

Sarvinder Singh

Vs

Dalip Singh and Others

Civil Appeal No. 10663 of 1996

K. Ramaswamy, G.B. Pattanaik JJ)

02.08.1996

ORDER

1. Leave granted.
2. We have heard learned counsel on both sides.
3. The admitted facts are that the appellant filed Suit Case No. 253-1 before the Sub-Judge, Ferozpur for declaration that he is the owner of the property on the basis of a registered Will dated 26-5-1952 executed by his mother Smt. Hira Devi and that a declaration to that effect was already given by the civil court in another decree dated 29-3-1974. He filed an application under Order 39 Rule 1 CPC for ad interim injunction to restrain the defendants from interfering with his possession and enjoyment of the plaint schedule property situated in Village Dabbla Kalan, Tehsil Fazilka. The interim injunction was granted on 14-6-1991 which subsequently came to be vacated on 2-12-1991. It would appear that the defendants alienated the selfsame lands by registered sale deeds dated 2-12-1991 and 12-12-1991 in favour of the respondents before this Court. On the basis thereof, they sought to come on record as defendants under Order 1 Rule 10 CPC. The trial court dismissed the application holding that they were neither necessary nor proper parties to the suit. On revision, the High Court in the impugned order in CR No. 323 of 1993, dated 13-5-1993 directed impleadment of the respondents as party defendants to the suit. Thus this appeal by special leave.
4. Shri Kapoor, the learned counsel for the appellant, contended that the claim for declaration of title is founded upon the registered Will executed by his mother dated 26-5-1952 which was upheld in an earlier suit in which the declaration and possession was granted and in furtherance thereof the appellant remained in possession. His mother Hira Devi left behind him three sisters and one of the sisters is Rajender Kaur whose sons are the defendants in the suit. The second suit came to be filed when his possession was sought to be interdicted asserting their right to the property through their mother. Pending suit, they had alienated the property to the respondents. It is hit by the doctrine of lis pendens under Section 52 of the Transfer of Property Act. The respondents are neither necessary nor proper parties. In support thereof, he placed reliance on the judgment of this Court in *New Redbank Tea Co. (P) Ltd. v. Kumkum Mittal* [(1994) 1 SCC 402]. Mrs. Rekha Palli, the learned counsel for the respondent contended that the declaration sought is in respect of immovable property. Having purchased the property, though pending suit, they are proper parties for defending the title of their predecessor-in-interest. Therefore, the High Court was right in bringing them on record under Order 1 Rule 10 CPC. She placed reliance on the judgment of this Court in *Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay* [(1992) 2 SCC 524]. The ratio in either of the cases has no application to the facts in this case. Therefore, it is not necessary to refer to them in extenso.

5. Having regard to the respective contentions, the question that arises for consideration is whether the respondents are necessary or proper parties to the suit ? It cannot be disputed that the foundation for the exclusive right, title and interest in the property, the subject-matter of the suit, is founded upon the registered Will executed by Hira Devi, the mother of the appellant as on 26-5-1952. The trial court noted that in a suit filed on a previous occasion by the appellant, the Will was propounded as basis for an exclusive right, title and interest in the said property. He impleaded Rajender Kaur, one of the daughters of Hira Devi, to the suit along with two other sisters and the suit came to be decreed by the trial court on 29-3-1974. The decree became final. In view of those facts, the necessary conclusion that can be deduced is that the foundation for the relief of declaration in the second suit is the registered Will executed by Hira Devi in favour of the appellant on 26-5-1952. The respondents indisputably cannot challenge the legality or the validity of the Will executed and registered by Hira Devi on 26-5-1952. Though it may be open to the legal heirs of Rajender Kaur, who was a party to the earlier suit, to resist the claim on any legally available or tenable grounds, those grounds are not available to the respondents. Under those circumstances, the respondents cannot, by any stretch of imagination, be said to be either necessary or proper parties to the suit. A necessary party is one whose presence is absolutely necessary and without whose presence the issue cannot effectually and completely be adjudicated upon and decided between the parties. A proper party is one whose presence would be necessary to effectually and completely adjudicate upon the disputes. In either case the respondents cannot be said to be either necessary or proper parties to the suit in which the primary relief was found on the basis of the registered Will executed by the appellant's mother, Smt. Hira Devi. Moreover, admittedly the respondents claimed right, title and interest pursuant to the registered sale deeds said to have been executed by the defendants-heirs of Rajender Kaur on 2-12-1991 and 12-12-1991, pending suit.

6. Section 52 of the Transfer of Property Act envisages that :

"During the pendency in any court having authority within the limits of India ... of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose."

It would, therefore, be clear that the defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the court. Admittedly, the authority or order of the court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by the doctrine of lis pendens by operation of Section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit.

7. The appeal is accordingly allowed and the petition under Order 1 Rule 10 CPC dismissed, but in the circumstances without costs.