

Before J. S. Sekhon, J.

RAM KALI,—Petitioner.

versus

UJALA AND ANOTHER,—Respondents.

Civil Revision No. 599 of 1987

August 31, 1988.

Code of Civil Procedure (V of 1908)—O. 1, Rl. 10—Application for being impleaded as a party—Contingencies under which said application can be allowed.

Held, that under the provisions of sub-para (2) of Order 1, Rule 10 of the Code of Civil Procedure, 1908, a person may be added as a party to the suit in two contingencies, the first being that he ought to have been joined and is not so joined, i.e., when he is necessary party, or, when without his presence the questions in the suit cannot be effectually and completely adjudicated, but there is no jurisdiction to add a party merely because that would save a third person the expense and botheration of a separate suit for seeking adjudication of a collateral matter, which was not directly and substantially in issue under the suit into which he seeks intrusion. The very factum that the findings in the suit would incidently affect the intervener is also no ground for impleading such person as a party.

(Para 5)

Held, that the controversy involves the determination of ownership of the disputed land which initially belonged to respondent but he transferred it in favour of his grand-son through a decree of the Civil Court dated 19th April, 1977. There is no dispute that in the present case, the controversy relates to the factum whether the respondent had transferred the land in dispute to his grand-son earlier or he has transferred the same to his grand-daughter, plaintiff in the present case. Thus, without impleading the widow of the grand-son the above referred controversy cannot be effectively and completely decided. The mere factum that respondent had filed a suit for declaration against the widow of his grand-son is not of much consequence.

(Paras 5 and 13)

Petition Under Section 115 CPC for revision of the order of the Court of Shri R. L. Sankhla, Sub Judge 1st Class Hansi, dated 26th November, 1986 allowing the application of the applicant with no order as to cost and now the case to come up on 10th December, 1986 for consideration on the application filed by the defendant.

C. B. Goel, Advocate, for the Petitioner.

S. N. Singal, Advocate, for respondent No. 2.

Surinder Gandhi, Advocate, for respondent No. 1.

JUDGEMENT

Jai Singh Sekhon, J.

(1) Ram Kali, plaintiff, has directed this revision petition against the order dated 26th November, 1986 of the Subordinate Judge I Class, Hansi, allowing the impleading of Mst. Santro as a defendant in suit filed by Mst. Ram Kali, petitioner, against her grand-father Ujala.

(2) Briefly stated, the facts are that Mst. Ram Kali, petitioner, filed a suit for declaration against her grand-father Ujala to the effect that she is the owner of the land measuring 104 Kanals situated in village Ghirai, Tehsil Hansi on the basis of family settlement and that the defendant has no concern with the land in dispute, besides that she is entitled to get the mutation of the land sanctioned in her favour. In the said suit, aforesaid Ujala defendant admitted the claim of the plaintiff,—*vide* his statement dated 11th September, 1984. During the pendency of this suit, Mst. Santro widow of Randhir the only grand-son of Ujala defendant filed an application for impleading her as a party contending that through a family settlement, aforesaid Ujala had already transferred the property in dispute to his only grand-son Randhir,—*vide* civil suit decided on 20th May, 1977. She also referred to the false and baseless suit filed by aforesaid Ujala after the death of her husband in order to restrain her from alienating the property in dispute and for getting a mutation sanctioned in her favour. This application was resisted by Mst. Ram Kali plaintiff by denying that Mst. Santro being the widow of Randhir, or the earlier settlement between Ujala and aforesaid Randhir. It was also alleged that the previous decree dated 20th May, 1977 based on fraud and mis-representation is only a paper transaction.

(3) The learned Subordinate Judge, however, allowed this application of impleading Mst. Santro by holding that she is a necessary party for adjudicating effectively the controversy between the parties.

(4) Mr. C. B. Goel, learned counsel for the petitioner, by relying upon the findings of this Court in *Banarsi Dass Durga Parshad v. Panna Lal Ram Richhpal Oswal and others* (1), *Bimla Devi of Hissar v. Municipality Hissar through its Administrator* (2), *Naib Singh*

(1) A.I.R. 1969 Pb. & Hry. 57.

(2) 1983 H.R.R. 249.

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and another v. Sada Ram and others (3) and Bara Hanuman Temple Durgian, Amritsar v. Gurbax Lal Malhotra and others (4), contended that as no relief was claimed against Smt. Santro, she was neither a necessary party nor her presence was required for effectively adjudication of the controversy in the suit. Mr. Surinder Gandhi, learned counsel appearing for respondent No. 1 also supported the view of the learned counsel for the petitioner. He further superimposed his arguments by placing reliance on the findings in *Vassudev R. Nhavekar v. Vishnum Atmaram Gaude and another* (5). Mr. S. N. Singal, learned counsel for respondent No. 2, on the other hand, supported the findings of the trial Court by relying upon the findings of the Supreme Court in *Razia Bequm v. Sahebzadi Anwar Begum and others* (6), as well as of this Court in *Gokal Chand and others v. Puran and others* (7). He also placed reliance on the findings of this Court in *Banarsi Dass's Case* (supra), which was relied upon by the learned counsel for the petitioner.

(5) Under the provisions of sub-para (2) of Order 1, Rule 10 of the Code of Civil Procedure, a person may be added as a party to the suit in two contingencies, the first being that he ought to have been joined and is not so joined, i.e. when he is necessary party, or, when without his presence the questions in the suit cannot be effectually and completely adjudicated, but there is no jurisdiction to add a party merely because that would save a third person the expense and botheration of a separate suit for seeking adjudication of a collateral matter, which was not directly and substantially in issue under the suit into which he seeks intrusion. The very factum that the findings in the suit would incidently affect the intervener is also no good ground for impleading such person as a party. This view finds support from the findings of R. S. Sarkaria, J. of this Court (as he then was) in *Banarsi Dass's case* (supra). It was further held in that case that the plaintiff is the *dominus litus* i.e. the master of the suit and that he cannot be compelled against a person against whom he does not wish to fight and against whom he does not claim any relief. The ratio of the above referred case supports the conclusion of the trial Court in the present case as herein the controversy involves the determination of ownership of the disputed land

(3) 1985(2) C.L.J. 374.

(4) A.I.R. 1978 Pb. & Hry. 192.

(5) A.I.R. 1976 Goa 58.

(6) A.I.R. 1958 S.C. 886.

(7) 1978 P.L.R. 403.

which initially belonged to Ujala, respondent, but he transferred it in favour of his grand-son Randhir through a decree of the Civil Court dated 19th April, 1977. Thus, aforesaid Ujala could not transfer the same property to his grand-daughter Ram Kali as he is trying to do so in the present case.

(6) In *Bimla Devi's case* (supra) relied upon by the learned counsel for the petitioner, the controversy related to granting of an injunction restraining the Municipality from demolishing the property in dispute, but a part of that property belonged to the State of Haryana. Under these circumstances, it was held that the State of Haryana was not a necessary party as no relief was claimed against it.

(7) The findings of this Court in *Naib Singh's case* (supra) are also not applicable to the facts of the case in hand, as therein the controversy related to the transfer of the disputed plots as on the basis of sale deeds and the order of the trial Court allowing Sheo Ram the other brother of Naib Singh and Baldev Singh plaintiffs was set aside in view of the factum that he was neither a party to the said sale deed and nor it could be said that the controversy could not be effectively decided without impleading him as such.

(8) The findings of the Division Bench of this Court in *Bara Hanuman's case* (supra) rather support the findings of the trial Court in the present case as therein also it was held that Gur Parshad being in actual possession and management of the Trust, was a necessary party, even though the Advocate General while granting sanction under section 92 of the Code of Civil Procedure was held to be not a necessary party.

(9) The findings of the Additional Judicial Commissioner Goa, in *Vassudeva R. Nhavekar's case* (supra) are also not attracted to the facts of the case in hand, as therein in a suit for redemption, no relief was sought against the party which itself sought to be impleaded as defendant subsequently.

(10) On the other hand, the Supreme Court in *Razia Begum's case* (supra) had held in a suit for declaration of status of the parties as husband and wife, another person claiming wife of the same person is a necessary party, but in suits relating to property such person should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation. In the present case, also, Mst. Santro had direct interest in the property in dispute having inherited the same from her husband after the latter's death.

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(11) The findings of S. P. Goyal, J. (as he then was) of this Court in *Gokal Chand's case* (supra) also support the conclusion of the trial Court in the case in hand, because in that case it was held that the controversy essentially related to the inheritance of one Gazi and for effectual and complete adjudication of the matter, the impleading of another heir to the estate of Gazi was well justifiable.

(12) The decision of this Court in (*Bhagwanti v. Gurmit Kaur and others*) (8), is also not attracted to the facts of the present case, as therein the controversy related to the impleading of a party in a suit for redemption of mortgaged land wherein no relief was sought against that party.

(13) There is no dispute that in the present case, the controversy relates to the factum whether Ujala had transferred the land in dispute to his grand-son Randhir earlier or he has transferred the same to his grand-daughter Mst. Ram Kali, plaintiff in the present case. Thus, without impleading the widow of aforesaid Randhir, the above referred controversy cannot be effectively and completely decided. The mere factum that Ujala had filed a suit for declaration against the widow of his grand-son Randhir is not of much consequence.

(14) For the foregoing reasons, there being no merit in this petition, the same is hereby dismissed, but the parties are left to bear their costs.

S.C.K.

Before A. L. Bahri, J.

S. D. COLLEGE EDUCATIONAL SOCIETY, BARNALA,—Petitioner.

versus

PUNJABI UNIVERSITY, PATIALA AND ANOTHER,—Respondents.

Civil Revision No. 3261 of 1987

September 1, 1988.

Constitution of India, 1950—Arts. 14, 29 and 30—Code of Civil Procedure (V of 1908)—Sec. 115—Educational Institution run by religious and linguistic minority—Admission to different courses by such institution—Instructions issued by University or State for such

(8) C.R. 337 & 338 of 1988 decided on 2nd August, 1988.