

(2002) 02 J&K CK 0002
Jammu & Kashmir High Court
Case No: C.R.No. 73/2001

Mohammad Shah alias Rasool
Shah

APPELLANT

Vs

Mohammad Amin Shah

RESPONDENT

Date of Decision: Feb. 15, 2002

Acts Referred:

- Jammu and Kashmir Civil Procedure Code, 1977 - Order 1 Rule 10

Citation: (2002) KashLJ 277 : (2002) SriLJ 267 : (2002) 1 SriLJ 267

Hon'ble Judges: B.L.Bhat, J

Bench: Single Bench

Advocate: I.M.Nehvi, Advocates appearing for the Parties

Judgement

1. Notice of this petition was given to respondents despite due and proper service, they are absent.

2. This motion of revision is aimed at revising the order dated 28.05.2001, recorded by the learned 2nd Addl. Munsiff Srinagar, in Civil Original

suit titled Mohd Amin Shah vs. Jameel Ahmad and ors. with respect to an application of the petitioner revisionist for impediment of party in the suit.

3. It appears that a suit for declaration with consequential relief of possession came to be instituted by respondent No. 1 plaintiff, Motid Amin Shah

against the defendant, remaining respondents herein before the court of learned District Judge, Srinagar, who came to transfer the suit file to the

court of learned 2nd Addl. Munsiff Srinagar. In the suit, the plaintiff respondent No. 1 has sought decree for declaration with respect to the suit

land with a consequential relief of perpetual injunction against the remaining respondents/defendants who came to admit the suit of the plaintiff by

virtue of their joint written statement. During the pendency of the suit Ghulam Mohd Shah alias Gulla Shah S/o Ghulam Rasool Shah alias Rasool

Shah, the petitioner herein filed an application presumably under Order 1 Rule 10 of the CPC, claiming therein that he is owner of the suit land

alongwith the plaintiff and the defendants, as the same being their an central property and is undivided and joint in between him and the parties of

the suit. This application came to be resisted by the plaintiff respondent No. 1 on the ground that he and defendants No. 5 are in peace ful

possession of the suit property as the same being the self acquired property of his there and defendant No. 5 and father of defendants 1 to 4 and

that the applicant had instituted a suit for partition and possession against the plaintiff and their father way back in 1955, which came to be

dismissed and that in case the petitioner has any right or interest the same is time barred.

4. Heard the learned counsel for the petitioner.

5. It is well settled principle of law that court has a discretion to implead any person as a party to the suit whose presence is found necessary to

enable it to effectually and completely to adjudicate upon all the points involved in the suit. Besides this, the court can also consider if the person

seeking his impediment as party has a prima facie case and a bonafide claim to the settlement of the suit property. Their Lordships of the Apex

Court in a case titled as Razia Begum vs. Anwar Begum reported in AIR 1958 S.C. 886, have laid down the following principles to add parties in

a suit under Rule 10 Order 1 CPC, which are enumerated as :

1. That the question of addition of parties under r.10 of O.1 of the Code of Civil Procedure is generally not one of initial jurisdiction of the court but

of a judicial direction which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise

controversies as to the power of the court in contradistinction to its inherent jurisdiction or, in other words, of jurisdiction in the limited sense in

which it is used in S.115 of the Code;

2. 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.

3. Where the subjectmatter of a litigation is a declaration as regards status or a legal character the rule of present or direct interest may be relaxed

in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate

upon the controversy;

4. The cases contemplated in the last proposition, have to be determined in accordance with the statutory provisions of Section 42 and 43 of the

Specific Relief Act.

6. If the aforesaid principles as laid down by the Apex Court are applied to the, case in hand, I find that in this suit for declaration of his rights filed

by the plaintiff/respondent No. 1, revisionist Gulla Shah, has claimed direct interest in the suit property on the strength of being its coowner

alongwith the parties of the suit and that he claims the said property as joint in between him and the parties as the same being ancestral property.

The fact that the suit for partition of this land instituted by the petitioner way back in 1955, has been dismissed, does by no stretch of imagination

preclude him from defending his alleged right to the suit property, which as per the court below has become time barred forgetting that the laws of

limitation are not meant to destroy the rights of the parties, they are meant to see that the parties do not resort to dilatory tactics and seek their

remedy within time fixed by the legislature. The defendants/respondents having admitted the claim of the plaintiff respondent No. 1, in such

circumstances, it becomes all the more desirable that the claim made by the petitioner should be enquired into more closely instead of merely

passing a collusive decree. Therefore, impediment of Gulla Shah revisionist in the suit is necessary for the proper adjudication about the title to the

property.

7. In view of the aforesaid discussion, the trial court has fallen in jurisdictional error and material irregularity in passing the impugned order which has

resulted injustice to the petitioner revisionist.

8. Therefore, this revision is accepted and the order impugned is set aside. The trial court is directed that the application of the petitioner of his impleadment as party be accepted and he be added as a defendant. No costs. The record alongwith the copy of this order be sent to the trial court for disposal in the light of the aforesaid observations and in accordance with law and after issuance of notice to the Respondents. The petitioner is directed to cause his appearance be fore the trial court on 28.02.2002.