

S.B. CIVIL WRIT PETITION NO.2609/2008.
Atma Ram Vs. Civil Judge (J.D.), Rawatsar & Ors.

Date of Order :: 30th April 2008.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Kishan Bansal, for the petitioner.

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BY THE COURT:

By way of this writ petition, the applicant-petitioner seeks to question the order dated 20.03.2008 (Annex.7) passed by the Civil Judge (Junior Division), Rawatsar rejecting his application for impleadment in a suit for injunction.

From the copy of the amended plaint (Annex.1), it appears that the plaintiff Sahi Ram (since deceased and represented by his wife and children, respondents Nos. 2/1 to 2/3 herein) has filed the suit for perpetual injunction against the State of Rajasthan, Additional Collector and Secretary, Mandi Vikas Samiti, Hanumangrh, and the Municipal Board, Rawatsar (respondents Nos. 3 to 5 herein) claiming his right over a piece of land described in paragraphs 1 and 2 of the plaint allegedly purchased by him on 16.04.1960 from the Sarpanch of Gram Panchayat Rawatsar and having been issued patta thereof; and submitted that the notice as issued by the Secretary of Mandi Vikas Samiti for auction of the land in question was wholly unauthorised. It appears that the substituted plaintiffs have taken

further pleadings by way of amendment that the State Government had issued orders for regularisation of such land and called for a list of pattas issued by the said Gram Panchayat; however, the concerned authorities did not carry out compliance and even the prayer made by the plaintiffs for such regularisation was declined in an illegal manner. The plaintiffs have further alleged that during pendency of the suit, the land in question has been vested in the Municipal Board (defendant No.3) who is competent to regularise; and the plaintiffs have adopted proceedings for such regularisation before the defendant No.3. The prayer in this suit is to the effect that the defendants be restrained from interfering with the land in question and be directed to regularise the same in favour of the plaintiffs. The defendant No. 3 in its written statement (Annex.2) has denied the claim of the plaintiff with the submissions, *inter alia*, that as on 16.04.1960, Gram Panchayat, Rawatsar had no authority to issue any such patta; and the patta referred by the plaintiffs remains void and non-est. The answering defendant has of course pointed out that the application for regularisation as made by the plaintiffs was to be considered by its Settlement Committee; and has contended that because the plaintiffs could obtain relief in the application moved before the Settlement Committee, they were not entitled for any relief from the Civil Court per Section 41 (h) of the Specific Relief Act.

In this suit, by way of the application moved under Order I Rule 10 of the Code of Civil Procedure (CPC), the applicant-petitioner would assert that the land sought to be claimed by the plaintiffs is that of Plot No. 233 and remains his patta land; and that the plaintiff was in its possession with his permission. According to the applicant, the plaintiff wanted to show this land of Plot No. 233 as that of Plot No. 234 whereas the fact remains that the land of Plot No. 234 has already gone in road. According to the applicant, the plaintiff, in connivance with the employees of the Municipality and while misleading the Court, was seeking to get the land of Plot No. 233 regularised by stating it to be the land of Plot No. 234. Hence, according to the applicant, he was a necessary and proper party in the suit.

The learned Trial Court has proceeded to reject the application for impleadment while finding doubtful the patta as produced by the applicant; while also finding ambiguity in the stand of the applicant that the plaintiff was in possession of the land in question with his permission; and while noticing that the stand of the applicant in the present application was contrary to the submission as made in the application moved before the Municipal Board, Rawatsar. The learned Trial court has also observed that the suit was filed about 20 years back and twice over Commissioners have produced site inspection reports and

joinder of the applicant 20 years after filing of the suit would lead to a *de novo* trial.

Seeking to assail the order aforesaid, learned counsel for the applicant-petitioner strenuously contended that in case the suit in question is decreed, the plaintiffs would succeed in getting regularisation of the plot of the petitioner in their favour and thereby the rights of the petitioner would be adversely affected. Learned counsel submitted that the Trial Court has acted wholly illegally in rejecting the application for impleadment without considering that the decision in the suit was directly to affect the rights of the petitioner. Learned counsel further submitted that the observations of the learned Trial Court about delay in filing of the application remain entirely irrelevant because parties could be added at any stage of proceedings under Order I Rule 10 CPC. Learned counsel has referred to and relied upon the decisions in *Aliji Momonji & Co. Vs. Lalji Mavji & Ors.* : (1996) 5 SCC 379, *Banshidhar & Ors. Vs. PHED & Ors.* : 2000-01 DNJ (Raj.) (Suppl.) 249, *Amit Kumar Shaw & Anr. Vs. Farida Khatoon & Anr.* : 2005 (1) WLC (SC) 793 and *Suninderjeet Singh & Ors. Vs. The State of Rajasthan & Ors.* : 1994 (1) RLW 265.

Having heard learned counsel for the applicant-petitioner and having perused the material placed on record, this Court is unable to find any jurisdictional error in the impugned order dated 20.03.2008 (Annex.8) as passed by the learned Trial Court

rejecting the application for impleadment as moved by the petitioner.

The decisions relied upon by the learned counsel do not lend any support to the claim for impleading in the present suit. The decision in Aliji Momonji's case (supra) deals with a matter where the suit was filed by the lessee for perpetual injunction to restrain the Municipal Corporation from demolishing a portion of plot; and the landlords of the property in question were found having direct interest in the subject matter of litigation and their right, title and interest were likely to be affected in the event of building being demolished; and the Hon'ble Supreme Court found the High Court right in refusing to interfere with the order passed by the Trial Court impleading the landlords as parties. In the present case, the petitioner seeks to make out a case that the suit property does not belong to the plaintiffs but to himself. Such an aspect, as suggested by the applicant-petitioner, entails an inquiry into the question of title of the applicant to the suit property; and such a question is entirely foreign to and nowhere near the cause of action in the suit concerned and the questions involved therein.

In Banshidhar's case (supra) this Court refused to interfere in impleadment of Gram Panchayat in a suit for perpetual injunction filed by the plaintiff against Public Health Engineering Department to restrain it from constructing water

tank over the disputed property where the Gram Panchayat asserted its claim over the land that was claimed by the plaintiff to be of his ownership; and the Gram Panchayat alleged itself having allotted the land to the Public Health Engineering Department for construction of water tank. In the fact situation of the case and looking to the nature of claim made by the plaintiff, if presence of Gram Panchayat was considered necessary for adjudication of all the questions involved in the matter and this Court refused to interfere in revisional jurisdiction, the said case hardly provides any support to the case of the present applicant, more particularly for uncertainty surrounding the claim of title as suggested in the application for impleadment.

Again, the decision in Amit Kumar Shaw's case (supra) dealing with impleading of a transferee *pendente lite* in a suit relating to immovable property stands on entirely different principles particularly for the provisions of Section 52 of the Transfer of Property Act. Looking to the claim for injunction as made by the plaintiffs in the present case, rejection of the application for impleadment cannot be said to be improper.

In Suninderjeet Singh's case (supra), the order was passed by the Trial Court in a suit for injunction for impleadment of a person who stated having filed revision petition before the Additional Collector wherein an order dated 30.01.1992 was passed and the plaintiffs claimed relief in the suit that the said

order dated 30.01.1992 be not executed; and this Court observed that the applicant was a necessary party to resolve the controversy as the validity of the said order was in question. The said decision in Suninderjeet Singh's case too has no application to the facts of the present case where the applicant is trying to assert his right on the land in question on the allegation that the plaintiffs' land has gone in road and that the plaintiffs were occupying the land in question with his permission. Such a claim of the applicant necessarily gives rise to absolutely different questions than the questions involved in the suit between the parties.

Of course, it is true that mere delay in moving cannot be the ground for rejection of application for impleadment if otherwise the applicant is required to be impleaded on relevant principles. However, the learned Trial Court does not appear unjustified in referring to the aspect of delay in the present case for the reason that the suit is pending for 20 years and the claim of the applicant has been that the plaintiffs were occupying the land in question with his permission. Apart that such assertion itself is shrouded in obscurity and ambiguity, looking to the nature of litigation, the applicant would not have remained aloof from the same for good 20 years if the plaintiffs were merely in permissive occupation of his land, as alleged.

Be that as it may, even when the aspect of delay is ignored, looking to the subject matter of the present suit and uncertain nature of independent claim as sought to be made by the applicant, when he has not been accepted as necessary or proper party by the learned Trial Court, the order impugned cannot be said to be suffering from any jurisdictional error.

The writ petition fails and is, therefore, rejected.

(DINESH MAHESHWARI), J.

Mohan/