

Aliji Momonji & Co.

Vs

Lalji Mavji and Others

Civil Appeal No. 9477 of 1996

(K Ramaswamy, G. B. Pattanaik JJ)

12.07.1996

ORDER

1. Leave granted.

2. We have heard learned counsel on both sides.

3. The facts are very simple. The appellant-lessee laid Suit No. 9460 of 1990 for perpetual injunction against the Municipal Corporation of Bombay restraining them from demolishing a portion of the building. The Municipal Corporation had issued notice under Section 351 of the Municipal Corporation Act for demolition of the above building on the ground that the appellant had made unauthorised structures. The contesting Respondents 2 to 6 sought to come on record under Order 1 Rule 10 CPC contending that they have direct interest in the property and the motion taken out by the respondent was ordered by the trial court and the High Court by the impugned order dated 17-2-1993 upheld the same in WP No. 2418 dated 5-7-1993. Thus, this appeal by special leave.

4. Shri R. F. Nariman, the learned Senior Counsel for the appellants, contended that the contesting respondents have only commercial interest in the property but the real question is whether the appellant had made construction of the building sought to be demolished by the Municipal Corporation and, therefore, whether the landlords-respondents are necessary or proper party. The High Court has not correctly appreciated the ratio of Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay [(1992) 2 SCC 524]. The question therein was whether the contesting respondents were necessary or proper party under Order 1 Rule 10 CPC ? It was held that the party was not a necessary or proper party. It would apply to the facts of the case. We find no force.

5. The controversy is no longer res integra. It is settled law by catena of decisions of this Court that where the presence of the respondent is necessary for complete and effectual adjudication of the dispute, though no relief is sought, he is a proper party. Necessary party is one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted. The question is whether the landlord is a necessary or proper party to the suit for perpetual injunction against the Municipal Corporation for demolition of demised building ? The landlord has a direct and substantial interest in the demised building before the demolition of which notice under Section 351 was issued. In the event of its demolition, his rights would materially be affected. His right, title and interest in the property demised to the tenant or licensee would be in jeopardy. It may be that the construction which is sought to be demolished by the Municipal Corporation was made with or without the consent of the landlord or the lessor. But the demolition would undoubtedly materially affect the right, title and interest in the property of the landlord. Under those

circumstances, the landlord necessarily is a proper party, though the relief is sought for against the Municipal Corporation for perpetual injunction restraining the Municipal Corporation from demolition of the building. Under those circumstances, the question of the commercial interest would not arise. In Ramesh Hirachand Kundanmal case [(1992) 2 SCC 524] this Court had pointed out in para 18 of the judgment that the notice did not relate to the structure but to two chattels. Original lessee from the landlord had no direct interest in that property. Under these circumstances, it was held that the second respondent has no direct interest in the subject-matter of the litigation and the addition thereof would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which was required to be adjudicated and settled. It is true, as pointed out by Shri Nariman that in para 14, this Court in that case had pointed out that what makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is not necessary for the purpose of this case to go into the wider question whether witness can be a proper and necessary party when the witness has a commercial interest. This Court in New Redbank Tea Co. (P) Ltd. v. Kumkum Mittal [(1994) 1 SCC 402] has pointed out that Respondent 11 who filed a suit for specific performance in the High Court was sought to come on record in the suit in which he had no direct interest in the pending matter. Under those circumstances, this Court had held that Respondent 11 was neither necessary nor proper party in the leasehold interest involved in the suit. In Union of India v. Distt. Judge [(1994) 4 SCC 737] the Union of India who ultimately had to bear the burden of payment of the compensation was held to be a necessary party under Order 1 Rule 10 CPC for determination of the compensation in respect of the acquired land. In Bihar SEB v. State of Bihar [1994 Supp (3) SCC 743] the same question was also reiterated and it was held that the Electricity Board was a person interested and also a necessary party. In Anil Kumar Singh v. Shivnath Mishra [(1995) 3 SCC 147] similar question was answered holding that the respondent was a necessary party.

6. In view of the finding that in the event of building being demolished, right, title and interest of the landlord would directly be affected, the landlord would be a proper party, though no relief has been sought for against the landlord. The High Court, therefore, was right in refusing to interfere with the order passed by the trial court impleading the landlords.

7. The appeal is accordingly dismissed. No costs.