

Manoj Kumar Singh Vs Smt. Susheela Thakur and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 4, 2011

Acts Referred: Civil Procedure Code Amendment Act, 1976 & Order 1 Rule 10A, Order 2 Rule 1
Constitution of India, 1950 & Article 227

Hon'ble Judges: Ram Chand Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ram Chand Gupta, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order

dated 29.1.2011, Annexure P3, passed by learned Civil Judge, Junior Division, Gurgaon, vide which learned trial Court has dismissed the

application filed by Petitioner-applicant under Order I Rule 10 of the CPC (hereinafter to be referred as "the Code") for impleading him as a party

in the suit.

2. I have heard learned Counsel for the Petitioner and have gone through the whole record carefully including the impugned order passed by

learned trial Court.

3. Brief facts relevant for the decision of present revision petition are that a suit for possession by way of ejectment and for recovery of rent was

filed by Respondent No. 1-Plaintiff against Respondent No. 2-Defendant on the brief allegations that Respondent No. 1 is owner of shop in

dispute by way of purchase from previous owner Sh.S.K. Gupta and that the same was rented out to Respondent No. 2 on monthly rent of Rs.

8,400/-vide agreement dated 1.4.2003 and that tenancy was terminated vide notice dated 11.9.2006. Suit was contested by Respondent No. 2

by filing written statement. During pendency of the said suit, the present application under Order I Rule 10 of the Code was filed by present

Petitioner-applicant for impleading him as a party in the suit by taking the plea that he alongwith Respondent No. 2 was a co-tenant in the premises

in dispute under previous owner Sh.S.K. Gupta and hence, he is a necessary party to be impleaded in this case. The application was contested by

Respondent-Plaintiff and hence, the same was dismissed by learned trial Court vide impugned order by observing as under:

By way of the present suit, the Plaintiff is seeking decree of possession by way of ejectment of Defendant who is admittedly the tenant of the

Plaintiff. The Plaintiff has placed reliance on rent agreement dated 1.4.2003. Perusal of the same reveals that the same was executed between

Plaintiff Sushila and Defendant Anita and the present applicant was not party to the said agreement. Moreover, the Defendant has failed to show

any of the rent agreement in which the present applicant was also a tenant with the Plaintiff over the suit property. Learned Counsel for the

applicant has placed reliance on receipt Mark 1 to Mark 13. However, these receipts have not been proved and they also do not reflect that they

were issued for the purposes of payment of rent as regards the present suit property. Moreover the Plaintiff is dominus litus and he has right to

implead proper party. The present applicant cannot be directed to become a party in the suit as no relief against the present applicant is claimed by

the Plaintiff. Moreover, it has also not been shown by the applicant that he is necessary party to the present suit. Reliance in this regard is placed

on the following authority:

Smt. Meera Rani and Ors. v. Ghanshyam Sharma 2008 (2) CCC 751 (MP); Ranbir Singh v. Ran Singh 2006(3) CCC 45 (P&H).

Ld. counsel for applicant has also relied upon Krishan Lal and Anr. v. Sudesh Kumari 1998(1) PLR 514 (P&H) to support his contention. There

is no dispute as regards the authority of Hon"ble Punjab and Haryana High Court, however, the same is not applicable to the facts of the present

case. Thus, the present application under Order 1 Rule 10 of the CPC is hereby dismissed.

4. It has been contended by learned Counsel for the Petitioner that rule of do minus litus is not an absolute rule and that the present Petitioner being

co-tenant with Respondent No. 2 under previous owner is a necessary party to be imp ledged in this case. He has also placed reliance upon

judgment rendered by a coordinate Bench of this Court in Smt. Vidya Devi v. Shruti Choudhry and others 2009(5) RCR 751, wherein on the

peculiar facts and circumstances of the case, it was observed as under:

11. Considering the aforesaid facts, where Smt. Kiran Chaudhary is the only one who has not been imp ledged as party to the suit filed for claiming

inheritance to the property left by late Ch. Bansilal and late Ch. Surender Singh and also the fact that in the counter claim filed by the Petitioner-

Defendant No. 6, relief has been sought not only against Respondent No. 1-Plaintiff but also Smt. Kiran Chaudhary, her mother. Further nothing

having been shown as to in what manner Smt. Kiran Chaudhary will be prejudiced in case she is also imp leaded as party in the litigation for the

decision of the lis, in my opinion, she would be proper and necessary party to be imp leaded in the suit. Still further, the Plaintiff is a do minus litus

in the suit filed by her and not absolute rule. Reference to a judgment of this Court in Gram Panchayat Garhi Vs. Dharambir and Others, may also

be appropriate at this stage, wherein it was opined that the Plaintiff is do minus litus of the suit is not an absolute rule. The law intends and has

actually provided for exceptions. One of the tests is that by imp leading a party, the lis can be adjudicated upon effectively and completely. The

relevant passage there from is extracted below:

The Code of CPC provides as to how a suit has to be instituted and how would it end. The Code provides thread of continuity, which would

regulate various stages of the suit. In other words, the intention of the legislation must and has to be gathered from the various provisions of the

Code read collectively and in conjunction with each other. Whereas Order 1, Rules. 1 and

3 of the Code provides who are the persons who would be joined as Plaintiffs and/or Defendants. Rule 10 gives power to the Court to add parties

and Rule 8-A gives right to a party to approach the Court for being imp leaded as a party, if the applicant has an interest in any question which

directly and substantially arise in the suit. The provisions regulating impediments of necessary and proper parties, whose presence is necessary

before the court for proper and final adjudication must be construed in a wider perspective as the provisions of Order 2, Rule 1 of the Code

clearly indicate that every suit, as far as practicable, be framed so as to afford grounds for final decision upon the subjects in disputes and to

prevent further litigation concerning them. To hold that avoidance of multiplicity of litigation in regard to the same subject matter is not even relevant

factor while considering the application for impediments, to my mind, would be an approach not in line with the spirit of the procedural law.

In order to have a pervasive and baroque approach to the provisions of the Code which would be also in consonance with the scheme of the

Code, would be to read the provisions of Order 1 and other effecting provisions of the Code. Collectively rather than to read and construe Order

1 Rule 10 of the Code in abstract or isolation. Interpretation of construction of procedural laws or provisions related thereto must be read to

achieve the ends of justice which is an indispensable object of basic rule of law. With the modern development in all spheres of life the courts must

mould the procedural laws to further the cause of expeditious disposal and determination of all questions in one proceedings, if permissible in law,

rather than to direct the parties to create multiplicity of litigation.

Without being innovative and primarily on reiteration of the settled principles and in a derivative manner, it is possible to indicate certain factors

which may be considered by the Court while determining such a question:

(a) Whether the applicant is a necessary and proper party keeping in view the facts and circumstances of the case ?

(b) Whether presence of such a party before the Court is necessary for effectively and completely adjudicating the matter and granting a complete

and effective decree to the party entitled to?

(c) Whether such a party interested would be directly affected as a result of culmination of such persons into decree or it would only be effected

remotely, indirectly and distantly? In addition to above, where the Court considers the presence of a party necessary for proper and complete

adjudication, then it may well be considered relevant whether non-impediments of such a party would result in avoidable multiplicity of litigation,

then effort should be to imp lead a party rather than to force the party to go to a fresh litigation. The above principles are not exhaustive but are

merely indicating what may be considered by the Court in addition to such consideration, which may be appropriately considered relevant by the

Court, keeping in view the facts and circumstances of a given case. The Legislature intend to provide an effective protection to a party who may be

affected by the questions to be determined by a Court in a suit or proceedings and to have complete adjudication, is clear from the introduction of

Rule 10-A in Order 1 of the Code vide CPC Amendment Act, 1976.

12. Any party who can reasonably be affected with the pending litigation or decision therein is a necessary and property party, it should be imp

leaded.

5. In the present case, Petitioner is real brother of Respondent No. 2. The present suit has been filed by Respondent No. 1 against Respondent

No. 2 by taking the specific plea that the premises in dispute was rented out by her to Respondent No. 1 vide rent agreement dated 1.4.2003 after

construction of the property in dispute was completed and that her tenancy has since been terminated by her after serving a notice dated

11.9.2006 and hence, she has sought possession of premises in dispute from Respondent No. 2. She is not seeking possession from present

Petitioner on the plea that he is not co-tenant with her sister under her or under the previous owner. Present applicant in order to rebut rent

agreement dated 1.4.2003 executed between both the Respondents has placed reliance upon rent receipts Mark 1 to Mark 13. However, learned

trial Court has rightly observed that on bare perusal of the said rent receipts, it cannot be said that the same pertain to the property in dispute.

6. Plaintiff is dominus litus. He is master of his own case. Hence, he cannot be compelled to seek relief of possession from present Petitioner when

according to him, he is having no cause of action against him. Smt. Vidya Devi's case (supra) is not applicable to the facts of present case.

7. Hence, in view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned trial Court

in passing the impugned order and that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

8. Moreover, law is well settled in Surya Dev Rai v. Ram Chander Rai and Ors. 2004(1) RCR 147 that mere error of fact or law cannot be

corrected in the exercise of supervisory jurisdiction by this Court. This Court can interfere only when the error is manifest and apparent on the face

of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and that a grave injustice or gross failure of

justice has occasioned thereby.

9. Hence, the present revision petition is, hereby, dismissed being devoid of any merit.