

(2010) 07 GAU CK 0031

Gauhati High Court

Case No: Civil Revision P. No. 259 of 2010

Somnath Banerjee

APPELLANT

Vs

Smt. Arati Rani Chakraborty and
Another

RESPONDENT

Date of Decision: July 28, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 1 Rule 10(2), Order 6 Rule 17, 151
- Constitution of India, 1950 - Article 227

Citation: AIR 2010 Guw 187

Hon'ble Judges: U.B. Saha, J

Bench: Single Bench

Advocate: G.P. Bhowmik, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

U.B. Saha, J.

The instant revision petition is filed by the Petitioner under Article 227 of the Constitution of India challenging the order dated 17-5-2010 passed by the learned Munsiff No. 1, Tinsukia in Misc. (J) 20 of 2010 arising out of Title Suit No. 23 of 2010 allowing the Plaintiff, the Respondent No. 1 herein, to insert the names of all legal heirs of the original tenant of the suit premises as Defendants at the argument stage.

2. Heard Mr. G.P. Bhowmik, learned Counsel for the Petitioner. None appears for the Respondents.

3. The brief facts of the case are as follows:

The Plaintiff, Respondent No. 1 herein, filed the Title Suit No. 23 of 2005 for ejectment of the Defendant No. 2, the Petitioner herein, as well as M/s. Emporium, a partnership firm, the Defendant No. 1, the Respondent No. 2 herein, stating, inter alia, in her plaint that on 2-1-1996, out of the houses situated over the Schedule-A property, a part thereof consisting of two rooms, a bath room, latrine and a tube well, has been rented out to one Sri Haranath Banerjee (since deceased), the father of the Defendant No. 2, by an oral agreement entered into on 2-1-1996, fixing the monthly rent @ Rs. 600/-per month, payable in the first week of each succeeding month according to English calendar with further condition that the said rented premises would not be put on sub-let and no construction, reconstruction, alteration; modification or damage would be made and also that the said rented premises would be handed over as vacant and khas possession by the Defendant to the Plaintiff or her authorised agent in case of default of payment of monthly rent or violation of any of the terms of tenancy or as and when the Plaintiff would ask for her own use and occupation or for the development of the said rented premises, which for convenience hereinafter referred to as suit premises. During the life time of the said original tenant Haranath Banerjee, the monthly rent was paid regularly for the suit premises without any default and on payment of monthly rent, the Plaintiff also issued the rent receipts which continued up to the month of August, 1999 and some time in the month of September, 1999, the said original tenant expired and after his death, the Defendant No. 2, the Petitioner herein, came in occupation of the suit premises as a tenant under the Plaintiff on the same terms and conditions and the Defendant No. 2 also paid the monthly rent @ Rs. 600/- up to the month of December, 1999, but he failed to pay the said monthly rent on and from the month of January, 2000 even in spite of repeated requests and demands of the Plaintiff and thus he was a heavy defaulter. Further the said Defendant made some addition and alteration inside the suit premises without the consent of the Plaintiff and thus violated the terms of the tenancy. The Plaintiff was in need of the said suit premises for development of the same and also for her own use and occupation and she on many occasions personally and through her agents approached and requested the Defendant No. 2 to clear up the arrear rent of Rs. 37,800/-due from the month of January, 2000 to March, 2005, but the Defendant No. 2 did not clear up the same by showing this and that reasons. The Plaintiff also requested the Defendant No. 2 to hand over the vacant and khas possession of the suit premises to the Plaintiff, but the Defendant No. 2 failed and neglected to comply with the said request of the Plaintiff. Being aggrieved by the said action of the Defendant, the Plaintiff filed the aforesaid suit.

4. On receipt of the summons, the Defendant No. 2, the Petitioner herein and the Respondent No. 2 (Defendant No. 1) filed their written statement denying the contention of the Plaintiff, inter alia, that the suit premises was rented out to the father of the Defendant No. 2 who was a partner of the Defendant No. 1 and since the death of his father, the Defendant No. 2 and his family members had been

occupying the said suit premises. In the written statement, the Defendants contended that the suit premises were taken by the father of the Defendant No. 2 through the husband of the Plaintiff fixing a monthly rent of Rs. 350/- in the year 1985 when the Plaintiff used to stay in Calcutta with her family members and it was not possible on her part to collect the monthly rent on every month, nor was it advisable to remit rent to Calcutta every month. It is further stated that the Respondent No. 2, the Defendant No. 1, M/s. Emporium was not a partnership firm at that time and the suit premises was taken by the father of the Defendant No. 2 on his individual capacity and on his death, the tenancy rights had developed on all the heirs of the father of the Defendant No. 2, Haranath Banerjee and his all legal heirs are the necessary party to the suit and for non-joinder of the legal heirs, the suit is liable to be dismissed.

5. To decide the suit, the learned trial Court has framed ten issues which are as follows:

1. Whether the suit is maintainable in law and facts?
2. Whether the Plaintiff has a right to sue?
3. Whether the suit is bad by the principle of waiver, estoppel and acquiescence?
4. Whether the Defendant originally came into occupation of the suit house in 1996 as monthly tenant?
5. Whether the present Defendants are defaulter in payment of rent since January, 2002?
6. Whether the Defendants made some construction inside the suit premises without consent of the Plaintiff?
7. Whether the Defendants are liable to be evicted?
8. Whether the Defendants are liable to be pay compensation?
9. To what relief the Plaintiffs are entitled to?
10. Whether the Plaintiff is entitled to cost of the suit?

6. Thereafter, the respective parties adduced their evidence and the matter was fixed for argument on 24-3-2010. But while preparing the synopsis of the argument, the learned Advocate for the Petitioner i.e. the Defendant No. 2 noticed that a vital issue on the pleading of non-joinder and misjoinder of necessary parties was not framed by the learned trial Court, may be due to inadvertence. Therefore, on 24-3-2010, the present Petitioner i.e. the Defendant No. 2 filed an application for framing additional issues, inter alia, "whether the suit is bad for non-joinder of the legal heirs of late Haranath Banerjee and misjoinder of M/s. Emporium?

7. On receipt of the aforesaid application dated 24-3-2010, the learned trial Court after hearing the objection by the Plaintiff framed the additional issues, viz., Whether the suit is bad for non-joinder of all the legal heirs of Haranath Banerjee? In view of framing the additional issue, the Plaintiff, Respondent No. 1 herein, also filed an application under Order VI, Rule 17 read with Section 151, CPC for amending the plaint to implead the legal heirs of the original tenant late Haranath Banerjee as Defendants which was rejected by the trial Court vide order dated 7-4-2010 for non-furnishing of the detailed particulars of the legal heirs of late Haranath Banerjee with a liberty to file a fresh application as the same was not decided on merit. Taking the opportunity of liberty, the Plaintiff Respondent No. 1 thereafter filed a petition on 12-4-2010 and another supplementary petition on 26-4-2010 praying for impleading the legal heirs of late Haranath Banerjee furnishing the names, address and relationship with the deceased Haranath Banerjee under Order VI, Rule 17 read with Section 151, Code of Civil Procedure. The Petitioner as well as the Respondent No. 2 being Defendants filed written objection on 17-5-2010 to the said prayer of the Plaintiff-Respondent. Upon hearing the parties, the learned trial Court rejected the contention of the Defendant, stating inter alia, that the prayer for impleadment/amendment would not fall under Order VI, Rule 17, C.P.C, as the Plaintiff has not sought for amendment of pleadings. The learned trial Court while rejecting the prayer of the Defendants also took note of Order 1, Rule 10(2), CPC and held that it is well settled that the section/provision quoted on the petition is not material, but the Court may allow a prayer if the same could be allowed under any provision of law. In his order, the learned trial Court also stated that the presence of all the legal heirs is necessary in the facts and circumstances of the case and as such, the prayer for impleadment of the legal heirs of late Haranath Banerjee was allowed by the order dated 17-5-2010 in Misc. (J) No. 20 of 2010. Consequent thereto, the name of the legal heirs of late Haranath Banerjee was inserted in the suit. Being aggrieved by the said order dated 17-5-2010, the present Petitioner filed the instant revision petition.

8. Mr. Bhowmik while urging for admission of the instant revision petition would contend that though an application for amendment under Order VI, Rule 17, CPC can be converted to an application for impleadment, but in the instant case, the trial Court without any jurisdiction vested upon him directed for impleadment of the new Defendants and also to issue summons to them at the final stage of hearing/argument of the suit. He further contended that by way of allowing the prayer for impleadment, the learned trial Court virtually allowed the Plaintiff-Respondent to fill up the lacuna inherently occurred in the suit and thereby a serious prejudice has been caused to the Defendant/Petitioner for getting a decree of dismissal of the suit in their favour. Mr. Bhowmik further contended that the words "at any stage" mentioned in Order 1, Rule 10(2), CPC does not mean that even at the belated stage of argument also, the Court can allow the prayer for impleadment of the parties. He Finally contended that the prayer for impleadment

of parties should not be allowed ignoring the facts and circumstances of the case. In the instant case, the trial Court failed to consider the said aspect.

9. Upon going through the impugned order, this Court is, prima facie, of the opinion that the Petitioner/Defendant even has not made out a case to issue notice upon the Respondents, as the learned Court acted within its jurisdiction while exercising discretionary power vested upon him. Hence providing an opportunity of hearing to the learned Counsel for the Petitioner, this Court has taken up the matter for disposal at this stage.

10. To appreciate the submissions of the learned Counsel of the Petitioner, it would be proper for this Court to reproduce the provisions of Order 1, Rule 10(2), CPC which is accordingly reproduced hereunder:

10(2). Court may strike out or add parties.-- The Court may at any stage of the proceedings, either upon or without the application" of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

11. From bare reading of the aforesaid provisions, it appears that the object of the Rule is to bring before the Court at the same time all the persons who are parties to dispute relating to one subject-matter so that the dispute may be determined at the same time without delay, inconvenience and expenses of separate action and trials. Moreso, Sub-rule (2) of Rule 10 gives a description to the Court to meet every case of defect of parties. A Division Bench of this Court in [State of Assam Vs. Basanta Burman and Others](#), taking note of Order 1, Rule 10, CPC held that "Order 1, Rule 10, CPC provides, inter alia, for adding parties or transposing Plaintiff as Defendant or Defendant as Plaintiff for effectually and completely adjudicating the disputes. It appears to us, on perusal of Order 1, Rule 10 that even mistake committed by a party in arraying parties may be rectified by the Court, rather it is the duty of the Court to see that parties are properly arrayed.

12. In [Hardeva Vs. Ismail and Others](#), a Full Bench of Rajasthan High Court while deciding a revision petition considered the provision of Order 1 and held that Order 1, Rule 9, CPC lays down that no suit shall be defeated by reason of misjoinder or non-joinder of parties and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Rajasthan High Court in the aforesaid decision also considered the decision of a Full Bench of the Allahabad High Court in Benares Bank Ltd. v. Bhagwan Das, AIR 1947 All 18 (FB) wherein the question arose for determining who is necessary party to a proceeding and what should be the test for such determination. The Allahabad

High Court in Bhagwan Das (supra) noted that there are two tests-(1) there must be a right to some relief against such party in respect of the matter involved in the proceedings in question and (2) it should not be possible to pass an effective decree in the absence of such a party. The aforesaid decision of the Allahabad High Court was also approved by the Apex Court in Deputy Commissioner, Hardoi incharge Court of Wards, [Deputy Commr., Hardoi, in charge Court of Wards, Bharawan Estate Vs. Rama Krishna Narain and Others,](#)

13. On scrutiny of the provisions of the Order 1, Rule 10(2), CPC as well as law reports as stated supra, this Court is of considered opinion that when the Plaintiff failed to implead the necessary parties in the suit either for mistake or for unawareness about the persons who would be the necessary parties, then also the Court can ask the parties to implead those persons as a party by way of impleadment exercising its discretionary power to decide the suit. In the instant case, it is the admitted position that the Petitioner, the Defendant No. 2 in the suit, made an application for framing additional issues, inter alia, whether the suit is bad for non-joinder of the legal heirs of late Haranath Banerjee and whether M/s. Emporium, a business firm, is a tenant under the Plaintiff in respect of the suit premises, which was allowed by the trial Court and when the, issues relating to non-joinder of all legal heirs of the late Haranath Banerjee, the original tenant was framed, it was the duty of the Court to allow the Plaintiff, the Respondent No. 1 to implead the legal heirs of late Haranath Banerjee as Defendants. Unless those persons are made party, then the plaint would be non-suited so far as those newly impleaded persons are concerned and even if a decree is passed by the trial Court allowing the suit, then those legal heirs might have come to challenge the decree and if the contention of the Petitioner, inter alia, that the suit premises was taken by his father, not by the Defendant No. 1, the firm, in that case, the object of Order 1, Rule 10(2), CPC would be frustrated. It is also to be noted that the Plaintiff in her plaint did not make any prayer against any other person and the Defendant-Petitioner also paid rent to the Plaintiff-Respondent after the death of his father on occupation of the suit premises. Therefore, it cannot be said that the Plaintiff-Respondent committed any wrong by not making the other legal heirs of late Haranath Banerjee as party. It is the Defendant-Petitioner who made prayer for framing additional issues for which the Plaintiff-Respondent was forced to implead the other legal heirs of his father as party in the suit.

14. Now question remains as raised by Mr. Bhowmik, learned Counsel for the Petitioner that whether the words used by the Legislature in Sub-rule (2) of Rule 10, "at any stage of the proceedings" do not empower the trial Court to allow the Plaintiff to implead the legal heirs of the deceased Haranath Banerjee at the belated stage of the argument considering the facts and circumstances of the case. From the plain language used by the Legislature in Sub-rule (2) of Rule 10 of Order 1, Code of Civil Procedure, inter alia, it appears that the Court may at any stage of the proceedings either upon or without the application of either party, and on such

terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added, meaning thereby even the Court has the power to implead a person either as Plaintiff or as Defendant without any application from either side of the parties, if the presence of such persons is necessary to adjudicate upon and settle all the question involved in the suit effectually and completely. It also further appears that "at any stage of the proceedings," according to this Court, not only at the stage of argument, even after completion of the trial and decree is passed and the said decree is challenged by way of an appeal, at that stage also, as "at any stage" includes appellate stage also, hence the Court has the power to pass an order for impleadment of necessary party considering the facts and circumstances of the case as the appeal is the continuation of the proceeding of the trial Court i.e. the suit. Unless there is specific prohibition imposed by the Legislation debarring the Court to pass an order for impleadment in the interest of justice, the Court has the wide discretion for passing an order for impleadment of the necessary party which in the instant case, the learned trial Court did.

15. The aforesaid views of this Court get support from the decision of the High Court of [Hardatt Sharma Vs. Jaikishen Shamlal and Sons and Others](#), wherein the learned single Judge of the said High Court while discussing the word "at any stage of the suit" held that an appeal being the continuation of the suit, a person may be added as a party to it, even at the stage of the appeal, provided his addition is necessary "in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit." A Division Bench of the Delhi High Court also considered the aforesaid aspect in the case [Gurmauj Saran Baluja Vs. Mrs. Joyce C. Salim and Others](#), while deciding an appeal filed by the Plaintiff against the order of the learned single Judge allowing an application of one Kaka Singh filed under Order 1, Rule 10, CPC for impleading him as Defendant in the suit took note of the decision of the Apex Court in [Razia Begum Vs. Sahebzadi Anwar Begum and Others](#), and ultimately observed that "the contention of the Plaintiff that the application which resulted in the impugned order was filed after a great deal of delay was raised before the learned single Judge who negatived the same while accepting the explanation of Kaka Singh as to why he could file the application only at the stage when the case was ripe for trial. We would not like, without more, to interfere in the discretion exercised by the learned single Judge which is judicial. There is no requirement of law that such an application must be made at any particular stage of the trial though in a given case delay in moving an application might be one of the considerations for the decision. Sub-rule (2) of Rule 10 of Order 1 of the Code provides that the Court can add a Defendant at any stage of the proceedings."

Ultimately, with the aforesaid observation, the Delhi High Court dismissed the appeal. This Court has no hesitation that "at any stage of the proceedings" means till continuation of the proceedings even up to the belated stage.

16. There is no doubt that Article 227 of the Constitution of India vested power of superintendence upon the High Court which also involves a duty to keep the inferior Court and Tribunals "within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner." But the said power is not an unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes. On scrutiny of the impugned order, as it appears to this Court that the learned trial Court while allowing the prayer for impleadment of the other legal heirs of the original tenant except the Petitioner did not commit any irregularity and illegality, rather exercised its judicial discretion vested on him for effective and complete adjudication and to settle all the questions involved in the suit.

17. In view of the above, according to this Court, the Petitioner even fails to make out a case for admission, far to hearing of the matter. Therefore, it would not be proper even to issue notice upon the Respondents. Hence, the revision petition is rejected.