

(Deepak Kumar Saxena vs. Smt. Nirmala Devi & Ors.)

08.01.2019

Shri N. K. Gupta, Senior Advocate with Shri Ravi Gupta, Counsel for the petitioner.

Ms. Anjana Singh Tomar, Counsel for respondent No.1.

None for the respondent No.2 though served.

Shri Harish Dixit, Government Advocate for the respondent No.3/State.

This petition under Article 227 of the Constitution of India has been filed against the order dated 3.8.2016 passed by First Civil Judge, Class II, Bhind in Civil Suit No.61A/2015 by which the application filed by the petitioner under Order 1 Rule 10 read with Section 151 of CPC for impleading him as a party in the suit has been rejected.

The necessary facts for the disposal of the present petition in short are that the respondent No.1 has filed a civil suit against the respondents No.2 and 3 for declaration of title and permanent injunction. It is the case of the respondent No.1 that the father-in-law of the respondent No.1 had purchased the land in dispute by an unregistered sale deed dated 17.11.1952 from Badri Prasad S/o Sunderlal (the petitioner claims to be the grand son of Badri Prasad) for a consideration of Rs.97/- and got the possession thereof. After the death of the father-in-law of the respondent No.1, the mother-in-law of the respondent No.1 inherited the said property. By registered "will" dated 8.8.2003, the said property was given to the respondent No.1. The mother-in-law of the respondent

No.1 has expired on 8.10.2005 and in view of "will" dated 8.8.2003 the respondent No.1 is the owner and in possession of the land in dispute. It is the case of the respondent No.1 that the Municipal Council, Bhind, is treating the respondent No.1 as an encroacher and, accordingly, he has been asked to vacate the premises raising cloud on the ownership of the respondent No.1, therefore, a suit was filed for declaration of title and permanent injunction.

The petitioner filed an application under Order 1 Rule 10 of CPC alleging that the so called sale deed as claimed by the respondent No.1 in paragraph 2 of his plaint purportedly executed by Badri Prasad (grandfather of the petitioner) by an unregistered sale deed dated 17.11.1952 in favour of late Suratnarayan Chaudhary (father-in-law of the respondent No.1) is a forged document and the respondent No.1 wants to grab the government land by creating the forged documents.

The application filed by the petitioner under Order 1 Rule 10 of CPC was opposed by the respondent No.1.

The Trial Court by order dated 3.8.2016 has rejected the application filed by the petitioner.

Challenging the order dated 3.8.2016 passed by the Trial Court, it is submitted by the counsel for the petitioner that the son of respondent No.1 has also filed a civil suit in respect of the same land against the Municipal Council, Bhind for declaration of title and permanent injunction which is still pending. In the said suit, the petitioner had filed an application under Order 1 Rule 10 of CPC which was rejected by the Trial Court.

Assailing the order passed by the Trial Court, the petitioner had filed a writ petition before this Court which was registered as Writ Petition No.2985/2016 and the said writ petition has been allowed by this Court by order dated 23.6.2016 and the petitioner has been impleaded as defendant in the said civil suit.

It is submitted that the order dated 23.6.2016 passed in Writ Petition No.2985/2016 applies *mutatis mutandis* in the present case also because the present case has also been filed against the Municipal Council in respect of the same property claiming the right through his grandfather. It is submitted that as the respondent No.1 has claimed that the grandfather of the petitioner has executed an unregistered sale deed in favour of Suratnarayan Chaudhary (father-in-law of the respondent No.1), therefore, he is a necessary party because the unregistered sale deed dated 17.11.1952 purportedly executed by Badri Prasad (grandfather of the petitioner) is a forged document and the entire attempt of the respondent No.1 is to somehow grab the government land.

Per contra, it is submitted by the counsel for the respondent No.1 that the respondent No.1 has not claimed any relief against the petitioner. The plaintiff being the *dominus litis* is the decisive party to file a suit and no one can be impleaded as a defendant against the wishes of the plaintiff and proceedings under Section 145 of Cr.P.C. was initiated against the petitioner as well as the respondent No.1 and in the said proceedings the land in question was held to be a government land by the SDM and the order passed by the SDM in the proceedings under Section 145

of Cr.P.C. were never challenged by the petitioner and the said proceedings has been challenged by the respondent No.1 only and, therefore, under these circumstances the petitioner cannot be allowed to get himself impleaded in the civil suit. To buttress her contention, the counsel for the respondent No.1 has relied upon the judgment passed by the Supreme Court in the case of **Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre & Hotels Pvt. Ltd. & Ors.** reported in **AIR 2010 SC 3109** and the judgment passed by this Court in the case of **Panne Khushali & Anr. vs. Jeewanlal Mathoo Khatik & Anr.** reported in **(1976) AIR (MP) 148**. It is submitted by the counsel for the respondent No.1 that a person can be allowed to be impleaded as a defendant only when some relief is sought against him in respect of the matter involved in the proceedings in question and without the said defendant no effective decree can be passed. In the present case, as the petitioner has not claimed any right or title over the land in dispute and no relief has been claimed against him, therefore, he is not a necessary party.

Heard the learned counsel for the parties.

In the present case, it is the claim of the respondent No.1 that the Municipal Council by treating him as an encroacher is trying to dispossess her from the land in dispute. The respondent No.1 has tried to establish her title by claiming that the grandfather of the petitioner namely Badri Prasad, the original owner of the said property, had sold the property to the father-in-law of the respondent No.1 by an unregistered sale deed dated

17.11.1952. It is the case of the respondent No.1 that after the death of her father-in-law, her mother-in-law succeeded the property. Later on, she executed a registered will in her favour and by virtue of the registered will, the respondent No.1 has become the owner and is in possession of the property in dispute. Thus, the claim of the municipal council that the respondent No.1 who is the encroacher and has encroached upon the government land has been resisted by the respondent No.1 through the unregistered sale deed dated 17.11.1952 purportedly executed by Badri Prasad (grandfather of the petitioner) in favour of Suratnarayan Chaudhary (father-in-law of the respondent No.1). If the respondent No.1 fails to establish her claim that Badri Prasad was the owner of the land in dispute and he has executed an unregistered sale deed dated 17.11.1952 in favour of Suratnarayan Chaudhary, then the claim of the respondent No.1 would certainly fail in her suit. In the present case, once the respondent No.1 is claiming her title through her grandfather of the petitioner and if the petitioner is claiming that his grandfather was never the owner and the unregistered sale deed dated 17.11.1952 is a forged document, then it cannot be said that the petitioner has no *locus standi* to oppose the claim of the respondent No.1.

It is next contended by the counsel for the respondent No.1 that since the respondent No.1 has not claimed any relief against the petitioner, therefore, she is not a necessary party as the respondent No.1 is claiming his title by virtue of an unregistered sale deed dated 17/11/1952 purportedly executed by Badri Prasad in

favour of Suratnarayan Chaudhary and since that claim is being objected by the petitioner, therefore, it cannot be said that for drawing an effective decree the petitioner is not a necessary party.

It is next contended by the counsel for the respondent no.1 that the plaintiff is a *dominus litis* and, therefore, no one can be impleaded as a defendant without his/her wishes.

So far as the submission made by the counsel for respondent no.1 is concerned, the proposition of law, as submitted by the counsel for respondent no.1, is well established, however, it does not apply in the facts and circumstances of the case. In the present case the petitioner is not claiming any relief against the respondent no.1. It is the case of the petitioner that by creating a forged document, respondent no.1 is trying to grab the government land and under these circumstances, as already held by this Court that the petitioner is a necessary party, therefore, the application filed by the petitioner under Order I Rule 10 CPC cannot be rejected on the ground that the plaintiff is *dominus litis*.

It is next contended by the counsel for respondent no.1 that as an order under Section 145 of Cr.P.C. was passed against the petitioner as well as against respondent no.1 and the SDM had declared the said land as Government land and since the petitioner has not challenged the order passed under Section 145 of Cr.P.C. and, therefore, he cannot be allowed to be get impleaded in the Civil Suit.

In the considered opinion of this Court, the

submission made by counsel for respondent no.1 is misconceived. It is not the case of the petitioner that he is the owner of the land in dispute. It is the case of the petitioner that the land in dispute is a government land and the respondent no.1 is trying to grab the said property by creating a forged document. Once the proceeding under Section 145 of Cr.P.C. has culminated into a finding that the land in dispute is a government land, then in the considered opinion of this Court, there was no need for the petitioner to challenge the order passed under Section 145 of Cr.P.C.

It is next contended by the counsel for the petitioner that the son of the petitioner has also filed the Civil Suit in respect of the same property claiming his title by virtue of an unregistered sale deed dated 17/11/1952 purportedly executed by Badriprasad in favour of Late Suratnarayan Chaudhary and in the said case this Court by order dated 23.6.2016 passed in Writ Petition No.2985/2016 has already allowed the application of the petitioner filed under Order I Rule 10 CPC and the said order will apply with equal force in the present case also is concerned, the petitioner has made specific contention in his writ petition. Although respondent no.1 has filed her return, but has not controverted the claim of the petitioner that the order passed by this Court in Writ Petition No.2985/2016 dated 23.6.2016 would apply in the present case also.

Thus, this Court is of the considered opinion that the trial court has committed material illegality by rejecting the application filed by the petitioner under Order I Rule

10 CPC and accordingly, the order dated 3/8/2016 passed by First Civil Judge, Class-II, Bhind in Civil Suit No.61-A/2015 is hereby set aside. The application filed by the petitioner under Order I Rule 10 CPC is allowed and the petitioner is impleaded as defendant no.3 in the said civil suit. Let necessary amendment be carried out in the plaint.

The petitioner, if so desires, may file his written submission.

Accordingly, the petition succeeds and is hereby **allowed**.

No order as to costs.

(G.S. Ahluwalia)
Judge

(alok)