

SUPREME COURT OF INDIA

Suresh Kumar Bansal

Vs.

Krishna Bansal

C.A.No.8271 of 2009

(Tarun Chatterjee and Dr.B.S.Chauhan JJ.)

14.12.2009

JUDGEMENT

Tarun Chatterjee,J.

1. Leave granted.

2. This appeal by special leave arises from the judgment and order dated 18th of January, 2006 of the High Court of Madhya Pradesh at Gwalior in Writ Petition No.261 of 2006 dismissing the writ petition and affirming the order dated 17th of November, 2005 passed by the 8th Civil Judge, Class I, Gwalior in Civil Suit No. 40-A/2004.

3. One Shri Mohanlal Bansal (since deceased) as a plaintiff had instituted a suit for eviction and recovery of arrears of rent against one Shri Bhogiram (since deceased) in respect of a shop room situated at Kampoo, Lashkar, Gwalior, M.P. (in short the `suit premises'). During the pendency of the suit, the plaintiff had expired on 20th of June, 1989 and thereafter his widow, the respondent No.1 herein, filed an application for substitution as an heir and legal representative of the deceased in the pending suit.

“The appellant herein, the brother of the deceased plaintiff also filed an application for substitution/impleadment as heir and legal representative of the deceased plaintiff claiming the suit premises on the allegation that the deceased plaintiff had executed a Will in his favour on 11th of June, 1989. The learned Civil Judge by an order dated 22nd of February, 1991 had allowed the application for substitution/impleadment filed by the widow of the deceased plaintiff, namely, the respondent No.1 and rejected the application for substitution/impleadment filed by the appellant on the ground that the Will of the deceased plaintiff did not seem to have been executed by him and, therefore, the appellant was not entitled to be substituted/impleaded in the suit for eviction as he was not the legal representative of the deceased plaintiff.”

4. Feeling aggrieved by the aforesaid order of the learned Civil Judge, a revisional application was filed in the Court of the IVth Additional Judge to the Court of District Judge,

Gwalior (in short, "the Additional Judge") and the Additional Judge, by his order dated 11th of November, 1991, set aside the order of the learned Civil Judge to the extent it held that the appellant was not the legal representative of the deceased plaintiff and thereafter remanded the case back to the Civil Judge for fresh decision of the application for substitution/impleadment filed at the instance of the appellant. Again, the Civil Judge by his order dated 17th of November, 2005 decided the application for substitution/impleadment filed by the appellant and rejected the same observing that the execution of the Will by the testator i.e. the original plaintiff on the basis of which substitution/impleadment was sought for, seemed suspicious. This time, the appellant herein, feeling aggrieved by the order of the learned Civil Judge, filed a writ application in the High Court of Madhya Pradesh at Gwalior which came to be registered as W.P.No.261 of 2006. By the impugned judgment of the High Court, the writ petition filed by the appellant for his substitution/impleadment in the suit for eviction was also rejected affirming the order of the learned Civil Judge rejecting the application for substitution/impleadment of the appellant holding inter alia that there was no ground to interfere with the order of the Civil Judge in the exercise of its power under Article 227 of the Constitution. The High Court held that the summary enquiry was conducted only to find out whether the appellant was entitled to participate in the proceeding as a legal representative of the deceased plaintiff and in the said limited enquiry, finding was arrived at by the learned Civil Judge that the execution of the Will seemed to be suspicious and such finding of the learned Civil Judge would only be treated as the decision on the question whether the appellant should be impleaded as a party in the eviction suit.

5. It is this order of the High Court that was challenged by the appellant in this Court by way of a special leave petition which on grant of leave was heard in the presence of the learned counsel for the parties.

6. During the pendency of this appeal in this Court, more precisely on 27th of October, 2007, the original tenant, the respondent No.2 herein, had expired and his heirs and legal representatives were brought on record.

7. Before us, the only question that has to be gone into is whether the appellant, on the death of the original plaintiff, namely, Mohanlal, was entitled to be impleaded/substituted in the suit for eviction along with the natural heirs and legal representatives of the deceased, namely, respondent No.1 and others.

“Ms.Indu Malhotra, learned senior counsel appearing on behalf of the appellant submitted that since a separate probate proceeding has already been instituted by the appellant for grant of probate in the competent Court of Law which is now pending, the only course open to the court was to substitute or implead the appellant in the eviction proceeding along with natural heirs and legal representatives of the deceased plaintiff, that is to say, the entire proceeding should be carried on not only by the natural heirs and legal representatives of the deceased plaintiff but also by the appellant subject to grant of probate by a competent court of law. In support of this contention, Ms.Malhotra, learned senior counsel appearing on behalf of the appellant

had drawn our attention to a decision of this Court in the case of *Jalai Suguna vs. Satya Sai Central Trust*¹.

Ms.Malhotra also submitted that in a proceeding under Order XXII Rule 5 of the Code, it was not open to the court to consider genuineness of the Will alleged to have been executed by the testator and come to a finding that the Will was suspicious and, therefore, the appellant could not be substituted/impleaded as a legal representative of the deceased plaintiff.”

8. This submission of the learned senior counsel for the appellant was hotly contested by the learned counsel for the respondent. According to the learned counsel for the respondent, the question of impleading/substituting the appellant on the basis of the Will alleged to have been executed by the original plaintiff in respect of the suit premises could not arise at all, as according to him, in the impugned order, it was found by the High Court as well as by the Civil Judge that the Will seemed to be suspicious.

9. Having heard the learned counsel for the parties and after going through the impugned order as well as the application for substitution of the appellant on the basis of the Will alleged to have been executed by the deceased plaintiff, we are of the view that the impugned order of the High Court is liable to be interfered with and the application for impleadment filed at the instance of the appellant on the basis of the Will alleged to have been executed by the deceased plaintiff must be allowed and the appellant must be impleaded in the suit along with the natural heirs and legal representatives of the deceased plaintiff, subject to grant of probate by a competent court of law. It is true that in the impugned order, the High Court has made it clear that the finding regarding genuineness of the Will was made only for the purpose of deciding the application for impleadment filed at the instance of the appellant. But, in our view, if at this stage, the appellant is not permitted to be impleaded and in the event an order of eviction is passed ultimately against the tenant/respondent, the tenants will be evicted by the natural heirs and legal representatives of the deceased plaintiff who thereby shall take possession of the suit premises, but if ultimately the probate of the alleged Will of the deceased plaintiff is granted by the competent court of law, the suit property would devolve on the appellant but not on the natural heirs and legal representative of the deceased. Therefore, in the event of grant of probate in favour of the appellant, he has to take legal proceeding against the natural heirs and legal representatives of the deceased plaintiff for recovery of possession of the suit premises from them which would involve not only huge expenses but also considerable time would be spent to get the suit premises recovered from the natural heirs and legal representatives of the deceased plaintiff. On the other hand, if the appellant is allowed to carry on the eviction petition along with the natural heirs and legal representatives of the deceased plaintiff, in that case decree can be passed for eviction of the tenant when the appellant shall not be entitled to get possession from the tenants in respect of the suit premises until the probate in question is granted and produced before the Court. Therefore, ultimately if the court grants a decree for eviction of the tenant/respondent from the suit premises, such decree shall be passed subject to production of probate by the appellant. That apart, since the question of genuineness of the will cannot be conclusively gone into by the court in a proceeding for substitution in a pending eviction suit and in view

of the fact that an application was made at the instance of the appellant for impleadment as a legal representative of the deceased on the basis of the Will which is yet to be probated, in our view, best course open to the court is to allow impleadment of the appellant in the eviction proceeding, thereby permitting him to proceed with the eviction suit along with natural heirs and legal representatives of the deceased plaintiff, but in case the decree is to be passed for eviction of the tenant from the suit premises such eviction decree shall be subject to the grant of probate of the Will alleged to have been executed by the deceased plaintiff. At the same time, it is clear that in case the Will of the deceased plaintiff is found not to be genuine and probate is not granted, the court shall proceed to grant the eviction decree in favour of the respondent no.1 and not in favour of the appellant. It is well settled that in the event, the Will is found to be genuine and probate is granted, only the appellant would be entitled to get an order of eviction of the tenants/respondents from the suit premises excluding the claim of the natural heirs and legal representatives of the deceased plaintiff. The Code of Civil Procedure enjoins various provisions only for the purpose of avoiding multiplicity of proceedings and for adjudicating of related disputes in the same proceedings, the parties cannot be driven to different Courts or to institute different proceedings touching on different facets of the same major issue. Such a course of action will result in conflicting judgments and instead of resolving the disputes, they would end up in creation of confusion and conflict. It is now well settled that determination of the question as to who is the legal representatives of the deceased plaintiff or defendant under Order XXII Rule 5 of the Code of Civil Procedure is only for the purposes of bringing legal representatives on record for the conducting of those legal proceedings only and does not operate as res judicata and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings. If this is allowed to be carried on for a decision of an eviction suit or other allied suits, the suits would be delayed, by which only the tenants will be benefited. In order to shorten the litigation and to consider the rival claims of the parties, in our view, the proper course to follow is to bring all the heirs and legal representatives of the deceased plaintiff on record including the legal representatives who are claiming on the basis of the Will of the deceased plaintiff so that all the legal representatives namely, the appellant and the natural heirs and legal representatives of the deceased plaintiff can represent the estate of the deceased for the ultimate benefit of the real legal representatives. If this process is followed, this would also avoid delay in disposal of the suit. In view of our discussions made hereinabove, we are, therefore, of the view that the High Court as well as the trial Court were not at all justified in rejecting the application for impleadment filed at the instance of the appellant based on the alleged Will of the deceased plaintiff at this stage of the proceedings.

10. Before parting with this judgment, it is necessary to consider the decision of this Court in the case of *Jalai Suguna (deceased) through L.Rs. v. Satya Sai Central Trust and Others*², cited by the learned senior counsel for the appellant. In *Jalai Suguna (supra)*, this Court held that the intestate heir (husband) and the testamentary legatees (nieces and nephews), seeking impleadment as the heirs of the deceased respondent in an appeal have to be brought on record before the Court can proceed further in the appeal. Furthermore, in that decision it was also held that a legatee under a Will, who intends to represent the estate of the deceased testator, being an intermeddler with the estate of the deceased testator, will be a legal representative. In view of the aforesaid discussions and in view of the decision reported in

Jalai Suguna (*supra*), we are also of the view that in an eviction proceeding, when a legatee under a Will intends to represent the interest of the estate of the deceased testator, he will be a legal representative within the meaning of Section 2(11) of *Code of Civil Procedure*, for which it is not necessary in an eviction suit to decide whether the Will on the basis of which substitution is sought for, is a suspicious one or that the parties must send the case back to the probate Court for a decision whether the Will was genuine or not.

11. For the reasons aforesaid, we are of the view that the High Court as well as the trial Court had acted illegally and with material irregularity in the exercise of their jurisdiction in not impleading not only the natural heirs and legal representatives of the deceased plaintiff but also the appellant who is claiming his impleadment on the basis of an alleged Will of the deceased plaintiff.

12. Accordingly, the impugned order of the High Court is set aside and the application for impleadment filed by the appellant is allowed. For this reason, the eviction proceeding shall be carried on not only by the natural heir of the deceased plaintiff, but also the appellant who claims to be a legal representative of the deceased plaintiff on the basis of a Will alleged to have been executed by the deceased plaintiff.

13. But we make it clear that in the event, the probate of the will of the deceased plaintiff is not granted on the ground of genuineness of the Will, it is needless to say that the natural heirs and legal representatives of the deceased plaintiff would only be entitled to get possession on the basis of inheritance of the suit property on the death of the original plaintiff.

14. However, we also make it clear that the appellant would be entitled to obtain order of eviction of the tenants/respondents if the ground taken in the plaint 16 stand proved, but such decree for eviction shall be passed subject to grant of probate of the Will of the deceased plaintiff in favour of the appellant.

15. The appeal is allowed to the extent indicated above.

There will be no order as to costs.

¹[2008 (8) SCC 521]

²[(2008) 8 SCC 521]