

Murti Shree Ram Chander Ji Maharaj, installed in Thakardwara Kalan, Talab Naurang Rai v. State of Haryana and another
(S. P. Goyal, J.)

Marriage Act, and confuse matrimonial relief with declaratory relief.”

(3) There can be no scope for doubt that a third party, whose civil rights are affected by a marriage which is null and void under section 11 of the Act, can bring it into question in a civil Court which undoubtedly has the jurisdiction to adjudicate upon the same and give its verdict. The case law having bearing on the point has been elaborately discussed in the case of *Smt. Ram Pyari* (supra) and we need not set out the same again. We are in full agreement with the view taken therein. We, therefore, hold that the Single Bench judgment of this Court in *Baboo Ram's case* (supra) does not lay down good law.

(4) We, therefore, answer the above question in the affirmative and hold that the validity of a marriage in contravention of clause (i) of section 5 of the Act performed after its enforcement can be questioned by aggrieved third party in a civil suit.

These appeals shall now go back to the learned Single Judge with the answer noted above for their disposal on merits.

R.N.R.

Before S. P. Goyal, J.

MURTI SHREE RAM CHANDER JI MAHARAJ, INSTALLED
IN THAKARDWARA KALAN, TALAB NAURANG RAI,—
Petitioner

versus

STATE OF HARYANA AND ANOTHER,—*Respondent.*

Civil Revision No. 2806 of 1986

February 17, 1987.

Land Acquisition Act (I of 1894)—Sections 9, 18 and 30—Code of Civil Procedure (V of 1908)—Order 1, Rule 10—Right to receive compensation—Person not party to reference seeking leave to be

impleaded to enforce right for the first time in appeal against award of the Collector—Impleading of such applicant at appellate stage—Whether can be allowed.

Held, that a person who does not make any claim before the Collector under section 9 of the Land Acquisition Act, 1894, nor moves any application for reference under section 30 of the Act to assert his right to receive the compensation as opposed to the person who got the reference made under section 18 of the Act for enhancement of the compensation, would have no right to get himself impleaded as a party under Order 1, Rule 10 of the Code of Civil Procedure, 1908, and get his right to receive compensation decided in that reference. The jurisdiction of the Court is confined to the reference made to it by the Collector under section 18 of the Act and it cannot enlarge its scope by invoking the provisions of Order 1, Rule 10 of the Code. Hence, it has to be held that an application seeking leave to be impleaded as a party at the appellate stage cannot be allowed.

(Para 4)

Petition for revision, under section 115 C.P.C., Article 227 of the Constitution of India and section 44 of the Punjab Courts Act, of the order of the Court of Shri J. K. Sud, Additional District Judge, Ambala, dated 1st September, 1986 dismissing the application under Order I, rule 10, Code of Civil Procedure, for being impleaded as a party.

S. K. Goyal, Advocate, for the petitioner.

M. S. Sullar, Advocate, for respondent No. 2.

JUDGMENT

S. P. Goyal, J.

(1) Some land belonging to Thakurdwara Kalan Talab Naurang Rai, Ambala City, was acquired by the State of Haryana. Dissatisfied with the compensation awarded by the Collector, Mahant Ram Narain Dass, respondent No. 2, got a reference made under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act). When the reference was at the stage of evidence in the Court of Additional District Judge, Ambala, the Trust Thakurdwara Kalan through its Vice-President Hit Abhilashi, moved an application under Order I, rule 10, Code of Civil Procedure, for being impleaded as a party praying that it was the Trust which only was entitled to manage the affairs of the Thakurdwara and also entitled to the

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compensation. The application was opposed by respondent No. 2 and the Additional District Judge, relying on a decision of this Court in *Niranjan Singh and others v. Amar Singh and others* (1), dismissed the same. Hence this revision petition by the Trust.

(2) At the outset, the learned counsel for the petitioner-Trust urged that as there is an apparent conflict between the two Single-Bench decisions of this Court in *Bagh Singh and others v. The Special Land Acquisition Collector, District Courts, Jalandhar and another* (2) and *Niranjan Singh's case* (supra) the case be referred to a larger Bench. Though seemingly there appears to be some difference of opinion so far as the applicability of the provisions of Order I, rule 10, Code of Civil Procedure, is concerned, but a close reading of the afore-said two decisions would show that they had been rendered on the peculiar facts of each case. In *Niranjan Singh's case* (supra) the dispute between one Amar Singh and the Gram Panchayat as to the title to the land was got referred under section 30 of the Act at the instance of the former. Niranjan Singh and some other persons moved an application under Order I, rule 10, CPC, to the Court for being impleaded as applicants or respondents, which was dismissed. Kang, J. upheld the order of the learned Additional District Judge with the following observations:—

“Proceedings before the Court on a reference made by the Collector under section 30 are of a special nature. The Court can take cognizance of the dispute regarding apportionment of compensation of the acquired land, only on a reference and the enquiry is confined to a dispute between certain parties. The Court cannot enlarge its scope by impleading others as parties. The persons who had not appeared before the Collector and staked any claim to compensation for the land, in dispute, and have not raised any grievance as to the apportionment of compensation in the award of the Collector, cannot come forward to join issue before the Court adjudicating on the reference.”

(1) A.I.R. 1984 Punjab and Haryana 250.

(2) 1984 P.L.R. 568.

(3) No doubt, the observations made in *Mt. Sakalbaso Kuer v. Brijendra Singh and others* (3), on the question whether a person, who never claimed any reference under section 30 of the Act, could be impleaded or not by the Court were disapproved, but the learned Judge never held that the provisions of Order I, rule 10, CPC, were not applicable or that, under no circumstances, any person could be impleaded as a party to the reference by invoking the said powers. In *Bagh Singh's case* (supra), a reference had been got made under section 18 of the Act for enhancement of the compensation by one of the co-sharers. Another co-sharer moved an application under Order I, rule 10, CPC, for being impleaded as a party to the reference, which was held competent by I. S. Tiwana, J., and the order of the trial Court declining the prayer, was reversed. The reasoning on which the application by the stranger was declined in *Niranjan Singh's case* (supra) obviously had no applicability on the facts of *Bagh Singh's case* (supra), as in the latter case the scope or nature of the reference was not going to be enlarged or changed in any manner by impleading another co-sharer as a party to the reference. Thus, there being no conflict in the two decisions on any question of law, the prayer for a reference to a larger Bench has to be declined.

(4) It is also not necessary for me in the present case to express any considered opinion whether *Niranjan Singh's case* (supra) was correctly decided. Here, the reference does not involve any question of apportionment and the only dispute referred to the Court was on the question of the market price of the land belonging to the Thakurdwara. If the question of apportionment between two persons had been referred under section 30 of the Act, it might have been possible for a third party to move an application under Order I, rule 10, CPC, for getting himself to be impleaded. But, it would not be possible to entertain such an application when the scope of the reference is confined to the proper market price only. The jurisdiction of the Court is confined to the reference made to it by the Collector under section 18 and it cannot enlarge its scope by invoking the provisions of Order I, rule 10, CPC. If a reference had involved a question of apportionment, a stranger, who did not move any application before the Collector, might, in a given case, be impleaded by invoking the powers under Order I, rule 10, CPC, to

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settle the dispute of apportionment finally but no such consideration would be available for impleading a third party in case like the present one which would necessarily result in the enlargement of the scope of the reference and would, in fact, introduce a new dispute not already covered by the reference. In spite of this distinction having been pointed out to the learned counsel for the petitioner, he could not produce even a single decision in which a third person's prayer for being impleaded was granted when the reference did not contain any question of apportionment of the compensation. In all the three decisions i.e. *Mt. Sakalbaso Kuer's case* (supra), *Bhadar Munda and another v. Dhuchua Oraon* (4) and *Kalarikkal Lakshmikutty Amma v. Kankath Vettolil Kanhirapally* (5), relied upon by him, the references related to apportionment between rival claimants and a third person, who claimed the right to receive compensation, was ordered to be impleaded as a party to settle the question finally. Consequently, so far as the present case is concerned, the petitioner, who never made any claim before the Collector under section 9 nor moved any application for a reference under section 30 of the Act to assert his right to receive the compensation as opposed to the persons who got the reference made under section 18 of the Act for enhancement of the compensation, would have no right to get himself impleaded as a party under Order I, rule 10, Code of Civil Procedure, and his right to receive compensation decided in that reference. This petition, therefore, must fail and is hereby dismissed but without any order as to costs.

R.N.R.

Before G. C. Mital, J.

MUNICIPAL COMMITTEE KHARKHODA,—Petitioner.

versus

BHIM SINGH,—Respondent.

Civil Revision No. 3489 of 1986.

March 2, 1987.

Code of Civil Procedure (V of 1908)—Sections 35-B, 148 and 151—Costs—Trial Court striking off defence for non-payment of costs—Defendant applying for recall of order and for enlargement

(4) A.I.R. 1970 Patna 209.

(5) A.I.R. 1973 Kerala 79.