rule 10-A in Order 1 of the Code *vide* Civil Procedure Code Amendment Act, 1976.

.....

It does not stand to reason that such determinations should be permitted to be concluded at the back of the applicant petitioner. Further more, to require the same parties to file different suits and proceedings in relation to the same property, based on the same documents, would neither be in the interest of justice nor would be proper. Avoidance of multiplicity and unnecessary expenses is a relevant factor, which needs to be considered by the Courts concerned. Here it would be relevant to refer to the following observations of a Division Bench of this Court in *Chandigarh Housing Board v. K.K. Kalsi and Others*, 1996 (2). All Instant Judgements 554 :—

“The purpose of determining the dispute between the parties is primarily to attach finality to their disputes and not to determine partial dispute and relegate the parties to different legal forums for determination.”

(6) Learned counsel for the respondents herein has relied upon the judgment of this Court in the case of *Hazura v. Sukhdev Singh* (1), on the other hand the learned counsel appearing for the petitioners has relied upon the judgments of this Court in the cases of *Anil Kumar v. Gurdial Singh and Others* (2), *Subh Ram*

(1) 1996 P.L.J. 37

(2) (1994-2) P.L.R 711

v. *Nitya Nand and Others* (3) and *Rajinder Singh v. Jaswant Singh and another* (4). As I have already discussed that avoidance of multiplicity of litigation alone by itself may not be a ground for impleadment. Thus, there is not much controversy to the view expressed by the Court in *Hazura Singh (supra)*, but it is certainly a relevant factor which must weight in the mind of the Court while deciding such an application because prevention of such unnecessary multiplicity of litigation is the very foundation and spirit of the procedural law like the Code of Civil Procedure. The judgments cited by the learned counsel for the petitioners certainly support the case and in face the cases of *Subh Ram and Rajinder Singh (Supra)* do apply on all force to the present case. Even if a decree in the absence of the petitioners is passed in favour of the plaintiff in the suit, it will be subject to the rights of the petitioners which may have to be determined still in another suit because the suit for injunction has been filed against the petitioners in which these disputes cannot be properly adjudicated upon. That suit is also controlled by the plaintiff in the present suit, as such, she would be at liberty to deal with the said suit in the manner she considers fit and proper. The present petitioners may be dragged to another suit. Net result of the discussion is that the Court would have to adjudicate upon the effect of the sale-deed on the rights of the plaintiff in the present suit. Once the parties are already in Court and dispute relates to the same subject matter and the parties claim their interest and rights through the same party, it will be proper to adjudicate and determine the disputes completely and finally. When the Court comes to the conclusion that such a party is necessary for complete and final determination of the controversy, the applicant should normally be impleaded as party to the proceedings. Once the party has a sale-deed which confers title in law, he is bound to have interest in the subject matter of the suit of the present kind. The defendants have opted not to contest the suit and they were ordered to be proceeded against *ex parte*. In this regard, the provisions of Order 22 Rule 10 would come to the aid of the petitioners. May be, this cannot be termed as assignment but certainly it is transfer of interest whether prior or after institution of the suit and a bonafide purchaser cannot be placed at disadvantage in the present manner and finding cannot be permitted to be recorded at his back in regard to the land over which he claims title on the strength of registered sale-deed. It will be expedient and in the interest of justice that the petitioners should be impleaded as party defendants in the suit. Consequently, this petition is allowed, impugned order dated 19th November, 1997 is set aside and the application of the petitioners under Order I rule 10 CPC

(3) 1990 P.L.J. 74

(4) 1987 P.L.J. 68

is accepted. They are directed to be impleaded as defendants in the suit. In the facts and circumstances of the case, the plaintiff and the petitioners being parties in another suit titled as *Smt. Chander Kanta v. Anup Singh* etc. and in order to avoid the possibility of conflicting view being taken by two different Courts, I consider it in the interest of justice that both the cases are tried by one and the same Court. Consequently, it is directed that both the suits should be tried by Civil Judge (Senior Division), Rohtak in accordance with law.

S.C.K.