

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 365 of 2016

1. Mohammad Yusuf Raza S/o Late Mohammad Ishhaq, Aged About 56 Years Earlier R/o A-14, Third Floor, Surya Apartment, Katoratalab, Raipur, Chhattisgarh, Present R/o Anand Nagar, Shahid Veer Narayan Singh, Ward No.32, Zone No.82, House No.32/82, Anand Nagar Raipur, P.S. And Post Raipur, Tehsil Raipur, District Raipur, (Chhattisgarh)

---- Petitioner

Versus

1. Vijay Leekha S/o Late R.K. Leekha, Aged About 40 Years R/o H.No. H.I.G. 41, Shahid Kaushal Yadav Nagar Amidnagar, Hudco, Bhilai, District Durg, (Chhattisgarh)
2. Pawan Kumar Leekha, S/o Late Shri R. K. Leekha, Aged About 47 Years R/o H.No. 512/ B, Street No.4, Smriti Nagar, Bhilai, P.S. And Post Bhilainagar, District Durg, (Chhattisgarh)
3. Smt. Sunia Arora, W/o Jaideep Arora, Aged About 50 Years R/o H.No.190, Napier Town, Jabalpur, P.S. And Post Madanmahal, District Jabalpur, (Madhya Pradesh)

---- Respondent

For Petitioner Shri Manoj Paranjape, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

20/06/2016

1. This petition under Article 227 of the Constitution of India has been preferred by the plaintiff challenging the trial Court's order, whereby the defendants' application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short 'the CPC') has been allowed and the present respondent Nos. 2 & 3 have been directed to be joined as defendants.

2. The present suit has been filed by the petitioner for specific performance of contract and for permanent injunction against the defendant Vijay Leekha. The defendant had executed an agreement in favour of the petitioner/plaintiff on 11.09.1993 for sale of land and house bearing Plot No.82, Anand Nagar, Raipur, Ward No.32, Shahid Veer Narayan Singh Ward, which was allegedly acquired by the respondent No.1/defendant No.1 through a registered will dated 26.02.2011 executed by his mother Smt. Manorama Leekha.
3. The respondent Nos.2 & 3 are the real brother and sister of the respondent/defendant No.1 Vijay Leekha. They have preferred a separate suit in respect of the joint family property including the present suit property in the Court of Second Civil Judge Class-II, Durg bearing Civil Suit No.111-A/2015. Amongst other averments, the respondent Nos.2 & 3 have also pleaded in the suit at Durg that the present respondent/defendant No.1 Vijay Leekha is not entitled to execute an agreement for sale of the suit property, as the property jointly belongs to them. In the above background, the respondent Nos.2 & 3 have moved an application in the present suit under Order 1 Rule 10 of the CPC for their impleadment. Similar application has been moved by the respondent/defendant No.1 also. The trial Court allowed these two applications and has directed the plaintiff to implead the respondent Nos.2 & 3 as defendants.

4. Admittedly, the present suit property is also one of the suit property in the suit pending at Durg. In the plaint filed at Durg (Annexure P-8), the present respondent Nos.2 & 3 have assailed the validity and genuineness of the will dated 26.02.2011 on the ground that Late Smt. Manorama Leekha had no authority to execute a will in respect of joint family property.
5. It is argued by the learned counsel for the petitioner that the plaintiff being *dominus litis*, he has right to choose the parties against whom he would bring the suit and he cannot be compelled to join any other person as defendant. Reliance has been placed on the decision rendered by the Supreme Court in **Mumbai International Airport Private Limited v. Regency Convention Center and Hotels Private Limited and Others¹**.
6. In the case at hand, the issue that whether defendant No.1 had the exclusive title and right to execute the agreement in favour of the plaintiff would be one of the most crucial issue for determination. Similarly, respondent Nos.2 & 3 having preferred another suit at Durg assailing the validity and genuineness of the will dated 26.02.2011 as also the authority of Smt. Manorama Leekha to execute the will on the ground that the property belongs jointly to all the members of the family and said respondent Nos.2 & 3 being the real brother & sister of defendant No.1 Vijay Leekha, any decision in the present suit would affect their interest.

¹ (2010) 7 SCC 417

7. It is also to be seen that the present suit cannot be decreed unless it is proved by the plaintiff that the respondent No.1 had exclusive title over the property because the moment it is found that the property is jointly owned by all the respondents, the recent pronouncement of the Supreme Court in **Pemmada Prabhakat and Others v. Youngmen's Vysya Association and Others**² to the effect that when an agreement for sale is not signed by all the co-sharers, the contract is not enforceable in law, the plaintiff may not be entitled to get a decree. Thus, the respondent Nos.2 & 3 appear to be a necessary party to the suit because in their absence, an effective decree may not be passed by the Court.
8. The Supreme Court in **Subodh Kumar Gupta and Others v. Alpana Gupta and Others**³ and **Aliji Momonji & Co. v. Lalji Mavji and Others**⁴ has held that when the trial Court has exercised its judicial discretion to allow impleadment of a party, the High Court may not interfere with the exercise of judicial discretion by the trial Court, in exercise of its extra ordinary jurisdiction under Article 227 of the Constitution of India.
9. *Ex-consequenti*, the writ petition, *sans substratum*, is liable to be and is hereby dismissed at the motion stage itself.

Sd/- Judge

Gowri

Prashant Kumar Mishra

2 (2015) 5 SCC 355 = 2016 (1) BLJ (SC) 1

3 (2005) 11 SCC 578

4 (1996) 5 SCC 379