

Vijay Pratap and Others

Vs

Sambhu Saran Sinha and Others

SLP (C) No. 13593 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

30.07.1996

ORDER

1. This petition is against an order dismissing the application under Order 1 Rule 10 CPC filed by the petitioners to come on record in place of their father. The suit was laid for specific performance wherein the father during his lifetime is alleged to have entered into compromise and requested to delete his name from the arraignment of the parties as Respondent 1. The deletion of the first respondent came to be made after his demise. Pending suit before compromise memo was recorded, the petitioners sought to come on record under Order 1 Rule 10 being that they were necessary and proper parties. The trial court recorded the finding that deletion had taken place and observed as under :

"At present I am not giving any finding with respect to Ext. 6 and compromise petition in the light of an objection raised by the petitioners in their other two petitions. Simply I have stated the facts which are available on record. If these petitioners are made parties in the suit as prayed then dispute will arise between the petitioners and Plaintiff 1 with respect of compromise and Ext. 6. Its result will be that there will be dispute between the co-plaintiffs with respect to their right, title and interest in the suit property. This suit will turn into a regular title suit. To decide right, title and interest of co-plaintiffs in suit property is beyond the scope of this suit. Suit of specific performance of contract can't be turned into a regular title suit. So, in my opinion these petitioners are not necessary and proper parties under Order 1 Rule 10 CPC.

2. The trial court accordingly held that the petitioners are neither necessary nor proper parties to the suit. On revision, the High Court upheld the same. Shri Sanyal, the learned counsel for the petitioners contended that their father had not signed the relinquishment deed and the signatures appended to it were not that of him. The deed of relinquishment said to have been signed by the father of the petitioners was not genuine. These questions are matters to be taken into consideration in the suit before the relinquishment deed and compromise memo between the other contesting respondents were acted upon and cannot be done in the absence of the petitioners. The share of the petitioners will be affected and, therefore, it would prejudice their right, title and interest in the property. We cannot go into these questions at this stage. The trial court has rightly pointed that the petitioners are necessary and proper parties so long as the alleged relinquishment deed said to have been signed by the deceased father of the petitioners is on record. It may not bind petitioners but whether it is true or valid or binding on them are all questions which in the present suit cannot be gone into. Under those circumstances, the courts below were right in holding that the petitioners are not necessary and proper parties but the remedy is elsewhere. If the petitioners have got any remedy

it is open to them to avail of the same according to law.

3. The special leave petition is dismissed.