Yumkham Rother
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IN THE HIGH COURT OF MANIPUR
AT IMPHAL
MC(RSA) Nos.4 and 5 of 2020
Ref.:- RSA Nos.7 & 8 of 2017

Shri Thangjam Irabot Singh, aged about 72 years, S/o, (Late) Thangjam Gulamjit Singh of Khurai Ahongei Leikai, Imphal East District, Manipur.

……. *Applicant/s*

– Versus –

1. Smt. Chingangbam Ongbi Ibetombi Devi, W/o (L) Ch. Babu Singh of Khrai Thangjam Leikai, now died by her LRs:-
   (i) Shri Chingangbam Doren @ Dorendro Singh, aged about 63 years, S/o. Late Babu Singh of Khurai Thangjam Leikai, P.O. & P.S. Porompat, Imphal East, Manipur;
   (ii) Shri Chingangbam Ingobi Singh, aged about 60 years, S/o. Late Babu Singh of Khurai Thangjam Leikai, P.O. & P.S. Porompat, Imphal East, Manipur;
   (iii) Smt. Chingangbam Ningol Namoijam Ongbi Sorojini Devi, aged about 66 years, W/o. Late Yaima Singh of Khurai Sorban Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur.

2. Smt. Yumnam Ongbi Maimu Devi, aged about 77 years, W/o. Y. Ningthoubi of Thoubal at present Kongba Uchekon Khunou, P.O. Imphal, P.S. Porompat, Imphal East District, Manipur;
3. Smt. Laishram Randhoni Devi, aged about 74 years, W/o Ibotombi Singh of Khurai Thangjam Leikai, P.O. & P.S. Porompat, Imphal East, Manipur;
4. Smt. Meisnam Ongbi Kunjarashi Devi, aged about 81 years, W/o. L. Achou Singh of Sagolband Meino Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur now died by her LRs:-
   (i) Meisnam Shantikumar, aged about 58 years, S/o. M. Achou Singh;

(ii) Meisnam Sarat Singh, aged about 56 years, S/o. M. Achou Singh;
(iii) Meisnam (N) Khoirom (O) Meme @ Memi Devi, aged about 60 years, W/o. Kh. Chaoba Singh of Uripok Khumanthem Leikai;
(iv) Meisnam Ningol Pukhrambam Ongbi Jugeshwori Devi, aged about 65 years, W/o. P. Ibobi Singh of Sagolband Meino Leirak;
….LRs at Sl.No. (i) and (ii) are residents of Sagolband Meino Leirak, P.O. & P.S. Imphal, District Imphal West, Manipur.

5. Smt. Haobijam Ongbi Pishak Devi, aged about 77 years, W/o. Yaima Singh of Khurai Konsam Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur;
6. Shri Yumnam Budhachandra Singh, aged about 74 years, S/o. Late Tomba Singh of Khurai Sajor Puthem Leikai, Lamlong, P.O. & P.S. Porompat, Imphal East District, Manipur;
7. Smt. Thokchom (O) Rajkumari Romita Devi, aged about 53 years, W/o (Late) Thokchom Saratkumar Singh of Brahmapur Nahabam, P.O. Imphal, P.S. Porompat, Imphal East District, Manipur.

…. ***Respondent/s***

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Applicant/Appellant	:	Mr. K. Chaoba, Advocate
For the Respondent/s	:	Mr. T. Rajendra, Advocate Mr. I. Lalitkumar, Sr. Adv.
Date of hearing	:	14.10.2020
Date of Judgment & Order	**:**	**25.11.2020**

JUDGMENT &ORDER
(CAV)

These petitions have been filed by the petitioner under Order 1, Rule 10(2) read with Section 151 of the Code of Criminal Procedure, 1908, to implead him as intervenor/respondent in the second appeals.

[2] The case of the petitioner is that he is the defendant in O.S. No.33 of 1967 on the file of the then Subordinate Judge, Manipur and he contested the suit by filing written statement and the suit was dismissed on 30.11.1972. Aggrieved by the judgment dated 30.11.1972, the plaintiffs have filed First Appeal No.6 of 1976 before the then Gauhati High Court, Imphal Bench and by the judgment dated 29.04.1993, the Gauhati High Court remanded the appeal for re-hearing. After remand the case was re-numbered as O.S. No.33/967/11/93/27/10/13/2016 on the file of the Learned Civil Judge, Senior Division, Imphal East. Thereafter, the suit was dismissed for default several times and lastly on 18.03.2016, the suit was proceeded ex parte and decreed in favour of the plaintiffs. Aggrieved by the judgment and decree dated 18.03.2016, two Regular First Appeals being RFA Nos.15 and 25 of 2016 were filed by the legal heir

of the second defendant and the legal heirs of the second plaintiff respectively before the Learned District Judge, Imphal West.

[3] According to the petitioner, the first plaintiff had also filed two Second Appeals against the common judgment and decree dated 18.03.2016 and in all these appeals, the petitioner was not made as party. On 02.02.2020, the petitioner came to know through his relatives that the suit was decreed ex parte and the pendency of the appeals.

[4] The further case of the petitioner is that he was the main defendant in the suit and very much interested in the suit land as the suit land was earlier decreed in his favour long back in the year 1966 in O.S. No.4 of 1967, dated 30.07.1966. Hence, the petitioner prays that he may be permitted to implead as intervenor or respondent in the appeals.

[5] Opposing the prayer of the petitioner, one of the legal heirs of the first appellant viz., Chingangbam Doren @ Dorendro Singh has filed affidavit-in-opposition stating that the petitioner is no longer a contesting party in the suit as early as on 07.09.2013 and in fact, he has not participated in the suit proceedings. It is stated that RFA

Nos.15 and 25 of 2016 were not filed at their instance and the present Second Appeals were filed by the appellants, who were parties to the Regular Appeals before the Learned District Judge, Imphal West. The statement of the petitioner that he came to know the pendency of the Second Appeals only on 02.02.2020 through his relatives is totally false and without showing any cause in the suit proceedings the petitioner has failed to appear before the Court.

[6] It is also stated in the affidavit-in-opposition that the petitioner was not a party before the First Appellate Court and therefore, there is no need to implead him as party in these Second Appeals. It is for the petitioner to challenge the judgment and decree dated 18.03.2016 of the Civil Judge, Senior Division, Imphal East before the appropriate forum. Hence, prayed for dismissal of the petitions.

[7] The learned counsel for the petitioner submitted that the petitioner is the contesting defendant in the suit and he had also filed the written statement. After filing the written statement, the plaintiffs allowed the suit to be dismissed for default on several times and without notice to the petitioner, the suit was restored subsequently and lastly on 18.03.2016, the suit was proceeded ex parte and

decreed the suit in favour of the plaintiffs. He would submit that aggrieved by the judgment and decree dated 18.03.2016, two Regular First Appeals being RFA Nos.15 and 25 of 2016 were filed without impleading the petitioner as party, which causes serious prejudice to him.

[8] The learned counsel further submitted that the petitioner was very much interested in the suit land, as he had obtained decree for the very same land in O.S. No.4 of 1967, dated 30.07.1966. Hence, it is necessary to implead the petitioner as the respondent for proper adjudication of the appeals.

[9] Per contra, the learned counsel for the contesting respondents submitted that the petitioner is no longer the contesting defendant in the suit and in the restoration application, the petitioner received notice and failed to appear before the Court. He would submit that RFA Nos.15 and 25 of 2016 were not filed by the appellants and the same have been filed by the legal heirs of the second defendant and the second plaintiff respectively.

[10] The learned counsel further submitted that when the present petitioner was not a party before the First Appellate Court, he has no

right to seek impleadment in the Second Appeals and thus, prayed for dismissal of the petitions.

[11] This Court considered the submissions raised and also perused the materials available on record.

[12] The grievance of the petitioner is that he is a necessary party in RSA Nos.7 and 8 of 2017, as he is interested in the very same suit land and in fact, without impleading him as party, the Regular First Appeals were decided by the First Appellate Court and therefore, the petitioner should be permitted to implead as party or he may be permitted to intervene in the Second Appeals.

[13] Before going into the merits of the applications, it is appropriate to mention certain facts, which are very much relevant to the present controversy.

[14] One Thangjam Ningol Chingangbam Ongbi Ibetombi Devi and her mother Thangjam Ongbi Leirensana Devi have filed O.S. No.33 of 1967 before the then Subordinate Judge, Manipur against the petitioner. The petitioner as defendant in the suit has filed written statement way back on 18.12.1967. Subsequently, the suit was

dismissed on 30.11.1972 and as against the judgment dated 30.11.1972, the first plaintiff preferred Regular First Appeal No.6 of 1976 before the Gauhati High Court. By the judgment dated 29.04.1993, the Gauhati High Court set aside the judgment dated 30.11.1972 and remanded the matter to the trial Court with a direction to re-hear the parties on all the issues on the basis of evidences which were adduced before it and after hearing, the Subordinate Judge shall give fresh findings on all the rest of the issues. Thereafter, on an application filed by Thokchom Saratkumar Singh, he was impleaded as the second defendant in the suit and after the demise of Thokchom Saratkumar Singh, his legal heir were brought on record. Pending suit the second plaintiff also died and her legal heirs were also brought on record. On 18.03.2016, the suit was decreed in favour of the plaintiffs. Aggrieved by the said decree and judgment, the wife of the second defendant viz., Thokchom Ongbi Raj Kumari Romita Devi has filed Regular First Appeal No.15 of 2016 and the respondents 1 to 5 have filed Regular First Appeal No.25 of 2016 on the file of the Learned District Judge, Imphal West. By the common judgment dated 21.01.2017, the Learned District Judge, Imphal West allowed the appeals by observing as under:

"17. In the result of the foregoing observations, I come to the conclusion that the trial court has committed gross error for not issuing summon to the LRs. Of defendant no.2 and that the L.Rs. of Plaintiff no.2, Leirensana Devi, who are the cross-Objectors were also not represented properly as no summon were issued to them after the suit was remanded from the Hon'ble High Court since they were wrongly transposed as plaintiffs. Therefore, the suit is required to be heard afresh after giving ample opportunities to the L.Rs. of Plaintiff No.2 and defendant no.2. Accordingly, no need for further discussion to the merit of the appeals.

Hence, the appeal is allowed. The case is remanded to the Trial Court for considering the matter afresh as per direction of the Hon'ble High Court by giving ample opportunity to the L.Rs. of plaintiff no.2 and defendant no.2. It has already stated that the L.Rs. of plaintiff no.2 were impleaded as defendant No.2,3,4,5 and 6 vide order dated 21.04.1972 passed in Judl.Misc.Case No.60 of 1972 but after remanding the suit from the Hon'ble High Court, they were transposed as plaintiff nos.2 (a), (b), (c), (d) and (e), therefore, Trial Court is directed to give an opportunity to the L.Rs. of the plaintiff no.2, who are cross-objectors, for deciding themselves to contest the suit as plaintiffs or defendants and on that basis reframed the case title of the suit.

The suit is very old suit and therefore, the Ld. counsel Civil Judge (Sr.Divn.) No.II is directed to dispose the suit within 6

months. Parties are directed to appear before the Court of Civil Judge (Sr.Divn.) No.II On 03.02.2017."

[15] Aggrieved by the judgment dated 21.01.2017, the appellants have preferred RSA Nos.7 and 8 of 2017. Pending appeals, the petitioner has filed these petitions seeking to implead him as intervener/respondent.

[16] Admittedly in RFA Nos.15 and 25 of 2016, the petitioner was not shown as respondent. Aggrieved by the judgment dated 18.03.2016, the wife of the second defendant and the legal heirs of the second plaintiff have filed the aforesaid two Regular First Appeals. Stating so, now petitioner contends that without impleading him as party in the Regular First Appeals, the First Appellate Court passed the judgment dated 21.01.2017 and he came to know the pendency of the present Regular Second Appeals preferred against the judgment passed in RFA Nos.15 and 25 of 2016 only on 02.02.2020 through his relatives.

[17] The contention of the petitioner is that the suit was decreed ex parte without hearing the petitioner, who was arrayed as first

defendant and the appeals preferred against the said ex parte decree, he was not impleaded as respondent.

[18] On a perusal of the judgment impugned in the Regular Second Appeals, this Court finds that the First Appellate Court came to the conclusion that the suit was dismissed on 31.03.2013 and vide order dated 08.03.2016, the suit was restored and re-registered as O.S. No.13 of 2016 and fixed for final argument on 14.03.2016. On 14.03.2016, an application for incorporating the legal heirs of the second defendant was filed and the same was allowed. Accordingly, the legal heirs of the second defendant were brought on record and then fixed the suit for hearing on 18.03.2016. Since the legal heirs of the second defendant failed to appear before the Court, the trial Court proceeded the suit ex parte. In such a situation, it will be more proper to issue summon to the legal heirs of the second defendant as they had keenly contesting the suit since the year 2010. Though there is no indication in respect of the rights of the first defendant in the said judgment of the First Appellate Court, the petitioner cannot take advantage of the same for seeking impleadment in the Second Appeals, as neither he has challenged the judgment and decree dated 18.03.2016 passed in the suit nor challenged the judgment dated

21.01.2017 made in RFA Nos.15 and 25 of 2016. Further, only on 02.02.2020 the petitioner came to know the ex parte decree passed in the suit has no merit, as the petitioner has not produced any material to establish the same. Further, there is also no indication in the judgment of the First Appellate Court that the petitioner was contesting the suit.

[19] As rightly argued by the learned counsel for the contesting respondents that when the petitioner was not a party before the First Appellate Court, there is no need to implead him as party in the Second Appeals.

[20] As stated supra, the First Appellate Court remanded the matter to the trial Court for re-hearing the matter afresh after giving opportunities to the legal heirs of the second plaintiff and the second defendant alone. In such circumstances, it is not appropriate to implead the petitioner in the instant Second Appeals, as he is not a party in the Regular First Appeals. The only course open to the petitioner is to challenge the judgment dated 21.01.2017 passed in the Regular First Appeals in the manner known to law and not by way of seeking impleadment in the Second Appeals.

[21] The Court may at any stage of the proceedings either upon or without the application of either party and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

[22] There is no quarrel that the question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 of CPC, which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

[23] In the instant case, as stated supra, the petitioner is not a party to the Regular First Appeals giving rise to the instant Regular Second Appeals. It is an unfortunate case, where the rights are contested/agitated from the year 1967 and the parties are still at a stage of contesting/opposing as to who is a proper and necessary party. The case needs to be expedited considering the larger issue involved. It is a trite that the Court has the discretion either to allow or reject an application of a person claiming to be a proper party depending upon the facts and circumstances, and no person has a right to insist that he should be impleaded as a party merely because he is a proper party. Filing of an application for impleading the petitioner in the present Regular Second Appeals is not the correct and appropriate procedure and therefore, on that ground the petitions are liable to be rejected. If the petitioner is impleaded in the Regular Second Appeals as party respondent or if he is permitted to intervene in the Regular Second Appeals, the same will be a wrong precedent. Further, this Court is of the view that only with a view to drag on the appeal proceedings, the petitioner has filed the petitions for impleadment instead challenging the judgment and decree passed in the suit and the first appeal.

[24] In the case on hand, there is no convincing explanation for not filing the appeals against the decree and judgment in the suit as well as in the first appeal. Since the First Appellate Court remanded the matter to the trial Court for deciding the matter afresh and the same is challenged by the parties to the first appeal by way of Regular Second Appeal, it would not be appropriate for this Court to implead the petitioner as party respondent in the Regular Second Appeals and therefore, the petitions are liable to be dismissed.

[25] In the result,

a) both the petitions in MC(RSA) No.4 of 2020 in RSA No.7 of 2017 and MC(RSA) No.5 of 2020 in RSA No.8 of 2017 are dismissed;

b) the parties are directed to bear their cost.

JUDGE

FR/NFR

-Larson