

Harbans Lal and others v. Central Bank of India and others
(J. S. Sekhon, J.)

Commissioner-cum-Collector, U.T. Chandigarh, which was upheld in appeal, by the Excise and Taxation Commissioner, Chandigarh, are hereby quashed leaving the parties to bear their own costs.

S.C.K.

Before J. S. Sekhon, J.

HARBANS LAL AND OTHERS,—Petitioners.

versus

CENTRAL BANK OF INDIA AND OTHERS,—Respondents.

Civil Revision No. 1204 of 1988 and Civil Misc. No. 2225/2227-CII of 1988.

September 5, 1988.

Code of Civil Procedure (V of 1908)—Order 1, Rl. 10—Suit by bank for recovery by sale of mortgaged property—Defendant agreeing to sell mortgaged property in favour of third party—Third party undertaking to pay the bank dues—Application by third party for being impleaded as party to the suit—Validity of such claim.

Held, that the provisions of sub-rule (2) of rule 10 of Order 1 of the Civil Procedure Code, 1908 are clear enough to conclude that an addition of a party to a suit cannot be allowed unless such party is a necessary party or if the controversy in issue cannot be effectively and completely decided without impleading such party. It is also well settled law that the plaintiff is the dominus litis, i.e. master of the suit and he cannot be compelled to fight against a person against whom he does not wish to fight and against whom he does not claim any relief. In the case in hand, the plaintiff-Bank had not at all claimed any relief against the present petitioner. The petitioners cannot be said to be necessary party to the suit as they had simply entered into an agreement after the institution of the suit with the original debtor of the Bank to purchase the property in dispute which is admittedly under simple mortgage with the plaintiff Bank.
(Para 6)

Petition under Section 115 C.P.C. for the revision of the Order of the Court of Shri Surinder Gupta, Sub Judge, Amritsar dated 29th January, 1988 declining the application and further order to come up on 26th February, 1988 for replication and issues.

CIVIL MISC. NO 2225/C. II of 1988

Application under order 41 Rule 27 read with Section 151 C.P.C. praying that this Hon'ble Court may be pleased to allow to place on

record the documents Annexures P-1 to P-7 in the interest of justice.

CIVIL MISC. NO. 2227/C. II of 1988

Application under Section 151 C.P.C. praying that filing of certified copies of the documents Annexures P-1 to P-7 may kindly be dispensed with.

R. K. Joshi, Advocate, for the Petitioners.

S. C. Nagpal, Advocate, for the Respondents.

JUDGMENT

Jai Singh Sekhon, J.

(1) This revision petition is directed under the provisions of section 115 of the Code of Civil Procedure, against the order dated 29th January, 1988 of the trial Court dismissing the application of the petitioners for allowing permission to be impleaded as parties to the suit.

(2) Briefly stated, the facts are that Shri N. C. Kundu sole proprietor of the firm—M/s Bharat Rice Mills—defendant No. 1 took some loan from the plaintiff-Bank against a simple mortgage of the land measuring 10 Kanals along with the building/construction existing thereon. The machinery of the Rice Sheller was also hypothecated. Defendant No. 1 failed to repay the loan which resulted in the filing of the suit by the Bank for the recovery of Rs. 6,07,860.15 Paise by sale of the mortgaged land and hypothecated property. During the pendency of this suit, Harbans Lal, Vipin Kumar and Sohan Lal present petitioners filed an application under the provisions of Order 1 Rule 10 of the Civil Procedure Code for impleading them as party, contending that Shri N. C. Kundu, sole-proprietor of the defendant-firm had agreed to transfer the right title and interest in the above-referred concern to them after they had discharged the liability existing on the said concern in favour of the Central Bank of India, i.e. the plaintiff. This application was resisted by the plaintiff-Bank as well as by defendant No. 1. Defendant No. 1 also denied the execution or existence of agreement dated 26th September, 1986 executed by him in favour of the applicants. The trial Court dismissed this application of the petitioners by holding that they are neither necessary parties nor their

Harbans Lal and others v. Central Bank of India and others
(J. S. Sekhon, J.)

presence is essential for properly and completely adjudicating upon the controversy in issue.

(3) During the pendency of this petition, the petitioners have also filed Civil Misc. No. 2225/C. II/1988 for placing Annexure P-1 to P-7 copies of the alleged agreement etc. on the record, besides requesting through Civil Misc. No. 2227-C II/1988 for permission to place uncertified copies of these documents on the record. Notice of these applications was given to Shri S. C. Nagpal, learned counsel for the plaintiff-Bank. He had rightly not objected to the allowing of these applications as the same simply support the case of the petitioners set up in their application moved under the provisions of Order 1 Rule 10 of the Civil Procedure Code. Accordingly, these applications are allowed.

(4) On merits of the petition, Mr. R. K. Joshi, learned counsel for the petitioners, contended that the petitioners having undertaken to repay the loan to the Bank taken by defendant No. 1,—*vide* agreement Annexure P-1, dated 26th September, 1986, it cannot be said that the petitioners are not necessary parties to the suit and at least their presence is required for effectively and completely adjudicating the controversy in the present suit. He has also referred to annexure P-2 and Annexure P-3 showing the payments of Rs. 80,000 and Rs. 20,000 respectively to the Bank by Harbans Lal petitioner in the month of October, 1986, towards the instalment of the above-referred loan. Annexure P-4 was also relied upon in order to prove that Shri N. C. Kundu had undertaken to transfer the licence of the Rice Sheller as well as electric connection to the petitioners after the payment of the loan to the Bank. The balance-sheets, Annexures P-5 and P-6 were also filed besides a copy of the Challan of payment of income-tax as Annexure P-7. Reliance has also been placed on the observations made in *Naba Kumar Hazara and another v. Radhashyam Mahish and others* (1), *Punjab Co-operative Bank Ltd., Lahore v. Lyallpur Bank Ltd.* (2), *United Provinces v. Mt. Atiga Begum and others* (3), *Banarsi Dass Durga Parshad v. Panna Lal Ram Richhpal Oswal and others* (4), *Lakshmana*

-
- (1) AIR 1931 P.C. 229.
 - (2) AIR 1934 Lah. 328(1).
 - (3) AIR 1941 F.C. 16.
 - (4) AIR 1969 Pb. & Hy. 57.

Chetty v. M. S. Askar Ahmed and another (5) and *Surjit Kaur and others v. Chand Singh and another* (6).

(5) The learned counsel for the respondent-Bank on the other hand, resisted this revision petition, contending that the same land is also under simple mortgage with the Bank against a loan advanced by it to M/s Northern India Flour Mill Ltd. through Shri N. C. Kundu, defendant No. 2 in the present case. He further supported the impugned order of the trial Court, contending that the petitioners were neither necessary party nor their presence was required for effectively and completely adjudicating the controversy.

(6) The provisions of sub-rule (2) of Rule 10 of Order 1 of the Civil Procedure Code are clear enough to conclude that an addition of a party to a suit cannot be allowed unless such party is a necessary party or if the controversy in issue cannot be effectively and completely decided without impleading such party. It is also well settled law that the plaintiff is the *dominus litis*, i.e. master of the suit and he cannot be compelled to fight against a person against whom he does not wish to fight and against whom he does not claim any relief. Justice R. S. Sarkaria of this Court (as he then was) in *Banarsi Dass's case* (supra) after elaborate discussion had supported the above referred view. In the case in hand, the plaintiff-Bank had not at all claimed any relief against the present petitioners. The petitioners cannot be said to be necessary party to the suit as they had simply entered into an agreement after the institution of the suit with the original debtor of the Bank to purchase the property in dispute which is admittedly under simple mortgage with the plaintiff-Bank. Simply because, in the agreement to sell, Annexure P-1, the petitioners had undertaken to repay the loan of the plaintiff-Bank or that the petitioners had paid Rs. 1,00,000,—*vide* Annexure P-2 and Annexure P-3 towards the said loan to the plaintiff-Bank or that the petitioners are running the concern of defendant No. 1 or that they had made improvements in the construction and installation of machinery on the premises of defendant No. 1, it cannot be said that the plaintiff-Bank is bound by the mutual arrangements between defendant No. 2 and the petitioners. Thus, under these circumstances, it appears that the Bank had rightly opposed the impleading of the prospective vendees of the mortgaged property as defendants. Even if possibility of collusion

(5) AIR 1978 Mad. 310.

(6) 1984 R.L.R. 158.

Harbans Lal and others v. Central Bank of India and others
(J. S. Sekhon, J.)

between the plaintiff-Bank and defendant No. 2 to defeat the interest of present petitioners in running the business of defendant No. 1 cannot be ruled out, but that in itself is not a good ground to allow the prospective vendees to be impleaded as a party to the suit. The prospective vendees are at liberty to pay the entire amount of loan to the Bank if they intend to do so as contended by their counsel at the bar as well as in the Grounds of Revision. It appears that the plaintiff-Bank had rightly opposed the application of the prospective vendees to be impleaded as a party in the suit for recovery of the above referred amount by sale of the mortgaged land as this very property is under mortgage for securing another loan taken by defendant No. 2 on behalf of the Northern India Flour Mills.

The observations of the Privy Council in *Naba Kumar's case* (supra) relied upon by the learned counsel for the petitioners are of no help to their case as in that case the request for joining some necessary parties made at a late stage of the proceedings was disallowed on the ground that it would necessitate a commencement of the proceedings *de novo*.

The controversy before the Lahore High Court in *Punjab Co-operative Bank's case* (supra) was whether the Bank under liquidation being a proper party should be allowed to join as a defendant in a suit based on a pronote in favour of the liquidator-Bank but endorsed in favour of another. The suit was filed by the endorsee against the original debtor. Under these circumstances, it was held that the Bank in liquidation is a proper party, even though no relief could be granted against the Bank under liquidation. Thus, it has no application to the facts of the present case.

In *United Provinces' case* (supra) before the Federal Court the controversy related to the impleading of Advocate General of the Province as a party in a suit involving the validity of a statute reflecting upon the executive competency of the Provincial Government. It was held under these circumstances that the controversy in the suit cannot be effectively and completely decided without impleading the State through Advocate General as a party. Thus, the above referred observations are of no help to the petitioners as the same are not applicable to the facts of the present case.

The view taken by the Madras High Court in *Lakshmana Chetty's case* (supra) that in a suit on the basis of the promissory

note by assignee—assignor—original payee is a proper party, is of no help to the petitioners in the present case.

The findings of this Court in *Surjit Kaur's case* (supra) relied upon by the petitioners, are also not attracted to the facts of the case in hand, as on facts it was found that the party sought to be impleaded had a direct interest as distinguished from the commercial interest, in the subject-matter of the litigation, in that case Daulat Singh had set up a case to the disputed property of Chand Singh defendant, on the ground that the latter had gifted away the property to him, besides adopting him as a son. Under these circumstances, it was held that in a suit for declaration filed by the plaintiff regarding the ownership of the disputed property belonging to Chand Singh, wherein the latter had admitted the claim of the plaintiff, the adopted son of the latter was a necessary party. Reliance in that case was placed on the findings of the Supreme Court in *Razia Begum v. Sahebzadi Anwar Begum and others*, (7), wherein, in turn, it was held that in a dispute relating to the property, the party sought to be impleaded should have direct interest in the subject-matter of the litigation and not only a commercial interest. In the instant case also, the prospective vendees had a commercial interest in the subject-matter of the litigation only and not a direct interest because there are so many hurdles to be crossed they would be able to purchase the property and become owners thereof.

For the foregoing reasons, it cannot be said that the trial Court had wrongly dismissed the application of the petitioners for being impleaded as a party. Consequently, this petition fails and is hereby dismissed but the parties are left to bear their own costs.

S.C.K.

Before : G. C. Mital and K. S. Bhalla, JJ.

KARNAIL SINGH,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 4797 of 1987.

September 15, 1988.

Punjab Land Reforms Act (X of 1973)—Sections 8 and 9—Land declared surplus—Possession, however, taken after death of land-owner and land allotted to tenant for resettlement—Effect of death on

(7) AIR 1958 S.C. 886.