

Bal Niketan Nursery School

Vs

Kesari Prasad

Civil Appeal No. 55-A of 1987

(Sabyasachi Mukharji, S. Natarajan JJ)

15.07.1987

JUDGMENT

NATARAJAN, J. -

1. The question falling for consideration in this appeal by special leave is whether the High Court has erred in law in quashing the order of eviction passed against the respondent by the Judge, Small Cause Court as confirmed by the Additional District Judge and remitting the suit to the trial court for fresh consideration in the event of the trial court allowing an application by the appellant under Order 1 Rule 10 Civil Procedure Code for correcting the name of the plaintiff in the plaint.

2. The background of events to this appeal may briefly be stated. The appellant Bal Nitetan Nursery School is a recognised institution under the U.P. Basic Education Act, 1972, and is run and managed by a Society, "Smt. Chandramukhi Ram Saran Shiksha Samiti", registered under the Societies Registration Act. Dr. Om Prakash is the Manager of the appellant school and also the Secretary of the registered Society mentioned above. On March 10, 1977 the Society purchased a plot of land adjoining the school together with four superstructures (khaprails) standing thereon in the name of the appellant school through its Manager Om Prakash Gupta. The superstructures were in the occupation of four tenants. The entire rental income derived from the tenants is being utilised for the purpose of running the school. Under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short 'the Rent Act') the provisions of the Act would not apply to a property owned by a recognised educational institution if the whole of the income from the property is utilised for the purpose of the institution. Section 2(1)(b) which provides for the exemption is in the following terms :

Nothing in this Act shall apply to any building belonging to or vested in a recognised institution, the whole of the income from which is utilised for the purpose of such institution.

3. As the appellant was in dire need of additional area for the growing needs of the school and as the property acquired by the school attracted the 'Exemption Clause' in the Rent Act, the Manager of the school issued notices of termination of tenancy to the tenants on May 30, 1977 under Section 106 of the Transfer of Property Act and demanded surrender of possession. As the tenants failed to surrender possession, the appellant filed separate suits against the four tenants for ejection and payment of arrears of rent. The suits were filed in the name of the appellant school through its Manager Dr. Om Prakash. The cause title of the plaintiff in the plaint was given as under :

Bal Niketan Nursery School, Near Ganj Gurhatti, Moradabad through Dr. Om

Prakash, Manager of the School.

All the four tenants including the respondent herein raised only two defences in the suit, namely, that the appellant school is not a recognised educational institution so as to be entitled to the benefit of Section 2(1)(b) of the Rent Act and secondly, that the notice of termination of tenancy was not a valid notice because it had not been issued by an institution having juristic status.

4. The Small Cause Court consolidated all the four suits and held a joint trial and rejected both the contentions of the tenants and decreed the suits in favour of the school. The tenants preferred revisions against the judgment to the District Judge and the learned Judge confirmed the judgment and decree of the Small Cause Court and dismissed all the revisions.

5. Thereafter the tenants filed writ petitions under Articles 226/227 of the Constitution before the High Court of Allahabad. Before the High Court it was contended for the first time that the appellant school was not a juristic person and was not, therefore, entitled to file the suits through its Manager and as such the judgments of the Small Cause Court and the District Judge were ineffective and the decrees unenforceable. The counter-argument of the school was that as a recognised institution under the U.P. Basic Education Act, 1972 it has juristic status and furthermore it is the registered owner of the suit property, having obtained the sale and deed in its own name and over and above all these the suit has been instituted by Dr. Om Prakash who was not only the Manager of the school but also the Secretary of the Registered Society and as such, the suits were fully maintainable under law and consequently the judgments and decrees of the Small Cause Court and the District Judges were perfectly valid and enforceable. Besides putting forth such contentions, the appellant school, by way of abundant caution also filed a petition under Order 1 Rule 10 Civil Procedure Code for amending the plaint by correcting the name of the plaintiff into Smt. Chandramukhi Ram Saran Shiksha Samiti by Secretary Om Prakash in place of the name of the Bal Niketan Nursery School by Manager Dr. Om Prakash.

6. The High Court declined to uphold the contentions of the appellant school as in its view clause (14) of the Constitution of the Registered Society contained a specific provision to the following effect : "All the legal proceedings by the Society and against the Society will be done either by the Manager or by the Secretary or by a person authorised by them" and as such, the appellant school was not a juristic person and only the registered society had the authority and competence to file the suits. The High Court, therefore, held that the suits filed by the appellant school were not maintainable and consequently the judgments and decrees passed by the Small Cause Court and the District Judge were liable to be set aside and accordingly quashed them in three suits alone since the fourth suit (SCC Case No. 259/1977) had been compromised after the filing of the writ petition. Insofar as the application under Order 1 Rule 10 is concerned, the High Court observed that the proper course for the appellant school was to move the Small Cause Court for getting the description of the plaintiff corrected and then pursue the proceedings for eviction. The High Court also gave directions to the Small Cause Court as to how the suits were to be dealt with after amendment of the plaint in the following terms :

It is made clear that in case the Judge, Small Cause Court exercises the powers under Order 1 Rule 10, CPC by correcting the description of the plaintiff, i.e. by getting the juristic person the Society substituted as plaintiff in the suit the defendant would be entitled to file additional written statement and the parties shall be afforded opportunity to lead fresh evidence in the case.

7. Aggrieved by the judgment of the High Court the appellant school has preferred this appeal by special leave. Mr. Kacker, learned counsel for the appellant advanced five contentions set out below to impugn the judgment of the High Court. The contentions are as follows :

(1) The appellant school being a recognised institution under the U.P. Basic Education Act, 1972 is a legal entity and is, therefore, entitled to file suits in its own name.

(2) Besides, the suit property has been purchased in the name of the appellant school and as the owner of the property the appellant is by itself entitled under law to file suits for seeking ejection of the tenants.

(3) Consequent upon the purchase of the land and superstructures and the vesting of possession in it, the appellant became the landlord of the tenants and the entire rental income is being used for running the school. Therefore, in its capacity as the landlord of the tenants the appellant school is entitled to file the suits for ejection notwithstanding clause (14) of the Constitution of the Registered Society.

(4) Even if it is viewed that the Registered Society is alone entitled to file the suit Dr. Om Prakash who is competent to file the suit on behalf of the Registered Society has filed the suits on behalf of the school and as such the Society is fully represented by Dr. Om Prakash and thereby clause (14) of the Constitution of the Society stands satisfied.

(5) Even if a hyper-technical view is to prevail requiring the suits to be filed only in the name of the Registered Society through its Secretary/Manager, the High Court should have allowed the petition under Order 1 Rule 10 CPC and disposed of the writ petitions on merits instead of quashing the concurrent findings of the courts below and remitting the suits to the Small Cause Court for fresh disposal after dealing with the petition under Order 1 Rule 10 CPC.

8. Learned counsel for the respondent refuted the contentions of Mr. Kacker and strenuously argued that the appellant is not a recognised school but even if it is treated as a recognised institution under the U.P. Basic Education Act and even if the sale deed pertaining to the land and superstructures has been obtained in the name of the school, it is only the Registered Society which can lawfully institute suits on behalf of the school or defend actions against it and that clause (14) of the Constitution of the Society has overriding effect, and hence the suits filed by the appellant school are not maintainable.

9. Having given our careful consideration to the arguments of the learned counsel and the view taken by the High Court we are of the opinion that the High Court was in error in sustaining the belated objection taken by the tenants regarding the competence of the appellant to file the suits and quashing the decrees for eviction passed against the tenants and remanding the suits to the Small Cause Court for fresh disposal after first considering whether the suits had been instituted in the name of the wrong plaintiff due to a bona fide mistake and whether the mistake calls for rectification by allowing the petition filed under Order 1 Rule 10 CPC. The reasons which has prompted us to come to this conclusion are manifold and may be enunciated in the following paragraphs.

10. Under the U.P. Basic Education Act, the appellant school has been granted recognition as a recognised institution and by reason of such recognition the school is conferred certain rights and obliged to perform certain duties. One of the rights flowing from the recognition granted to the school is an exemption from the provisions of the Rent Act. Consequently, the appellant school has acquired rights by reason of the statutory recognition given to it under the U.P. Basic Education Act and to that extent the appellant school stands clothed with legal status. It is not, therefore, a non-entity in the eye of law. Viewed from that perspective the appellant is entitled to file the suits through its manager to seek the eviction of the tenants occupying the superstructures. Of course, the learned counsel for the respondent tried to content that certain proceedings have been initiated for impugning the recognition granted to the appellant school under the U.P. Basic Education Act and as such the appellant's status as a recognised institution cannot be taken for granted. We cannot contenance this argument because any proceedings instituted to impugn the recognition of the school subsequent to the filing of the suits cannot affect the status of the school at the time the suits were filed. Furthermore, the respondent has not produced any material to show that the recognition granted to the school has been subsequently withdrawn.

11. Secondly, apart from the legal status acquired by the school as a recognised institution, it is admittedly the registered owner of the suit property even though the purchase price may have been provided by the society. It is not in dispute that the sale deed pertaining to the land and the superstructures has been obtained in the name of the school. Even as a benami owner of the property, the appellant is entitled in law to preserve and protect it and to institute actions in that behalf so long as they do not conflict with the rights of the society. As a corollary to this proposition it follows that the appellant constitutes the landlord of the tenants after the property was purchased in its name and rents from the tenant came to be collected. Once a jural relationship of landlord and tenants was formed between the appellant and the tenants by operation of law the appellant's right to initiate actions against the tenants for recovery of arrears of rent or recovery of possession of the leased property cannot be questioned or disputed.

12. Even if we are to close our eyes to the right of the appellant to file suits against the tenants in its capacity as a recognised institution or as the ostensible owner of the property or as the landlord of the tenants and are to judge the status of the appellant solely with reference to clause (14) of the Constitution of the Society it may be noticed that Dr. Om Prakash is not only the Manager of the school but also the Secretary of the Registered Society. The suits against the tenants have admittedly been filed by Dr. Om Prakash and even as per clause (14) of the Constitution of the Society he is competent to file suits on behalf of the Society. The school as well as the registered Society, being institutions, they can file suits or defend suits only through a competent officer-bearer managing the affairs of the school or the Registered Society. Inasmuch as the suits have been instituted by Dr. Om Prakash albeit as Manager of the school he has not ceased to be the Secretary of the Society and it can, therefore, well be taken that the suits have not been instituted by an incompetent person who is to empowered under the Constitution of the Society to file suits on behalf of the Society. There is, therefore, no merit in the belated objection raised by the tenants that the suits are not maintainable in view of clause (14) of the Constitution of the Society. The suits, even if not instituted in the name of the Registered Society, are nevertheless competent actions because they have been filed by Dr. Om Prakash who is competent to file suits on behalf of the Society also for recovering possession of the leased property to the school.

13. The last and final ground which needs setting out in some detail is that even if a rigid view is taken and it is to be held that the suits have not been instituted in the name of the proper person viz. the Society, the High Court should have seen that Order 1 Rule 10 has been expressly provided in

the Civil Procedure Code to meet with such situations so that the rendering of justice is not hampered. The rule provides that if a suit has been instituted in the name of a wrong person as plaintiff or if there is a doubt as to whether the suit has been instituted in the name of the right plaintiff the court may, at any stage of the suit, if it is satisfied that the suit has been instituted due to a bona fide mistake and that is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just. The scope and effect of Order 1 Rule 10 has been considered in numerous cases and there is a plethora of decisions lying down the ratio that if the court is satisfied that a bona fide mistake has occurred in the filing of the suit in the name of the wrong person then the court should set right matters in exercise of its powers under Order 1 Rule 10 and promote the cause of justice. The courts have gone so far as to hold that even if the suit had been instituted in the name of a person who had no competence to file the suit, the courts should set right matters by ordering the addition or substitution of the proper plaintiff for ensuring the due dispensation of justice. We may only refer to a few decisions in this behalf.

14. In *Hughes v. Pump House Hotel Co. Ltd.* (No. 2) ((1902) 2 KB 485), a dispute was raised regarding the competence of the plaintiff to file a suit because doubts were cast as to whether the plaintiff had made an absolute assignment of his claim against the defendants, or only an assignment by way of charge. Thereupon an application was made under Order 16 Rule 2 (corresponding to Order 1 Rule 10 CPC) for substitution of another person as plaintiff. The application was allowed and that was upheld by the Court of Appeal and it was pointed out that the fact that the original plaintiff had no cause of action would not take away the jurisdiction of the court to order the substitution of another person as plaintiff.

15. In *Krishna Boi v. Collector and Government Agent, Tanjore* (ILR 30 Mad 419) when it was found that a suit for ejectment of a dependent had been brought by the Collector and Government Agent due to a bona fide mistake instead of the beneficiaries of the estate, the court allowed an application for substitution of the correct plaintiff and it was further held that the fact that the Collector had no right to institute the suit would not stand in the way of the court ordering the substitution of the correct plaintiff.

16. In *Sitla Bux Singh v. Mahabir Prasad* (AIR 1936 Oudh 275 : 1963 OWN 414 : 1936 OLR 237 : 162 IC 229) it was held that where a person prohibited from dealing in actionable claim under Section 136, Transfer of Property Act obtained an assignment of a bond through a bona fide mistake and instituted a suit on the basis of the same, the provisions of Order 1 Rule 10 would apply and the assignor can be substituted in place of the assignee as plaintiff and allowed to continue the suit.

17. In *Dinanath Kumar v. Nishi Kanta Kumar* (AIR 1952 Cal 102) the court allowed an application under Order 1 Rule 10 CPC and permitted a person who claimed that he was the real owner of the property and the original plaintiff was only a benamidar to be added as plaintiff in order to avoid multiplicity of proceedings and that he was a necessary party to the proceedings.

18. In *Laxmikumar Srinivas Das v. Krishnaram Baldev Bank, Lashkar* (AIR 1954 MB 156) it was held that the words "where a suit has been instituted in the name of the wrong person as plaintiff" must be construed to include those suits which are instituted by persons who had no right to do so and that the fact that the person instituting the suit had no cause of action would not take away the court's jurisdiction to order substitution of another as plaintiff.

19. In *Karri Somalu v. Thimmalapalli Venkataswamy* ((1963) 2 AWR 138) it was held that the

expression "wrong person" in Order 1 Rule 10 cannot be confined merely to a person wrongly described but would also extend to include a person whose name ought not to have figured as plaintiff for want of right to file the suit and that the object of the rule is to save suits instituted honestly although in the name of the wrong person as plaintiff and to ensure that honest plaintiffs do not suffer.

20. In *Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar* (AIR 1963 SC 786 : 1963 BLJR 512) it was held that in proceedings for a writ of certiorari it is not only the Tribunal or Authority whose order is sought to be quashed but also the parties in whose favour the said order is issued who are necessary parties and that it is in the discretion of the court to add or implead proper parties for completely settling all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or on application filed at the instance of such proper party.

21. In *Murari Mohan Deb v. Secretary to Government of India* ((1985) 3 SCC 120 : 1985 SCC (L&S) 588) the dismissal of a petition under Article 226 of the Constitution by the Judicial Commissioner was challenged by the appellant therein. The judicial Commissioner found that the appellant who was a forester in the employment of Tripura Government had been wrongly removed from service by an order of compulsory retirement but nevertheless refused to grant relief to the appellant because he had failed to implead the Government of India which was a necessary party to the proceedings. This Court disapproved the dismissal of the writ petition on the technical ground and observed as follows : [SCC p. 124, SCC (L&S) pp. 891-92, para 10]

Respondent 1 is shown to be the Secretary to the Government of India, Ministry of Home Affairs. If there was technical error in the draftsmanship of the petition by a lawyer, a Forester a Class IV low grade servant should not have been made to suffer. An oral request to correct the description of the first respondent would have satisfied the procedural requirement. By raising and accepting such a contention, after a lapse of six years, the law is brought into ridicule. The court could have conveniently read the cause title as Government of India which means Union of India through the Secretary, Ministry of Home Affairs instead of the description set out in the writ petition and this very petition would be competent by any standard. The contention is all the more objectionable for the additional reason that the appointing authority of the appellant, the Chief Commissioner of the Government of Tripura as well as the Chief Forest Officer who passed the impugned order were impleaded and they represented the administration of Tripura Government as well as the concerned officers. Therefore, not only the petition as drawn up was competent but no bone of contention could be taken about its incompetence.

22. Having regard to this settled position of law the High Court ought not to have sustained the objection raised by the tenants regarding the competency of the appellant to file the suits and quashed the orders of eviction concurrently passed by the Small Cause Court and the Appellate Judge and remitted the suits for fresh consideration with directions to consider the merits of the application under Order 1 Rule 10 CPC but should have itself allowed the petition and added the Registered Society represented by its Secretary Dr. Om Prakash who is already on record, also as a party and disposed of the writ petitions on their merits.

23. We, therefore, allow the appeal and remit the matter to the High Court for disposal on merits after allowing the application filed under Order 1 Rule 10 CPC by the appellant and ordering Srimati Chandramukhi Ram Saran Shiksha Samiti through its Secretary Dr. Om Prakash to be also added as a plaintiff in the suits so as to make it clear that Dr. Om Prakash is representing not only

the appellant's school but also the Registered Society and dispose of the writ petitions on merits after the formal amendments have been carried out in the pleadings. The parties are directed to bear their respective costs.

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