

Court No. - 17

Case :- WRIT - C No. - 1003210 of 2007

Petitioner :- Shiv Pratap Singh And Another

Respondent :- Special Judge Sc/St Act Gonda And 5 Others

Counsel for Petitioner :- D.C.Mukherjee,Amit

Mukerjee,Mayankar Singh,Mohan Singh

Counsel for Respondent :- C.S.C.,A.P.Singh

Hon'ble Alok Mathur,J.

1. Heard Sri Mohan Singh, learned counsel for the petitioner as well as learned State Counsel and perused the records.

2. In the present writ petition, the petitioner has challenged the order dated 11.08.2005, passed by the Civil Judge (Senior Division) Gonda, in Regular Suit No.98/99 whereby the application under Order 1 Rule 10 of CPC preferred by the respondent no.6 has been allowed.

3. The petitioner has further challenged the order dated 17.03.2007, passed by the Special Judge, SC/ST Act, Gonda, whereby the revision against the order of the trial court has also been rejected. It is submitted by learned counsel for the petitioner that the petitioner had instituted the suit for permanent injunction stating that there is recorded tenure holder of certain agricultural plots and the house situated at village-Khaira Pargana- Gwarich, Tehsil- Colonel Ganj, District-Gonda which they have been cultivating and he apprehends that the respondent no.3 to 5 not allowing to cultivate the said land and consequently instituted a suit for permanent injunction to restrain the defendants from cutting the crop and trees and sugarcane crop on plot no.966 area 3.19 acres, plot no.373 area 3.58 acres balool tree standing on plot no. 384.

4. In the said suit, an application under order 1 Rule 10 of CPC was preferred by respondent no.6. In the said application, it was stated that the respondent no.6, i.e., Smt. Ramlali is the daughter of Ram Bahadur son of Bhulli Singh. She stated that Ram Bahadur Singh died on 20.03.1983 and she is the only legal heir of Ram Bahadur Singh as Ram Bahadur Singh did not have any son. She stated that after the death of Ram Bahadur Singh, the property dwelt on his wife Smt. Ram Sawari and Smt. Ram Sawari also died in the meanwhile and consequently the applicant was the only legal heir of Ram Bahadur Singh. She has further made allegations against the petitioner that he is creating fictitious records to take up the property of Ram

Bahadur Singh and the applicant being the only legal heir is entitled for the possession of the disputed property and also a necessary and proper party.

5. The trial court duly considered the case of the applicant and also the objections filed by the petitioner. The petitioner had opposed the application filed by the applicant under Order 1 Rule 10 of CPC by stating that Smt. Ramlali is not the daughter of Ram Bahadur Singh son of Bhulli Singh but in fact she is daughter of Ram Bahadur Singh son of Munna Singh and resident of village- Khaira Pargana- Gwarich, Tehsil- Colonel Ganj, District- Gonda. In support of his submissions, he has filed a copy of the family register. It is in the aforesaid circumstances that the trial court considered the entire facts and it is in the interest of justice that the applicant should be impleaded as a defendant and we allow to place her case before the court and in case she is not impleaded, this would be permitting multiplicity of litigations. Further, he considered the fact that the applicant has stated that she is in possession of the disputed property and hence she was a necessary and proper party and accordingly allowed the said application. Before the revisional court, the facts were reiterated by the concerned parties and the revisional court also concurred with the findings recorded by the trial court and considering the assertions made by the applicant that she is owner in possession of the disputed property, she was a necessary party and consequently the revision was also dismissed. Before this Court, it is submitted that the petitioner has adduced sufficient evidence to indicate that Smt. Ram Lali was not the daughter of Ram Bahadur Singh son of Bhulli Singh and in fact she was an imposter and consequently her application could not have been allowed. He has further submitted that the petitioner was the plaintiff in the said suit and his capacity as dominus litis and application under Order 1 Rule 10 of CPC could not have been allowed. He has relied upon the judgment of the Supreme Court in the case of **Sudhamayee Pattnaik and Others vs. Bibhu Prasad Sahoo and Others 2022 SCC Online SC 1234**, the operative portion of which is quoted here-in-under:

"...10. Order 1 Rule 10 of the Code enables the court to add any as a party at any stage of the proceedings, if the person whose presence in court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision. Order 1 Rule 10 of the Code empowers the court to substitute a party in the suit who is a wrong person with a right person. If the court is satisfied that the suit has been instituted through a bona fide mistake, and also that it is necessary for the

determination of the real matter in controversy to substitute a party in the suit, it may direct it to be done. When the court finds that in the absence of the persons sought to be impleaded as a party to the suit, the controversy raised in the suit cannot be effectively and completely settled, the court would do justice by impleading such persons. Order 1 Rule 10(2) of the Code gives wide discretion to the court to deal with such a situation which may result in prejudicing the interests of the affected party if not impleaded in the suit, and where the impleadment of the said party is necessary and vital for the decision of the suit.

...17. The expression "to settle all questions involved" used in Order 1 Rule 10(2) of the Code is susceptible to a liberal and wide interpretation, so as to adjudicate all the questions pertaining to the subject-matter thereof. Parliament in its wisdom while framing this rule must be held to have thought that all material questions common to the parties to the suit and to the third parties should be tried once for all. The Court is clothed with the power to secure the aforesaid result with judicious discretion to add parties, including third parties. There cannot be any dispute that the party impleaded must have a direct interest in the subject-matter of litigation...."

6. Subsequent to notices having been issued to the respondents, appearance had been put in on behalf of opposite party no.6 but no one has appeared to contest the said case today.

7. I have heard the counsel for the petitioner and perused the records. The only question arising before this Court is as to how the application preferred by Ramlali could have been allowed to be impleaded as a defendant. It was asserted by Ramlali that she is daughter of Ram Bahadur Singh son of Bhulli. Ram Bahadur Singh had died on 20.03.1983 and after his death, the property stood transferred in the name of his wife Smt. Ram Sawari. Smt. Ram Sawari also died 10 days after the death of Ram Bahadur Singh i.e. on 31.03.1983 and subsequent to the death of Ram Bahadur Singh, the entire property had dwelt upon the applicant, being the legal heir and daughter of Ram Bahadur Singh. She has further stated that after the death of Ram Bahadur Singh and Smt. Ram Sawari, she was in possession of the said property in her own right as the owner of the said property. Though the petitioner had objected to the application for impleadment and also produced a parivar register indicating that the applicant was not the legal heir of deceased Ram Bahadur Singh son of Bhulli Singh but this Court considered the fact that the assertions made by the applicant that she is the owner of the said property and also in possession, it is in the interest of justice that the application for impleadment is

allowed.

8. This Court, after considering the entire material and as well as the judgments relied upon by the learned counsel for the petitioner, is of the considered view that there is no infirmity in both the impugned order dated 11.08.2005 passed by opposite party no.2/Civil Judge (Senior Division), Gonda and order dated 17.03.2007 passed by Special Judge, SC/ST Act, Gonda. It is further noticed that the trial court at this stage has not decided the question about the identity of the applicant as to whether in fact she is the daughter of Ram Bahadur son of Bhulli Singh or she is the daughter of Ram Bahadur Singh son of Munna Singh. Further, it cannot be denied at this stage that she is not the daughter of Ram Bahadur Singh son of Bhulli Singh and in view of the matter this question can be adequately considered during the course of trial when both the parties have adduced the evidence to prove the same. This Court is also of the considered view that merely because of an objection being raised with regard to the identity of the applicant will by itself be the sole ground for rejection of the application under Order 1 Rule 10 of CPC.

9. In light of the above, this Court does not find any infirmity with the impugned orders necessitating interference under Article 227 of the Constitution of India. Considering that the suit proceedings had been stayed for the last 15 years the trial court is directed to proceed with the same and conclude the proceeding expeditiously.

10. This Court has not recorded any findings with regard to the merits of the case and the trial court shall be at liberty to record the findings on the basis of evidence adduced before it.

(Alok Mathur,J.)

Order Date :- 8.12.2023/Manoj K.