

Ashok Krishnachand Sethi and Anr.] ... Petitioners

Lal Bahadur Yadav and Ors.] ... Respondents

Mr. Yadunath M. Chaudhary a/w Mr. Mukesh V. Chheda i/b Omkar Kulkarni for Respondents.

DATE :- JULY 15, 2015

1. This petition challenges orders dated 15/05/2015 and 10/06/2015 made by the Small Causes Court ('Trial Court') and the Division Bench of the Small Causes Court ('Revisional Court') in the context of Exh.15 in R.A.E. Suit No.270 of 2015. Both the orders have the effect of permitting the impleadment of Respondent No.5 as Defendant No.5 in the R.A.E. Suit No.270 of 2015.

2. Mr. S. P. Kanuga, learned Counsel for Petitioners, submits that the suit, as instituted by the Petitioners, is on the basis that the Petitioners are the owners/occupants of the suit premises as well as the land beneath the same and that the Respondent Nos.1 to 4 are the

tenants, who need to be evicted upon the grounds set out in the plaint. In such a suit, he contends, the Respondent No.5 could never have been impleaded, notwithstanding the plea of the Respondent No.5 that it purchased the suit premises and the property beneath the same. The factum of purchase is seriously disputed and in any case, it is for the Respondent No.5 to initiate appropriate but independent proceedings, in order to establish its claim. In the suit instituted by the Petitioners, the Respondent No.5 can neither be regarded as a necessary nor a proper party. In fact, the impleadment of the Respondent No.5 in the suit, is bound to embarrass the trial therein. For all these reasons, Mr. Kanuga submitted that the impugned orders are in excess of jurisdiction and therefore deserve to be interfered with.

3. Mr. Yadunath M. Chaudhary, learned Counsel for Respondent No.5, on the other hand, submitted that the proceedings between the Petitioners and Respondent Nos.1 to 4 are collusive. Based upon interim order in such proceedings, the Petitioners as well as Respondent Nos.1 to 4 intend to block/stall the development activity undertaken by the Respondent No.5 in the suit property. It is for this reason, Mr. Chaudhary contented that the Respondent No.5 is a necessary or in any case, a proper party to the proceeding. The two Courts, have correctly appreciated the position and there is no jurisdictional error whatsoever in the making of the impugned orders.

4. Having heard the learned Counsel for parties and perused the record, in my Judgment, the Respondent No.5 cannot be

permitted to be impleaded as a Defendant in the Petitioners' suit which basically seeks eviction of Respondent Nos.1 to 4. Insofar as the grievance of the Respondent No.5 is concerned, it is clarified that no order, including interim order, made in R.A.E. Suit No.270 of 2015 instituted by the Petitioners, can, in any manner, affect the rights, title and interest, if any, of the Respondent No.5 to the suit premises. This is because the Petitioners resist the impleadment of the Respondent No.5 as a Defendant in the suit. If so, the Petitioners, obviously cannot obtain any order which will, in any manner, affect or bind the rights, title and interest, if any, of the Respondent No.5 to the suit property. In suits of the present nature, it is even otherwise apparent that any orders that may be made therein, will only bind the parties to the suit.

5. The impleadment of Respondent No.5, in a suit of such nature, will not, assist in the effective adjudication of the issues arising therein. The issues which will arise in the said suit are basically whether the Petitioners are entitled to secure a decree of eviction as against Respondent Nos.1 to 4. The interim order already made, according to Mr. Kanuga, the learned Counsel for Petitioners, is in the context of Respondent Nos.1 to 4 not sub-letting the suit premises. Obviously, such an interim order, will not, in any manner, bind the Respondent No.5. Besides, it is always open to the Respondent No.5 to initiate appropriate and independent proceedings for the protection or enforcement of its rights, if any, in the suit property. For all the aforesaid reasons, the impugned orders are set

aside. The application made by the Respondent No.5 at Exh.15 is dismissed. This is subject to the clarification as aforesaid that any order, including interim order made in R.A.E. Suit No.270 of 2015, shall, in no manner, bind the Respondent No.5.

6. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

7. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)