

(3) Consequently, this petition succeeds; the impugned order is set aside and the application for bringing on record the legal representatives is allowed. Since further proceedings were stayed at the time of motion hearing by this Court, the parties are directed to appear in the trial Court on September 4, 1989.

(4) Since the suit was filed in the year 1985, it is directed that the parties will lead their evidence at their own responsibility for which one opportunity be given to each party. However, dasti summons may be given, if so desired, as contemplated under Order 16, Rule 7-A, C.P.C.

S.C.K.

Before : J. V. Gupta, J.

DHARAM SINGH AND ANOTHER,—*Petitioners.*

versus

ADDU RAM AND OTHERS,—*Respondents.*

Civil Revision No. 1811 of 1988.

11th August, 1989.

Code of Civil Procedure (V of 1908) O. 1 Rl. 10—Impleading of parties—Applicants having same interest as Plaintiffs—Whether such applicants can be impleaded as defendants.

Held, that added Defendants could file a separate suit to establish their right, if any, in the suit property. In any case, at this stage it is directed that either the said defendants be impleaded as plaintiffs if the plaintiffs have no objection and if they cannot be impleaded as plaintiffs, they be directed to file a separate suit. In the present suit they could not be allowed to take up the defence which effects the rights of defendants 1 and 2.

(Para 4)

Petition Under Section 115 C.P.C. for revision of the order of the Court of Shri Balbir Singh, H.C.S., Addl. Senior Sub Judge, Bhiwani dated 16th May, 1988 dismissing the application filed by defendants No. 1 and 2 and ordering that the case is adjourned to 20th May, 1988, for filing replication.

Claim : Suit for declaration that the General Power of Attorney No. 59 registered on 13th May, 1983 by plaintiff in favour of defendant No. 1 is wrong, against law and facts and is based upon fraud and is not binding on the rights of the plaintiff and the registered Patta Nama dated 6th June, 1983 in favour of defendant No. 2 by

Dharam Singh and another v. Addu Ram and others (J. V. Gupta J.)

defendant No. 1 on the basis of wrong, against fact, null and void general Power of Attorney, is wrong, against law and facts on record, null and void and not binding on the rights of the plaintiff and suit for injunction restraining the defendants 1 and 2 from interfering in the possession of the land in dispute and or taking illegal and forcible possession or interfering in the crops shown in the land comprised in Khasra and Killa No. situated in village Mandholi

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|-----------|----|------------|--------|----------|
| 4 | | 3 | | |
| 7/1(3—4) | | 9—3/2(5—0) | 8(7—8) | |
| 3 | | 1 | | 3 |
| 13(6—14) | Or | 17(2—8) | Or | 1/1(6—0) |
| 3 | | 3 | | 4 |
| 11(7—11), | Or | 12(7—11) | Or | 10(8—0) |
| | | | Or | 6(6—16) |

Khurd Teh. Siwani Distt. Bhiwani,—vide Mutation No. 1013 sanctioned on 31st May, 1981 on the basis of wrong, against law General Power of Attorney and Patta Nama and for restraining the defendant No. 1 from transjering the land or any part thereof on the basis of wrong and illegal General Power of Attorney and for taking any action on behalf of the plaintiff on the basis of illegal General power of Attorney and for restraining defendant 1 and 2 from implementing the Patta Nama in the Revenue Record on the basis of wrong illegal and against facts Patta Nama and restraining defendant No. 2 from sanctioning Mutation of Patta Nama by way of evidence oral and documentary.

Claim in Revision : For reversal of the order of the Lower Court.

Mani Ram, Advocate, for the Petitioner.

None, for the Respondents.

ORDER

J. V. Gupta, J.

(1) This revision petition is directed against the order of the trial Court, dated May 16, 1988, whereby the application filed on behalf of the defendants seeking permission to file reply to the written statement filed on behalf of the added defendants 3 to 8 was declined.

(2) Earlier the trial court,—*vide* its order, dated February 4, 1988, allowed the application filed under Order 1, Rule 10, CPC, on behalf of defendants 3 to 8. That application was not contested by the plaintiff, but rather was opposed by the defendants. However, the trial Court allowed the same. When they filed the written statement, defendants 1 and 2 sought permission to file reply to their written statement, which has been declined by the trial Court by the impugned order. According to the trial Court, there was no provision for allowing the defendants to file replication to the written statement.

(3) Learned counsel for the petitioners submitted that as a matter of fact the earlier order allowing the application filed under Order 1, Rule 10, CPC, dated February 4, 1988, itself was wrong and illegal. Defendants 3 to 8 should have been impleaded as plaintiffs if at all because they were claiming certain rights in the suit along with the plaintiff and that is why the plaintiff never opposed the said application. However, argued the learned counsel, in case they were added as defendants and were allowed to file their written statement, defendants 1 and 2 should have been allowed to file reply thereto.

(4) After hearing the learned counsel, I am of the considered view that the earlier order dated February 4, 1988 was not warranted. Defendants 3 to 8 could file a separate suit to establish their right, if any, in the suit property. In any case, at this stage it is directed that either the said defendants be impleaded as plaintiffs if the plaintiffs have no objection and if they cannot be impleaded as plaintiffs, they be directed to file a separate suit. In the present suit they could not be allowed to take up the defence which effects the rights of defendants 1 and 2.

(5) Consequently, this petition succeeds; the order dated February 4, 1988, as well as the impugned order dated May 16, 1988, are set aside. Defendants 3 to 8 may be added to plaintiffs if the plaintiff has no objection and in that case the defendants Nos. 1 and 2 will be entitled to file their written statement to the plea taken by the added plaintiffs. In case, the plaintiff does not agree, in that situation, defendants Nos. 3 to 8 will be directed to file a separate suit. The petition is disposed of accordingly.

S.C.K.