

Amit Sood Vs Sandala

Court: High Court of Himachal Pradesh

Date of Decision: Nov. 5, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 1 Rule 10

Hon'ble Judges: Rajiv Sharma, J

Bench: Single Bench

Advocate: Dheeraj K. Vashista, Advocate for the Appellant; Rakesh Kumar Thakur, Advocate for the Respondent

Judgement

Rajiv Sharma, J.

This petition is instituted against the order passed by the learned Civil Judge (Sr. Divn.) Court No. 1, Amb, Distt. Una, in case No. 33 of 2006 passed on 3.3.2014.

2. Key facts, necessary for the adjudication of this petition are that the respondents-plaintiffs (hereinafter referred to as the plaintiffs for

convenience sake) have filed a civil suit for issuance of permanent injunction restraining the respondents-defendants No. 3 to 7 (hereinafter referred

to as the defendants) from raising any sort of construction, changing the nature and dismantling or damaging any room/building existing over the

land measuring 1409-33 sq. decimeters, comprised in Khewat No. 257 Khatoni No. 397, Khasra Nos. 1914/1718, 1916/1719, 1848, 1849,

1850, 1851, 1852 and 1853, as per jamabandi for the year 1999-2000, situated in Up-Mohal Dev Nagar, Mauja Gagret, Tehsil Amb, District

Una, H.P. Defendants No. 3 to 7 have also filed a suit against the plaintiffs, namely, Sandla Devi and Shivi Sud for separate possession by partition

of the share of abadi site measuring 1409-33 sq. decimeters bearing Khewat No. 257 min, Khatoni No. 397, Khasra Nos. 1914/1718,

1916/1719, 1848, 1849, 1850, 1851, 1852 and 1853, as per jamabandi for the year 1999-2000. The petitioners have also filed suit for

declaration against the plaintiffs as well as the defendants.

3. The suit has been instituted by the plaintiffs against defendants No. 3 to 7 in the year 2004. The petitioners have moved an application under

Order 1 Rule 10 CPC for impleadment as defendants. The application was resisted and contested by the plaintiffs as well as defendants by filing

replies. The Court has already noticed that the Civil Suit No. 145 of 2004 was filed by the plaintiffs for permanent injunction restraining the

defendants No. 3 to 7 from raising any sort of construction, changing the nature and dismantling or damaging any room/building existing over the

land denoted in the plaint. Defendants No. 3 to 7 have also filed the suit against the plaintiffs for partition. These two suits have been clubbed. The

petitioners have filed the suit No. 33 of 2007 for declaration of their title on the suit land by challenging right, title or interest of plaintiffs and

defendants. Infact, the petitioners are challenging the title of the plaintiffs as well as the defendants over the suit land. The learned Civil Judge (Sr.

Divn.), Court No. 1, Amb has rightly come to the conclusion that even after the partition of the suit land between the plaintiffs and defendants, they

would be bound by the judgment and decree in Civil Suit No. 33 of 2007 filed by the petitioners. Mr. Dheeraj K. Vashista, Advocate, has failed

to convince the Court as to what prejudice would be caused to the petitioners if they are not permitted to participate in the suit for injunction and

partition filed by the plaintiffs and defendants against each other. The application has been filed under Order 1 Rule 10 CPC belatedly. The act of

allowing the application filed by the petitioners, at this belated stage for impleadment, would amount to relegate the parties to 2004 position.

4. The presence of petitioners is not necessary to adjudicate upon the real controversy inter se the parties. The considerable prejudice would be

caused to the existing parties if the petitioners are ordered to be added as new party.

5. Their lordships of the Hon"ble Supreme Court in the case of Kasturi Vs. Iyyamperumal and Others, , have laid down the following test for

impleadment under Order 1 Rule 10 CPC:

11. As noted herein earlier, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a

proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific

performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific

performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in

a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the

person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically

converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said

to be necessary at all. Lord Chancellor Cottenham in Tasker v. Small, 1834 (40) English Report 848 made the following observations:

It is not disputed that, generally, to a bill for a specific performance of a contract for sale, the parties to the contract only are the proper parties:

and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court

assumes jurisdiction in such cases, because a Court of law, giving damages only for the non-performance of the contract, in many cases does not

afford an adequate remedy. But, in equity, as well as in law, the contract constitutes the right and regulates the liabilities of the parties: and the

object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should

be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise

out of it are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it.

15. As discussed herein earlier, whether respondent Nos. 1 and 4 to 11 were proper parties or not the governing principle for deciding the

question would be that the presence of respondent Nos. 1 and 4 to 11 before the Court would be necessary to enable it effectually and completely

to adjudicate upon and settle all the questions involved in the suit. As noted herein earlier, in a suit for specific performance of a contract for sale,

the issue to be decided is the enforce-ability of the contract entered into between the appellant and the respondent Nos. 2 and 3 and whether

contract was executed by the appellant and the respondent Nos. 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and

willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against

the respondent Nos. 2 and 3. It is an admitted position that the respondent Nos. 1 and 4 to 11 did not seek their addition in the suit on the strength

of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on

independent title and possession of the contracted property. It is, therefore, obvious as noted herein earlier that in the event, the respondent Nos. 1

and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit

for specific performance to a suit for title and possession which is not permissible in law. In the case of Vijay Pratap and others Vs. Sambhu Saran

Sinha, this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held

that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance

of the contract and the same cannot be turned into a regular title suit. Therefore, in our view, a third party or a stranger to the contract cannot be

added so as to convert a suit of one character into a suit of different character. As discussed above, in the event any decree is passed against the

respondent Nos. 2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the

decree that would be passed in the said suit, obviously, cannot bind the respondent Nos. 1 and 4 to 11. It may also be observed that in the event,

the appellant obtains a decree for specific performance of the contracted property against the respondent Nos. 2 and 3, then, the Court shall direct

execution of deed of sale in favour of the appellant in the event respondent Nos. 2 and 3 refusing to execute the deed of sale and to obtain

possession of the contracted property he has to put the decree in execution. As noted herein earlier, since the respondent Nos. 1 and 4 to 11 were

not parties in the suit for specific performance of a contract for sale of the contracted, property, a decree passed in such a suit shall not bind them

and in that case, the respondent Nos. 1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking

recourse to the relevant provisions of the CPC, if they are available to them, or to file an independent suit for declaration of title and possession

against the appellant or respondent No. 3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the

stranger to the contract being the respondent Nos. 1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal

property.

16. That apart, from a plain reading of the expression used in sub-rule (2), Order 1, Rule 10 of the CPC "all the questions involved in the suit" it is

abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is

to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies

which may arise between the plaintiff/appellant and the defendants inter se or questions between the parties to the suit and a third party. In our

view, therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a

complicated suit for title between the plaintiff/appellant on one hand and Respondent Nos. 2 & 3 and Respondent Nos. 1 and 4 to 11 on the

other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside

the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all,

affect the right, title and interest of the respondent Nos. 1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion

made herein earlier, the respondent Nos. 1 and 4 to 11 would, not, at all, be necessary to be added in the instant suit for specific performance of

the contract for sale.

17. It is difficult to conceive that while deciding the question as to who is in possession of the contracted property, it would not be open to the

Court to decide the question of possession of a third party/or a stranger as first the lis to be decided is the enforceability of the contract entered

into between the appellant and the respondent No. 3 and whether contract was executed by the appellant and the respondent Nos. 2 and 3 for

sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is

entitled to a decree for specific performance of a contract for sale against the respondent Nos. 2 and 3. Secondly in that case, whoever asserts his

independent possession of the contracted property has to be added in the suit, then this process may continue without a final decision of the suit.

Apart from that, the intervener must be directly and legally interested in the answers to the controversies involved in the suit for specific

performance of the contract for sale. In *Amol v. Rasheed Tuck and Sons Ltd.* (1956 (1) All Eng. Reporter, 273) it has been held that a person is

legally interested in the answers to the controversies only if he can satisfy the Court that it may lead to a result that will effect him legally.

19. The learned counsel appearing for the respondent Nos. 1 and 4 to 11, however, contended that since the respondent Nos. 1 and 4 to 11

claimed to be in possession of the suit property on the basis of their independent title to the same, and as the appellant had also claimed the relief of

possession in the plaint, the issue with regard to possession is common to the parties including respondent Nos. 1 and 4 to 11, therefore, the same

can be settled in the present suit itself. Accordingly, it was submitted that the presence of respondent Nos. 1 and 4 to 11 would be necessary for

proper adjudication of such dispute. This argument which also weighed with the two courts below although at the first blush appeared to be of

substance but on careful consideration of all the aspects as indicated herein earlier, including the scope of the suit, we are of the view that it lacks

merit. Merely, in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a

suit for specific performance of the contract for sale because the respondent Nos. 1 and 4 to 11 are not necessary parties as there was no

semblance of right to some relief against the respondent No. 3 to the contract. In our view, the third party to the agreement for sale without

challenging the title of the respondent No. 3, even assuming they are in possession of the contracted property, cannot protect their possession

without filing a separate suit for title and possession against the vendor. It is well settled that in a suit for specific performance of a contract for sale

the lis between the appellant and the respondent Nos. 2 and 3 shall only be gone into and it is also not open to the Court to decide whether the

respondent Nos. 1 and 4 to 11 have acquired any title and possession of the contracted property as that would not be germane for decision in the

suit for specific performance of the contract for sale, that is to say in a suit for specific performance of the contract for sale the controversy to be

decided raised by the appellant against respondent Nos. 2 and 3 can only be adjudicated upon, and in such a lis the Court cannot decide the

question of title and possession of the respondent Nos. 1 and 4 to 11 relating to the contracted property.

6. There is no illegality or perversity in the order passed by the learned Civil Judge (Sr. Divn.), Court No. 1, Amb dated 3.3.2014. Accordingly,

the petition is dismissed.