

GAHC010034092022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/35/2022

KRITIKA SOOD

D/O- LATE KULDEEP SOOD, PERMANENT ADDRESS- MAHINDRA MARKET,
PALTAN BAZAR, G.S. ROAD, P.S. AND P.O. PALTANBAZAR, GUWAHATI-
781008.

VERSUS

MD. MEHER KHAN AND ANR.

S/O- MD. FARUK KHAN, R/O- H/NO. 5, HAFIZ NAGAR, ULUBARI, P.S.
PALTANBAZAR, P.O. ULUBARI, GUWAHATI-781007, DIST.- KAMRUP(M),
ASSAM

2:SMTI. KABITA SOOD

W/O- LATE KULDEP SOOD

R/O- 1ST FLOOR

HOTEL GEETANJALI BUILDING

G.S. ROAD

P.S. PALTANBAZAR

P.O. REHABARI

GUWAHATI-781008

DIST.- KAMRUP(M)

ASSA

Advocate for the Petitioner : MR H GUPTA

Advocate for the Respondent : MS P TOKBIPI

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGEMENT AND ORDER (ORAL)

Date : 28-04-2023

Heard Mr. H. Gupta, learned counsel for the petitioner. Also heard Mr. N.K. Murry, learned counsel for the respondents.

2. This is an application under Article 227 of the Constitution of India read with Section 151 CPC filed by the petitioner against the impugned order dated 06.09.2021 passed by the learned Munisff No. 2, Kamrup(M), Guwahati in Misc. (J) Case No. 5/2021, wherein the prayer for impleadment of the petitioner as defendant No. 2 in Title Suit No. 159/2017 was rejected.

3. The brief facts of the case is that the petitioner is the daughter of the respondent No. 2 and the only legal heir of her father late Kuldeep Sood. The respondent No. 2 was arrayed as sole defendant in T.S. No. 159/2017 who is the mother of the petitioner. The respondent No.1 as plaintiff has claimed himself to be the tenant under respondent No. 2 and filed a suit claiming decree for declaration that the plaintiff is a tenant under the defendant with respect to the suit premises and cannot be evicted therefrom by the defendant without following the due process of law.

4. The respondent No. 1 as plaintiff filed a Title Suit being No. 159/2017 against the respondent No. 2 before the court of learned Munsiff No. 2, Kamrup(M) stating *inter alia* that he is a tenant of the respondent No. 2 and runs a garment shop at the said premises rented by the respondent No. 2 and used to pay rent on daily basis as per terms of the rent agreement. It is further stated by respondent No. 1 that one evening, the respondent No. 2 with some unknown persons asked respondent No. 1 to vacate the premises or else his

materials will be thrown away and forcibly tried to evict the respondent No. 1 from the said premises. Accordingly, the respondent No. 1 prayed for a decree for declaration as aforesaid.

5. The respondent No. 2 in the said Title Suit No. 159/2017 filed a written statement/counter claim stating *inter alia* that no such deed of agreement was ever executed between the respondent No. 1 and respondent No. 2 in connection with the tenanted premises. It is further stated that the respondent No. 1 has been running the business over the said premises unauthorizedly. There was no any agreement to that effect as such, the respondent No. 2 prayed to dismiss the Title Suit being No. 159/2017.

6. It is further stated by the petitioner that the father of the petitioner i.e. Kuldeep Sood was the owner of the suit property/premises who had expired on 19.08.2016 due to brain stroke. After the death of her father, the petitioner and her mother jointly inherited the suit property and accordingly their names were recorded at serial Nos. 6 and 7 in the jamabandi of the land covered by Dag No. 498 an Patta No. 139 of revenue village- Town Guwahati of Mouza- Ulubari. The petitioner being the co-owner of the suit premises, she is an interested party over the suit property and accordingly she prayed for being impleaded as defendant No. 2 by filing Misc.(J) Case No. 5/2021 under Order I rule 10 of CPC, 1908 in the Title Suit No. 159/2017.

7. After hearing both sides, the learned Munsiff No. 2 passed the order dated 06.09.2021 by rejecting the prayer of the petitioner to be impleaded in the said suit by stating that impleading the petitioner in the suit will result in inviting irrelevant matters such as title of the property to be adjudicated or considered and there will be no relationship between such matters with the declaration of lawful tenancy and injunction. It was further observed that the court has no

business with the present petitioner and as such, the court passed an order stating that the petitioner is neither a necessary party nor a proper party to the suit. Hence, this civil revision petition.

8. It is submitted by the learned counsel for the petitioner that the learned trial court fails to take into consideration the fact that the prayer for impleadment was made by the petitioner by filing a petition on 18.11.2020 in Title Suit No. 159/2017. But the petition for compromise was filed later on i.e. on 11.02.2021 by the parties to the suit i.e. the tenant and the sole defendant being the mother of the petitioner, stating that fresh tenancy agreement was reached between them and in the said process, the petitioner being the legal heir is deprived of her rights in the tenanted premises. Not allowing impleadment would result in multiplicity of proceedings and would deprive the petitioner to agitate her claim in the tenanted premises. Therefore, the impugned order dated 06.09.2021 cannot be sustained in law.

9. In support of his submissions, the learned counsel for the petitioner has relied on the following case law-

(i) 1997 SCC Online Raj 95 (Bajinath & Anr. vs Smt. Ganga Devi & Anr.)

10. On the other hand, the respondent No. 1 i.e. plaintiff in Title Suit No. 159/2017 has filed an affidavit-in-opposition against the prayer of the petitioner for impleadment in the said suit. It is admitted that he has filed a Title Suit being No. 159/2017 seeking declaration that he is the tenant of the suit premises and injunction and not to be evicted therefrom by the owner of the property who was impleaded as sole defendant i.e. the respondent No. 2 without due process of law.

11. It is submitted by the learned counsel for the respondent No. 1 that the

petitioner does not have the locus standi to file the present petition simply by the fact that she is the daughter and legal heir of late Kuldeep Sood and respondent No. 2 Kabita Sood. It is also submitted that the petitioner is not an aggrieved person but a third party/stranger in the proceeding of the suit pending before the court of Munsiff and as she was not a party in the agreement and as such, the same does not require any indulgence by this Court.

12. I have considered the submissions made by the learned counsel for the parties.

13. Admittedly, the petitioner is not a party to the tenancy agreement dated 03.06.2016 executed between the respondent No. 1 and respondent No. 2. Accordingly, on the basis of the said agreement, the present respondent No. 1 without any default paid the rental dues as payable. The husband of the respondent No. 2 died on 19.08.2016. The present petitioner is the daughter of respondent No.2 and late Kuldeep Sood.

14. During the pendency of the said suit filed by the respondent No. 1, a mutual settlement by way of deed of agreement was executed between the landlady i.e. respondent No. 2 and the present respondent No. 1 30.09.2020 with certain terms and conditions and accordingly filed a joint compromise petition on 11.02.2021 under Order 23 Rule 3 of CPC before the trial court. But on the said petition, no order was passed by the trial court.

15. The question that has to be considered is whether the petitioner is a necessary or a proper party in T.S. No. 159/2017. In the decision reported in **(2005) 6 SCC 733 - Kasturi v. Iyyamperumal and others**, it was observed that in a suit for specific performance of a contract, only the parties to the

contract or parties claiming under them or a person who had purchased the contracted property from the vendor with or without notice of the contract are necessary parties. However, the person who claims independent title and possession adversely to the title of vendor is not a necessary party since an effective decree can be passed in his absence and no relief can be claimed against such party.

16. In another case reported in ***(2010) 7 SCC 417 Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and others***, it was held that "the fact that if the Airport Authority succeeds in the suit, the suit land may also be leased out to the appellant is not sufficient to hold that the appellant has got any right, interest or semblance of right or interest in the suit property. It has been further held that when the appellant is neither claiming any right nor remedy against the first respondent therein, who has instituted the suit and when the first respondent has not claimed any right or remedy against the appellant in a suit for specific performance by the first respondent against the Airport Authority, the appellant cannot be a proper or necessary party."

17. While considering the claim of the appellant to implead itself as a party, the Hon'ble Apex Court, in the said decision, has held that a necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a necessary party is not impleaded, the suit itself is liable to be dismissed. A proper party is a party, though not a necessary party, is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all the matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made.

18. The Hon'ble Apex Court in the said judgment has also considered the observation of a two-Judge Bench of the ***Supreme Court in Sumitibai v. Paras Finance Co. reported in 2007 (10) SCC 82***, wherein it was held that a person need not have any subsisting right or interest in the suit property for being impleaded as a defendant and that even a person who is likely to acquire an interest therein in future, in appropriate cases, is entitled to be impleaded as a party.

19. In the case of **Kasturi** (supra), it has been held that in a suit for specific performance of an agreement of sale of property, a stranger or a third party to the contract cannot be added as defendant in the suit. While considering both the judgments, the Hon'ble Apex Court has held as follows:-

“The learned counsel for the first respondent on the other hand submitted that the decision in **Sumtibai** is not good law in view of an earlier decision of a three-Judge Bench decision of this Court in **Kasturi v. Iyyamperumal** (supra). In **Kasturi**, this Court reiterated the position that necessary parties and proper parties can alone seek to be impleaded as parties to a suit for specific performance. This Court held that necessary parties are those persons in whose absence no decree can be passed by the court or those persons against whom there is a right to some relief in respect of the controversy involved in the proceedings; and that proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person. Referring to suits for specific performance, this Court in **Kasturi**, held that the following persons are to be considered as necessary parties: (i) the parties to the contract which is

sought to be enforced or their legal representatives; (ii) a transferee of the property which is the subject-matter of the contract. This Court also explained that a person who has a direct interest in the subject-matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under Order 1 Rule 10 CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the contract, but a person who claims a title adverse to that of the defendant vendor will not be a necessary party.

On a careful consideration, we find that there is no conflict between the two decisions. The two decisions were dealing with different situations requiring application of different facets of sub-rule (2) of Rule 10 of Order 1. This is made clear in **Suntibai** itself. It was observed that every judgment must be governed and qualified by the particular facts of the case in which such expressions are to be found; that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision and that even a single significant detail may alter the entire aspect; that there is always peril in treating the words of a judgment as though they were words in a legislative enactment."

20. Thus, the Hon'ble Apex Court has held that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. The Hon'ble Apex Court, in the said decision, also held that if a party claiming to be impleaded himself as a party, if established a semblance of title over the suit property, he can be impleaded. Further, it has been held that a person who has a direct interest in the subject matter of the

suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under Order 1 Rule 10 C.P.C. It has also been held that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without the notice of the contract. However, a person who claims a title adverse to that of the defendant vendor will not be a necessary party.

21. In a case of ***Robust Hotels (P) Ltd v. E.I.H.Limited, reported in 2010 (6) CTC 192***, it was held as follows:-

"A proper and necessary party to a suit is a party whose presence and participation is absolutely necessary for a final adjudication of the lis. It is immaterial as to the extent of relief sought for against it or the subject of controversy involved in the suit. In the case it is demonstrated that any decision made in the suit would prejudicially affect the interest of a particular person, he should be treated as a necessary party. "

22. In the decision reported in ***2007 vol.2 CTC 73 S.Krishnan v. Rathinavel Naicker and 22 others***, it was observed as follows:-

"In a nut shell, the tests to be applied for determining the right of a party to implead another, in a pending suit or other proceeding, may be crystallized into the following categories:

(a) If without his presence no effective and complete adjudication could be made;

(b) If his presence is necessary for a complete and effectual adjudication of the dispute though no relief is claimed against him;

(c) If there is a cause of action against him;

(d) If the relief sought in the suit or other proceedings is likely to be made binding on him;

(e) If the ultimate outcome of the proceedings is likely affect him adversely;

(f) If his role is really that of a necessary witness but is sought to be camouflaged as a necessary party.... "

23. Coming to the case in hand, it is an admitted fact that the petitioner is the daughter of the respondent No.2 and her husband i.e. late Kuldeep Sood. The father of the petitioner was the original owner of the suit premises. After the death of the father of the petitioner, his wife i.e. Kabita Sood, respondent No. 2 and the daughter i.e. present petitioner became the owner of the suit premises. When the first tenancy agreement was executed on 03.06.2016, the present petitioner was minor. Subsequently, she was abandoned by her mother i.e. respondent No. 2. It is also not disputed that after filing of Title Suit being No. 159/2017, the matter has been compromised between the respondent No. 1 and respondent No.2 and subsequently separate agreement was executed between the respondent No. 1 and 2 in the year 2020. By this time, the petitioner became major but she was not made party in the said agreement. She was also not called by her mother i.e. respondent No. 2 to be a party at the time of execution of the subsequent tenancy agreement in the year 2020. It is pertinent to say here that there was no partition of the suit property between the petitioner and the respondent No. 2. Under such backdrop, it can be presumed that the respondent No. 2 had an intention to deprive her daughter i.e. the present petitioner from getting the rent proceeds of the tenanted premises.

24. It is true that the original agreement was not executed between the

present petitioner and the respondent No. 1 who is plaintiff in title Suit No. 159/2017. The reason behind that the petitioner was a minor at that time. The respondent No. 1 as plaintiff has filed the case being No. T.S. 159/2017 prayed for a decree of declaration and injunction that the plaintiff as a tenant under the defendant with respect to the suit premises cannot be evicted therefrom by the defendant without following the due process of law. As it appears that the present petitioner is the legal heir of her father i.e. husband of the respondent No. 2, she has interest over the suit premises. It also appears from the record that the petitioner has filed a separate suit against her mother i.e. respondent No. 2 vide T.S. 388/2020 before the learned Civil Judge No. 1 Kamrup(M) praying for declaration of right, title and interest over the suit property and also rent proceeds in respect of the suit premises.

25. Under such backdrop, this Court is of the view that the petitioner is a necessary party in Title Suit No. 159/2017. The impugned order passed by the learned Munsiff No. 2, Kamrup(M) in Title Suit No. 159/2017 dated 06.09.2021 is hereby set aside. The learned Munsiff No. 2, Kamrup(M), is directed to implead the petitioner as defendant No. 2 in Title Suit No. 159/2017.

26. With the above observation, the present revision petition is allowed and disposed of accordingly at the admission stage.

27. Stay order passed earlier, if any, stands vacated.

JUDGE

Comparing Assistant