

(2002) 10 AHC CK 0205

Allahabad High Court

Case No: C.M.W.P. No. 45617 of 2002

Ashok Kumar Dublish

APPELLANT

Vs

Ajeet Kumar Dublish and
Another

RESPONDENT

Date of Decision: Oct. 29, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10

Citation: (2003) 2 AWC 1146

Hon'ble Judges: S.P. Mehrotra, J

Bench: Single Bench

Advocate: K.K. Arora, for the Appellant; Pramod Kumar Jain, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Mehrotra, J.

This writ petition has been filed by the petitioner under Article 226 of the Constitution of India, inter alia, praying for quashing the order dated 6.9.2002 (Annexure-7 to the writ petition) passed by the learned Additional District Judge (Court No. 8), Meerut in S.C.C. Revision No. 131 of 1998.

2. The dispute relates to a shop No. 57, Nagarpalika No. 1605/27 situated in Gol Market, Mohalla Munna Lal, Kasba Mawana Kalan. Tehsil Mawana, District Meerut. The said shop has, hereinafter, been referred to as "the disputed shop".
3. From the allegations made in the writ petition, it appears that the plaintiff-respondent No. 1 filed a suit against the defendant-respondent No. 2 for ejection and arrears of rent etc. in respect of the disputed shop. The said suit was registered as S.C.C. Suit No. 297 of 1993. A copy of the plaint has been annexed as Annexure-3 to the writ petition.

4. It was, inter alia, alleged in the said suit that the plaintiff-respondent No. 1 was the sole owner and landlord of the disputed shop ; and that there had been a family settlement between the plaintiff-respondent No. 1 and his other brothers, according to which, the plaintiff-respondent No. 1 was the owner and landlord of the disputed shop.

5. It was, inter alia, further alleged in the said suit that the defendant-respondent No. 2 was the tenant of the disputed shop at a monthly rent of Rs. 300 ; and that a registered notice dated 17.6.1993 was given by the plaintiff-respondent No. 1 to the defendant-respondent No. 2 determining the tenancy of the defendant-respondent No. 2 in the disputed shop ; and that the said notice was served on the defendant-respondent No. 2 on 18.6.1993 ; and that the said notice determined the tenancy of the defendant-respondent No. 2 on the expiry of 30 days from the service of the said notice ; and that thus, the tenancy of the defendant-respondent No. 2 stood determined on 17.7.1993 in respect of the disputed shop, and since 18.7.1993, the occupation of the defendant-respondent No. 2 over the disputed shop became unauthorised.

6. It further appears that the said suit was contested by the defendant- respondent No. 2. Evidence was led by both the sides in the said suit. Ultimately, by the judgment and order dated 11.2.1998 the said suit was decreed by the Additional Judge, Small Cause Court, Meerut. A copy of the said judgment and order dated 11.2.1998 has been annexed as Annexure-4 to the writ petition.

7. Thereupon, the defendant-respondent No. 2 filed a revision u/s 25 of the Provincial Small Cause Courts Act. The said revision was registered as S.C.C. Revision No. 131 of 1998.

8. It further appears that during the pendency of the said revision, the petitioner moved an application (No. 50-Ga) dated 19.8.2002 under Order I Rule 10 and Section 151 of the Code of Civil Procedure, inter alia, praying that the petitioner be impleaded as a party in the case. A copy of the said application dated 19.8.2002 has been filed as Annexure-5 to the writ petition.

9. It was, inter alia, alleged in the said application dated 19.8.2002 filed by the petitioner that the disputed shop was a joint Hindu family property, and there was no partition among the members of the joint Hindu family ; and that the petitioner and his brothers and sisters etc. were co-owners of the disputed shop ; and that the plaintiff-respondent No. 1 was riot the sole owner of the disputed shop, and he alone had no right to file the said S.C.C.: Suit No. 297 of 1993.

10. The plaintiff-respondent No. 1 filed an objection dated 20th August, 2002 (Annexure-6 to the writ petition) against the said application filed by the petitioner for impleadment.

11. By the order dated 6.9.2002, the learned Additional District Judge (Court No. 8) Meerut rejected the said application No. 50-Ga filed by the petitioner for impleadment.

12. Thereafter, the petitioner has filed this writ petition seeking the reliefs mentioned above.

13. I have heard Sri K. K. Arora, learned counsel appearing for the petitioner and Sri Pramod Kumar Jain, who has put in appearance on behalf of respondent No. 1.

14. Sri K. K. Arora, learned counsel for the petitioner submits that in the impugned order, no specific finding has been recorded on the question as to whether the petitioner was a necessary or proper party in the case. It is further submitted by Sri Arora that the revision being continuation of the suit, the revisional court had jurisdiction to implead the petitioner as a party in the revision.

Sri Arora has placed reliance on the following decisions :

(1) Narendra Nath Srivastava v. Prescribed Authority, Lucknow and Ors. 1992 (2) ARC 236.

(2) Ramesh Hiranand Kundanmal v. Municipal Corporation of Greater Bombay and Ors. 1992 (2) AWC 1134 : 1992 (2) ARC 57.

(3) Nasir Ali Qadri v. Mom Yar Khan and Ors. 1996 (1) AWC 10 : 1995 (2) ARC 600.

15. Sri P. K. Jain, learned counsel appearing for the plaintiff-respondent No. 1 submits that the petitioner was neither necessary party nor proper party in the said S.C.C. Suit No. 297 of 1993. The said suit, the contention proceeds, had been filed on the basis of relationship of landlord and tenant between the plaintiff-respondent No. 1 and the defendant-respondent No. 2, and the petitioner was not a necessary or proper party in the said suit. Therefore, it is submitted, the impleadment application filed by the petitioner has rightly been rejected.

Sri Jain has placed reliance on the following decisions :

(1) Ramesh Hiranand Kundanmal v. Municipal Corporation of Greater Bombay and Ors. 1992 (2) AWC 1134 : 1992 (2) ARC 57 (supra).

(2) Laxman Prasad Kanchan v. Krant Kumar Kanchan and Ors.. 1992 (3) AWC 1551 : 1992 (2) ARC 293.

(3) Kailash Chand v. Kedar Nath Jain and Ors. 1992 (1) ARC 47.

(4) Jiya Lal v. XIth Additional District Judge, Meerut and Ors. 1994 (1) ARC 280.

(5) Smt. Prabha Saxena v. IIInd Additional District Judge, Kanpur Nagar and Ors., 1989 (2) ARC 197.

16. Having considered the submissions made by the learned counsel for the parties, I am of the opinion that no interference is called for with the impugned order dated 6.9.2002 passed by the learned Additional District Judge (Court No. 8), Meerut. The learned Additional District Judge (Court No. 8), Meerut has considered in detail the entire case law cited by both the sides in the light of the facts and circumstances of the present case and, thereafter, the learned Additional District Judge has concluded that the application for impleadment filed by the petitioner is liable to be rejected. I do not find any illegality in the impugned order passed by the learned Additional District Judge calling for interference by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India.

17. As regards the submission made by the learned counsel for the petitioner that there is no specific finding recorded by the learned Additional District Judge on the question as to whether the petitioner is a necessary or proper party in the said suit, I am of the opinion that a perusal of the entire impugned order passed by the learned Additional District Judge shows that the learned Additional District Judge was of the view that the said S.C.C. Suit No. 297 of 1993 being a suit between the plaintiff-defendant No. 1 and the defendant-respondent No. 2 on the basis of relationship of landlord and tenant, the petitioner was not a necessary or proper party in the said suit. Therefore, the first submission made by the learned counsel for the petitioner cannot be accepted.

18. Coming now to the submission made by the learned counsel for the petitioner that the revision being continuation of the suit, it was open to the revisional court u/s 25 of the Provincial Small Cause Courts Act to implead the petitioner as a party, I am of the opinion that the revisional court having already concluded that the petitioner was not a necessary or proper party in the case, it was not necessary for the revisional court to go into the question as to whether the revisional court had jurisdiction to implead the petitioner as a party in the revision or as to whether the impleadment at the stage of revision u/s 25 of the Provincial Small Cause Courts Act was permissible or not.

19. The submissions have been made at length by the learned counsel for both the sides before me also. Having heard the submissions made by the learned counsel for the parties, I am of the opinion that the petitioner was not a necessary or a proper party in the said S.C.C. Suit No. 297 of 1993, and as such, there was no question of impleading the petitioner as a party in the said S.C.C. Revision No. 131 of 1998.

20. The said S.C.C. Suit No. 297 of 1993 was a suit filed by the plaintiff-respondent No. 1 against the defendant-respondent No. 2 for ejectment and arrears of rent etc. in respect of the disputed shop on the basis of the relationship of landlord and tenant. The said suit has already been decreed by the learned Additional Judge, Small Cause Court, Meerut by the Judgment and decree dated 11.2.1998.

21. The revision u/s 25 of the Provincial Small Cause Courts Act was filed in 1998. In the year 2002, the petitioner filed the said application 50-Ga for impleadment alleging that the disputed shop was a joint Hindu family property, and there had been no partition amongst the members of the Joint Hindu family and as such, the petitioner be impleaded in the said case. Considering the allegations made on behalf of the petitioner in the said impleadment application, I am of the opinion that the petitioner was not a necessary or a proper party in the said S.C.C. Suit No. 297 of 1993 filed on the basis of the relationship of landlord and tenant. The rights and obligations of the plaintiff-respondent No. 1 vis-a-vis the defendant-respondent No. 2 to be determined in the said suit were based on the relationship of landlord and tenant between them. The relevant question to be considered in the said suit was as to whether there was relationship of landlord and tenant between the plaintiff-respondent No. 1 and the defendant-respondent No. 2.

22. The questions sought to be raised by the petitioner in the said impleadment application (namely, regarding the disputed shop being joint Hindu family property, or regarding there having been no partition of the Joint Hindu family, etc.), pertained to the title to the disputed shop. The said questions pertaining to title arose between the petitioner and the plaintiff-respondent No. 1, and the same were not relevant in the said suit.

23. Let us now consider certain judicial decisions in this regard.

In Smt. Prabha Saxena (supra), it was laid down as follows (paragraphs 3 and 4 of the said ARC) :

"3. The close question that arises for determination is whether in a suit between landlord and tenant, a third person claiming to be a co-owner of the property can intervene and seek to be added as a party. In my opinion by allowing such a course to be adopted, a simple suit between landlord and tenant could be converted into a suit for title between the landlord and a third person. In fact in a suit between the landlord and tenant only their rights are to be determined on the basis of contract of tenancy. In the Instant case, admittedly, the tenant had been inducted by Ram Swarup Saxena and on his death some times in 1979, he attorned in favour of opposite-party No. 2 and never challenged the relationship even during the pendency of the suit. Thus, the suit was filed on the basis of privity of contract as between landlord and tenant which was not denied by the tenant in the suit. A simple suit of this nature, therefore, cannot be allowed to become an arena of litigation between plaintiff and petitioner which can best be left to be decided by means of a regular suit. During the arguments, I was Informed that the petitioner has in fact instituted a suit seeking cancellation of the will in favour of the opposite party landlady. In view of this, I find no justification at all for the intervention which the petitioner seeks to make through her impleadment as a party to the suit. In any case, any decision in the suit is not likely to cause any prejudice to the interest of the petitioner for, if the suit is decreed, the landlady will get possession over the same

which will be subject to the result of the suit filed by the petitioner.

4. The petitioner relies on the provision of the Order I, Rule 10, C.P.C., in support of his submission. Order I, Rule 10, C.P.C. cannot be taken advantage of for this purpose for the simple reason that the petitioner is neither a necessary nor a proper party to the main lis. She can certainly claim this right and get it determined in civil proceedings. The plea that the suit was not maintainable on account of the fact that the other co-owner has not joined may be open to the tenant but a third party cannot raise this plea. The learned counsel has cited a decision in 1982 (1) ARC 117 where on the death of the original landlord, admittedly two persons succeeded to the property. The suit was filed only by one of them. On these admitted facts, on a plea being raised by the tenant that the suit by one of the co-landlords was not maintainable, the same was accepted by this Court. This position in the present case is entirely different. According to the plaint allegations, the plaintiff alone was the owner and landlady of the building in view of the will in her favour. If a third party who seeks intervention in the suit through her impleadment claiming to be a co-owner by challenging the validity of the will, this cannot be allowed particularly when such a case was not even taken by the tenant. In view of this, the said case can have no application in the facts and circumstances of the present case."

24. Keeping in view the principles laid down in the aforesaid decision In Smt. Prabha Saxena (supra), it is evident that the petitioner could not be permitted to raise the questions pertaining to title in the said S.C.C. Suit No. 297 of 1993, so as to convert a simple suit between landlord and tenant into a title suit. The petitioner was neither necessary party nor proper party in the said suit filed on the basis of relationship of landlord and tenant between the plaintiff-respondent No. 1 and the defendant-respondent No. 2. It is open to the petitioner to file separate regular suit for getting decided the questions pertaining to title between the petitioner and the plaintiff-respondent No. 1.

25. In Ramesh Hiranand Kundanmal (supra), their lordships of the Apex Court laid down as follows (Paragraph 6 of the said ARC) :

"6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order I, Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case."

Applying the aforesaid principles, it is evident that the petitioner was neither necessary party nor proper party in the said S.C.C. Suit No. 297 of 1993.

26. In Laxman Prasad Kanchan case (supra), it was laid down as follows (paragraphs 2, 4, 5, 6 and 7 of the said ARC) :

"2. The plaintiff opposite party No. 1 filed the suit praying for a decree of ejectment against the defendant-opposite party No. 2 on the basis of alleged landlord-tenant relationship in respect of a shop. The applicant and the opposite party No. 3 filed an application of their impleadment asserting that the shop in suit was a joint Hindu family property wherein the plaintiff opposite-party No. 1 had only one-sixth share and they had two-third share. According to the applicant and the opposite party No. 3, their presence in the suit was necessary because they also were the co-owners of the property in suit.

4. Rule 10 (2) of Order I of the Code permits the Court to order the name of any of the following two categories persons to be added as party to a suit (a) person "who ought to have been Joined" or (b) person "whose presence before the Court may be necessary In order to enable the Court effectually and completely to adjudicate and settle all the questions involved in the suit". And the name of none else can be ordered to be added to the suit, either as plaintiff or as defendant.

5. Person who ought to be Joined as party to a suit is the person whose presence is indispensable for granting an effective decree. Such person is a necessary party. Person whose presence may enable the Court to effectually and completely decide and dispose of all the questions involved in the suit is the person "whose presence before the Court may be necessary" and such a person is a proper party.

6. Person having direct interest in the subject-matter of the suit alone can be necessary party or a proper party. Indeed, Court has no jurisdiction to direct the name of any person to be added to the suit unless it is established that such a person ought to have been joined, or his presence is necessary for effectual and complete adjudication and settlement of all the questions involved in the suit. To be precise, Court is duty bound to investigate and find out as to whether the person, whose name is sought to be added as a party to the suit, is a proper or necessary party before ordering his impleadment.

7. In a suit where the relief sought is a decree for ejectment of a tenant and the foundation for the relief is landlord tenant relationship between the plaintiff and defendant a person claiming himself to be a co-sharer in the property in question is neither necessary nor a proper party inasmuch as in such a suit the title of ownership of the property is not the subject-matter of the suit in which the co-sharer may have an interest. Likewise, for passing an effective decree of ejectment against the tenant at the behest of a co-sharer-plaintiff, if the relationship of landlord and tenant between him and the defendant is pleaded and proceed, the presence of the other co-sharer is not a condition precedent."

The facts of the present case are similar to those of Laxman Prasad Kanchan case (supra).

27. Applying the aforesaid principles laid down in Laxman Prasad Kanchan case (supra), it is evident that the subject-matter of the said S.C.C. Suit No. 297 of 1993 was contract of tenancy between the plaintiff-respondent No. 1 and the defendant-respondent No. 2, and the rights and obligations flowing from the said contract. The question of title or ownership was not the subject-matter of the said suit. The petitioner had no direct interest in the subject-matter of the said suit. The petitioner was thus neither necessary party nor proper party in the said suit.

28. In Kailash Chand case (supra), the revisionist had filed an impleadment application in a suit filed by the landlord against the tenant, inter alia, claiming that the revisionist was the exclusive owner of the disputed property on the basis of family settlement and, therefore, he was entitled to be impleaded as a party to the suit.

After noticing the facts of the case, it was laid down by a learned Single Judge of this Court as under (paragraph 2 of the said ARC) :

"2. I have considered the argument advanced by the learned counsel for the revisionist. So far the present case is concerned, the suit has been filed by plaintiff alleging himself to be the landlord and defendant as his tenant. Any adjudication of rights of plaintiff against defendant neither affects the rights of revisionist nor any Judgment passed in the suit will be binding on revisionist. It is not going to affect the rights of revisionist in any way. The revisionist's right and title will be decided in suit filed by him. He has no legal right of impleadment in suit instituted by plaintiff against the defendant. Otherwise also, it is well-settled that if a person seeking impleadment as party is refused relief he can always get his rights determined in a suit filed against plaintiff of the suit in which impleadment is refused. For aforesaid reason the submission advanced on behalf of revisionist are devoid of any force and the revision is liable to be dismissed summarily. It is not a fit case requiring interference in exercise of my revisional jurisdiction. The revision is dismissed summarily."

This decision is also applicable to the present case. In view of this decision, it is evident that the petitioner had no legal right to seek impleadment in the said S.C.C. Suit No. 297 of 1993. However, the decision in the said suit would not prejudice the rights of the petitioner.

29. In Jiya Lal case (supra), it was laid down as follows (paragraph 7 of the said ARC) :

"7. A suit by a landlord against a tenant is cognizable by Judge, Small Causes Court on limited questions. The Judge, Small Causes Court cannot decide the question of title. He has to decide the limited question as to whether there is a relationship of landlord and tenant between the plaintiff and defendant. The right of the plaintiff is

based on the relationship of landlord and tenant. In case the plaintiff has based his rights on the basis of a title, then the Court has to return the plaint as provided u/s 23 of the Provincial Small Cause Courts Act, 1887."

30. It is thus evident that in a suit filed by a landlord against a tenant, the limited question to be determined is as to whether there is relationship of landlord and tenant between the plaintiff and the defendant. Such a suit is cognizable by .Tudge, Small Cause Court.

31. In Narendra Nath Srivastava case (supra), relied upon by the learned counsel for the petitioner, it was laid down as follows (paragraphs 7 and 8 of the said ARC) :

"7. The principles governing impleadment of a party are embodied in Order I, Rule 10, C.P.C. It is indicated therein that a party may be either necessary party or proper party. A person, who ought to have been joined as party, is necessary party. This is so, because no effective decision can be given without his presence. A person is a proper party if his presence before the Court is necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit. The impleadment of a party is a matter of judicial discretion of the Court which ought to be exercised in the light of the facts and circumstances of the particular case. All this has been high-lighted in Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, and Razia Begum Vs. Sahebzadi Anwar Begum and Others,

"8. Normally in a suit by a landlord against the tenant for arrears of rent and ejectment, a third party raising question of title is not a necessary party. This is the effect of the decisions in Pravat Kumar Misra Vs. Prafulla Chandra Misra and Another, and Shafiq Ahmad v. Vth Additional District Judge, Varanasi and Ors., 1988 (1) AWC 716 : 1988 ALJ 612 . But there may be cases where it may be proper to allow the application of a third party for impleadment. This has been recognised in Shafiq Ahmad's case wherein it has been observed that the facts of the case in Jawasharlas Vs. Saraswatibai Babulal Joshi and Others, were entirely different inasmuch as therein matter of title was to be gone into."

Thus, in this decision also, it was laid down that normally In a suit by a landlord against the tenant for arrears of rent and ejectment, a third party raising a question* of title is not a necessary party. However, in certain circumstances, it was observed, it may be proper to allow the application of a third party for impleadment. On the basis of the said principle, the facts of the said case were analysed by the learned Single Judge, and on the facts and circumstances of the said case, it was concluded that the person concerned was a proper party whose presence would facilitate the adjudication of the controversy between the parties effectively and completely.

32. In my opinion, the facts of Narendra Nath Srivastava case (supra), are distinguishable. In the present case, it is evident on a consideration of the facts and

circumstances of the case that the petitioner was neither a necessary party nor a proper party in the said S.C.C. Suit No. 297 of 1993.

33. In Nasir Ali Qadri case, relied upon by the learned counsel for the petitioner, the suit filed by the plaintiffs was a suit for declaration that they were owners of the total amount of F.D.R. with interest and of the Savings Bank Account in the joint names of Haji Amjad Yar Khan and Smt. Bilkeesh Begum, and the direction was sought that the defendant-Bank be directed to make payment of the said F.D.R. and Savings Bank Account with interest to each of the plaintiffs equally. It was alleged by the plaintiffs that they were sons of the brother of Smt. Bilkeesh Begum and hence they were the heirs of Smt. Bilkeesh Begum.

In the said suit, the revisionist sought impleadment by moving an application under Order I Rule 10, Code of Civil Procedure, *inter alia*, stating that he was the son of Smt. Mukhtar Begum, real sister of Smt. Bilkeesh Begum, and that Smt. Bilkeesh Begum had executed an agreement and gifted half portion of her house to him, and that he being the sole successor and heir of Smt. Bilkeesh Begum was entitled to get the amount of the F.D.R. and Savings Bank Account with interest.

The trial court rejected the said impleadment application of the revisionist. Thereupon, the revisionist filed revision before this Court.

It was held by learned Single Judge of this Court that on the facts of the case, the revisionist was entitled to be impleaded as party in the suit, and consequently, the trial court was directed to implead the revisionist. The facts of the said case are thus distinguishable from the facts of the present case. In the present case, a suit was filed by the landlord against the tenant on the basis of contract of tenancy, while the suit in Narendra Nath Srivastava case (*supra*) was on the basis of title to the amounts in F.D.R. and Savings Bank Account and interest thereon.

34. In view of the aforesaid discussion, I am of the opinion that this writ petition lacks merit, and the same is liable to be dismissed. The writ petition is accordingly dismissed.