

REVISIONAL CIVIL

*Before H. R. Sodhi, J.*MANMOHAN SINGH,—*Petitioner.**versus*SAT NARAIN ETC.,—*Respondents.***Civil Revision No. 465 of 1970**

December 2, 1970.

Code of Civil Procedure (V of 1908)—Section 115 and Order 1 rule 10—Order of addition of a new party in a suit—Revision against—When lies—Order 1 rule 10—Object and scope of—Stated.

Held, that the question of addition of parties under Order 1 rule 10 of the Code of Civil Procedure, is generally one of judicial discretion but there may be cases where the controversy centres around the power of the Court and, in such a case, a question of jurisdiction in the limited sense in which the expression is used in section 115 of the Code may arise. Judicial discretion has to be exercised for administering justice according to law and a capricious, perverse, unwarranted or unreasonable exercise thereof may in a particular case amount on the part of the Court to have acted in the exercise of its jurisdiction illegally or with material irregularity within the meaning of said section 115. Where the power under Order 1 rule 10 is exercised as to lead to misjoinder of the parties or to result in bringing in altogether a new cause necessitating a fresh and collateral inquiry wholly irrelevant for the disposal of the suit to which a person is sought to be impleaded, it will be a fit case for the exercise of revisional powers by the High Court under section 115 of the Code. (Para 5).

Held, that the object of Order 1 rule 10 is not to change the scope and character of the suit by adding new parties or to enable them to litigate their own independent claims but simply to help them to avoid litigation which might otherwise become necessary. What has to be seen is that the addition of a new party is consistent with the scope of the inquiry as necessitated in the suit and that the presence of such a party is necessary to completely and effectively dispose of the controversy in the pending suit and not that some other suit may be avoided. Moreover, the plaintiff is the *dominus litus* and it is he who is to run the risk of consequences of not adding a necessary or proper party. However, it cannot be laid down as a rule of law that in no case a person can be impleaded as a defendant against the wishes of the plaintiff. There might arise cases where the Court feels that in spite of the opposition of the plaintiff it is necessary to add a person as defendant since in the absence of that person it finds itself helpless and unable to effectively and completely settle the matter in controversy and that its failure to do so will lead to multiplicity of proceedings.

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The balance has, therefore, to be struck by the Court in each case by making a sound judicial approach. (Para 5).

Petition under Section 115 of Civil Procedure Code for revision of the order of Shri Madan Lal Single, Sub-Judge 1st Class, Fazilka, dated 26th May, 1970, permitting Shri J. R. Aggarwal, an Advocate of Jullundur, to be impleaded as a defendant in the suit.

M. M. PUNCHHI, ADVOCATE, for the petitioner.

H. L. SARIN, ADVOCATE, for Respondent No. 2 only.

JUDGMENT

H. R. SODHI, J.—(1) This revision petition filed by the plaintiff under section 115, Code of Civil Procedure, is directed against the order of the Subordinate Judge, 1st Class, Fazilka, who permitted Shri J. R. Aggarwal, an Advocate of Jullundur, to be impleaded as a defendant in the suit. The plaintiff is also an Advocate at Jallalabad.

(2) It is alleged that Sat Narain, defendant respondent 1, executed an agreement to sell a vacant plot of land situate in Jallalabad, district Ferozepur, in favour of the plaintiff-petitioner on 13th June, 1964, for an ostensible consideration of Rs. 5,500 out of which Rs. 4,500 were received by him in cash as earnest money and the balance was to be paid at the time of the registration of the sale-deed after meeting the incidental expenses. It may be mentioned that the plot in question was an evacuee property which had been purchased by Sat Narain defendant at an auction sale but he had not obtained the sale certificate when the agreement to sell was entered into. The deed of conveyance by the Rehabilitation Department is supposed to have been executed in his favour on 27th December, 1968, and about two months before that, on 29th October, 1968, he is said to have entered into an other contract for sale of the same property in favour of Shri J. R. Aggarwal and received Rs. 5,500.

(3) On the failure of defendant Sat Narain to execute the sale-deed, the plaintiff instituted the present suit on 26th February, 1969, for specific performance of the contract to sell as made in his favour on 13th June, 1964. During the pendency of the suit, Shri J. R. Aggarwal made an application under Order 1, rule 10, read with section 151, Code of Civil Procedure, on 25th December, 1969, for being impleaded as a defendant, it being pleaded that his presence

was necessary before the Court to enable it to effectively and firmly adjudicate on the questions involved in the suit. The trial Court by its order passed on 26th May, 1970, allowed the application and directed Shri Aggarwal to be brought on the record as a defendant herein-after called as defendant 2. The sole basis for allowing the application of this defendant was that there was an agreement in his favour which rendered him a proper party to the suit, if not a necessary party, and that his presence would enable the Court to decide the questions arising in the suit more effectively and firmly. It is this order that is now being challenged in the present revision petition.

(4) After hearing the learned counsel for the parties, I am of the view that it is a fit case where the revisional powers of this Court should be exercised in order to set aside the impugned order.

(5) A preliminary objection has been taken by Mr. H. L. Sarin, learned counsel for defendant 2, that no revision is competent and in support of his contention he relies upon three judgments of their Lordships of the Supreme Court reported as *Razia Begum v. Saheb-zadi Anwar Begum and others* (1), *Chaube Jagdish Prasad and another v. Ganga Prasad Chaturvedi* (2), and *Pandurang Dhondi Chougule and others v. Maruti Hari Jadhay and others* (3). No doubt, as observed by their Lordships in *Razia Begum's case* (1), the question of addition of parties under Order 1 rule 10 of the Code of Civil Procedure, is generally one of judicial discretion but it equally follows from these observations that there may be cases where the controversy centres around the power of the Court and, in such a case, a question of jurisdiction in the limited sense in which the expression is used in section 115 of the Code may arise. Judicial discretion has to be exercised for administering justice according to law and a capricious, perverse, unwarranted or unreasonable exercise thereof may in a particular case amount on the part of the Court to have acted in the exercise of its jurisdiction illegally or with material

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

(2) A.I.R. 1959 S.C. 492.

(3) A.I.R. 1966 S.C. 153.

irregularity within the meaning of said section 115. This power is not intended to be so exercised as to lead to misjoinder of the parties or to result in bringing in altogether a new cause necessitating a fresh and collateral inquiry wholly irrelevant for the disposal of the suit to which a person is sought to be impleaded. The matter of determination of a question as to who is a necessary or proper party for the purposes of Order 1 rule 10 of the Code, is regulated by set legal principles. Their Lordships in *Razia Begum's case* (1), have observed that "in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation". The Court has to form an opinion on the facts and circumstances of each case keeping in view the nature and character of the suit and the point involved therein whether the case, as originally laid before it, cannot be effectively and completely disposed of without having before it the person who seeks to be impleaded or is desired by any of the parties to be so impleaded. It must be borne in mind that by adding a new party, the nature of the original suit is not to be altered. The object of Order 1 rule 10 is not to change the scope and character of the suit by adding new parties or to enable them to litigate their own independent claims but simply to help them to avoid litigation which might otherwise become necessary. What has in other words, to be seen is that the addition of a new party is consistent with the scope of the inquiry as necessitated in the suit and that the presence of such a party is necessary to completely and effectively dispose of the controversy in the pending suit and not that some suit may be avoided. The other well established rule namely that the plaintiff is the *dominus litus* can also not be lost sight of as after all it is he who is to run the risk of consequences of not adding a necessary or proper party. At the same time, it cannot be laid down as a rule of law that in no case a person can be impleaded as a defendant against the wishes of the plaintiff. There might arise cases where the Court feels that in spite of the opposition of the plaintiff it is necessary to add a person as defendant since in the absence of that person it finds itself helpless and unable to effectively and completely settle the matter in controversy and that its failure to do so will lead to multiplicity of proceedings. The balance has, therefore, to be struck by the Court in each case by making a sound judicial approach and where it fails to do so, a revision to this Court under section 115 of the Code of Civil Procedure, is maintainable.

(6) In the instant case, the relief sought was of specific performance against defendant 1 on the basis of agreement to sell alleged to have been executed in favour of the plaintiff. The mere fact that another agreement has also been subsequently made by the same prospective seller in favour of another person is of no significance. Defendant 2 who claims to have a contract of sale in respect of the same property executed in his favour subsequent to the earlier contract in favour of the plaintiff has no interest in or charge on that property. As a matter of fact, an agreement itself creates no such charge and there is no legal right which could possibly be adjudicated in the present suit. A subsequent purchaser of property may have an interest in the property and his presence might be necessary as specific performance of the contract of sale may have to be ultimately obtained against him he being the successor-in-interest of the seller, but no such question arises when there is merely an agreement to sell. Defendant-respondent 2, if he had any remedy under law, could enforce the same in a separate suit and his presence before the Court in the suit for specific performance founded on an earlier agreement to sell was neither necessary nor proper. It would have only led to misjoinder of parties.

(7) Mr. Sarin concedes that defendant-respondent 2 was not a necessary party but vehemently urges that he was a proper party and in this connection relies on *Ram Krishna Sardar v. Sree Kanta Mondal and others* (4), and *Ram Swarup Singh v. Mahabir Mahton and another* (5). Facts in *Ram Krishna Sardar's case* (4), are quite different and there is not the remotest semblance of similarity of that case with the one in hand. A contract to sell land had been executed there but later the vendor in conjunction with his son sold a part of that land in contravention of the contract to some other person. A suit for specific performance of the contract was instituted and during the pendency of that the father died. An application was made to implead the son as a party. The son objected that he could not be made a party to the suit as he held the land under different title from that of his father and the performance of contract was not maintainable against him. The nature of interest of the son had indisputably to be ascertained in the case in order to enforce the contract against him and it was in these circumstances that the learned Judges held that the son was not only a proper but a necessary party. The plaintiff in the case before us is not seeking any enforcement of contract against defendant 2 and the reasoning in *Ram Krishna Sardar's case*

(4), is thus wholly inapplicable. In *Ram Sarup Singh's case* (5), a suit for specific performance of a contract of sale in regard to certain immovable property was filed. After the execution of the contract, the vendor sold the same property by a registered sale-deed to one Amrit Lal Sahu. In such a situation, Shib Chandra Prasad, J., held that since the contract could be enforced either against a party to the sale or any other person claiming under him by a title arising subsequent to the contract, it was necessary for the prior purchaser to implead the subsequent purchaser in a suit for specific performance. A decree passed in favour of the prior purchaser was bound to affect the subsequent purchaser's right in the property in whose favour a regular registered sale-deed had been executed. The prior purchaser had indeed a cause of action against a subsequent purchaser and it was, therefore, necessary to implead the latter. No such question arises in the present case. There is only an agreement to sell in favour of defendant 2 which creates no right, title or interest in the property as distinguished from a sale.

(8) No other decided case has been cited before me by the learned counsel.

(9) I must, therefore, hold that Shri Aggarwal was neither a necessary nor a proper party. The trial Court must proceed with the suit. It is needless to mention that this defendant can, of course, pursue any legal independent remedy as may be available to him to enforce his rights arising under the contract of sale made in his favour but he cannot be allowed to join this litigation as initiated by the plaintiff on the strength of an earlier agreement of sale in his favour.

(10) In the result, the revision petition is allowed and the order of the trial Court impleading Shri J. R. Aggarwal as defendant 2 in the suit set aside with no order as to costs.

N. K. S.

(4) A.I.R. 1929 Cal. 667.

(5) A.I.R. 1960 Patna 235.