

Anil Kumar Singh

Vs

Shivnath Mishra Alias Gadasa Guru

SLP (C) No. 17305 of 1994

24.10.1994

ORDER

1. Daulat Singh, father of the petitioner filed Civil Suit No. 51 of 1989 for specific performance of a contract of sale said to have been executed on 22-9-1986 agreeing to sell 7.17 acres of the land bearing Plot No. 655. Pending decision in the suit, Daulat Singh died. The petitioner came on record as legal representative of Daulat Singh. He filed an application under Order 6, Rule 17 CPC seeking leave to amend the plaint by impleading the respondent also as a party-defendant in the suit. The contention of the petitioner is that Shivnath Mishra, the vendor, has colluded with his sons and wife and had obtained a collusive decree in Suit No. 393 of 1990 under Section 229-B of the U. P. Zamindari Abolition and Land Reforms Act. By operation thereof, they became co-shares of the property to be conveyed under the agreement and, therefore the respondent is a necessary and proper party. The trial court dismissed the petition and on revision, by the impugned order dated 13-7-1994, the High Court of Allahabad dismissed the Civil Revision No. 369 of 1993. Thus this SLP.

2. The contention of the petitioner is that the respondent having secured an interest as a co-owner in the land by operation of decree of the court to effectuate the ultimate decree of the specific performance that may be granted in favour of the petitioner, the respondent is a necessary and proper party, and the High Court, therefore, has committed grievous error in refusing to bring the respondent on record as second defendant. He seeks to place reliance on Order 1, Rule 3, Order 1, Rule 10(2) and Order 22, Rule 10 CPC. We find no force in the contention.

3. Order 22 Rule 10 postulates continuation of suit by or against a person who has by devolution, assignment or creation, acquired any interest during the pendency of a suit, by leave of the court. The obtaining of a decree and acquiring the status as a co-owner during the pendency of a suit for specific performance is not obtaining by assignment or creation or by devolution, an interest. Therefore, Order 22, Rule 10 has no application to this case.

4. Equally, Order 1 Rule 3 is not applicable to the suit for specific performance because admittedly, the respondent was not a party to the contract. Rule 3 of Order 1 provides that :

"3. Who may be joined as defendants. - All person may be joined in one suit as defendants where -

(a) any right to relief in respect of, or arising out of the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise."

5. In this case, since the suit is based on agreement of sale said to have been executed by Mishra, the sole defendant in the suit, the subsequent interest said to have been acquired by the respondent by virtue of a decree of the court is not a matter arising out of or in respect of the same act or transaction or series of acts or transactions in relation to the claim made in the suit.

6. Order 1, Rule 10(2) postulates that :

"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 the settle all the questions involved in the suit be added."

7. By operation of the above-quoted rule though the court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the court must be satisfied that the presence of the party to be added, would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. To bring a person as party-defendant is not a substantive right but one of procedure and the court has discretion in its proper exercise. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.

8. The question is whether the person who has got his interest in the property declared by an independent decree but not a party to the agreement of sale, is a necessary and proper party to effectually and completely adjudicate upon and settle all the questions involved in the suit. The question before the court in a suit for the specific performance is whether the vendor had executed the document and whether the conditions prescribed in the provisions of the Specific Relief Act have been complied with for granting the relief of specific performance.

9. Sub-rule (2) of Rule 10 of Order 1 provides that the Court may either upon or without an application of either party, add any party whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit. Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party.

10. A person may be added as a party-defendant to the suit though no relief may be claimed against him/her provided his/her presence is necessary for a complete and final decision on the question involved in the suit. Such a person is only a proper party as distinguished from a necessary party. In *Razia Begum v. Sahebzadi Anwar Begum* in a suit instituted for a declaration of legal status as a married wife the question arose whether another claiming to be the third wife and sons through her are necessary and proper party, who sought to come on record under Order 1, Rule 10(2). This Court held that in a suit for declaration as regards status or legal character under Section 42 of the Specific Relief Act, the rule that in order that a person may be added as a party must have a present or direct interest in the subject-matter of the suit, is not wholly applicable, and the rule 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 to effectually and completely adjudicate upon the controversy. In such suits the court is not bound to grant the declaration prayed for on a mere admission of the claim by the defendant if the court has reasons to insist upon clear proof, apart from the admission. It was therefore, held that since a declaratory judgment binds not only the parties actually before the court but also the persons claiming through them respectively within the meaning of Section 43 of the Specific Relief Act, they are proper parties. The petitioner therein was not claiming this legal status nor through the respondent. In *Lala Durga Prasad v. Lala Deep Chand*, in a suit for specific performance the subsequent purchaser was held to be a necessary party. In this case the petitioner is merely seeking the specific performance of the agreement of sale. Section 15 of the Specific Relief Act, 1963, provided that except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by "any party thereto", and under Section 16, though discretionary, created personal bars to relief under given circumstances enumerated in clauses (a) to (c) therein. Therefore, based on the fact situation, the court would mould the relief. The respondent is neither a necessary nor a proper party to adjudicate upon the dispute arising in the suit so as to render an effective and complete adjudication of the dispute involved in this suit.

11. Therefore, the High Court though for different reasons has rightly refused to interfere with the order of the trial court. The SLP is accordingly dismissed.