

A KANAKLATA DAS & ORS.
v.
NABA KUMAR DAS & ORS.
(Civil Appeal No. 3018 of 2008)

B JANUARY 25, 2018

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

C *Code of Civil Procedure, 1908 – Or. I, r.10(2) – Respondent No.1 sought permission u/Or. I, r.10(2) to become co-plaintiff in the ejection suit filed by the appellants-plaintiffs against respondent Nos. 2 to 5-defendants for their eviction from the suit premises – Application dismissed by the trial Court – However, allowed by the High Court – Propriety of – Held: Not proper – Lis in the suit was between the appellants on the one hand and respondent Nos. 2 to 5 on the other hand – Decision in the suit would depend upon the question as to whether there existed any relationship of landlord and tenant between the appellants and respondent Nos. 2 to 5 in relation to the suit premises and, if so, whether the grounds pleaded in the plaint for claiming eviction of respondent Nos. 2 to 5 were established or not – For deciding these two main questions, the presence of respondent No. 1 not necessary – Respondent No.1 is neither a necessary and nor a proper party in the suit – Accordingly, order of the trial Court restored.*

D *Party – Difference between a necessary party and proper party – Held: 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.*

Allowing the appeal, the Court

G **HELD: Whether the High Court was justified in allowing the application filed by respondent No. 1 under Order 1 Rule 10 (2) of the CPC thereby permitting him to become co-plaintiff in the Ejection Suit filed by the appellants against respondent Nos. 2 to 5 for their eviction from the suit premises.**

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1. There are some well-settled principles of law on the question involved in this appeal, which need to be taken into consideration while deciding the question arose in this appeal. These principles are mentioned *infra*. [Para 11] [811-C]

2. First, in an eviction suit filed by the plaintiff (Landlord) against the defendant(Tenant) under the State Rent Act, the landlord and tenant are the only necessary parties. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant. [Paras 12, 13] [811-D-E]

3. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff-landlord has sought defendant's-tenant's eviction under the Rent Act exists. When these two things are proved, eviction suit succeeds. [Para 14] [811-E-F]

4. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. [Paras 15, 16] [811-F-H]

5. Fourth, the plaintiff being a *dominus litis* cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his

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A presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. [Paras 17, 18] [812-A-C]

B 6. Fifth, 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. [Para 19] [812-C-D]

C 7. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners/landlords should join in filing the eviction suit against the tenant. [Para 20] [812-E]

D 8. In the light of well settled principles of law and on examining the legality of the impugned order, the impugned order is not legally sustainable and hence deserves to be set aside. [Para 21] [812-F]

E 9. Respondent No. 1, who claims to be the co-sharer or/ and co-owner with the plaintiffs (appellants herein) of the suit property is neither a necessary and nor a proper party in the eviction suit of the appellants against respondent Nos. 2 to 5. In other words, such eviction suit can be decreed or dismissed on merits even without the impleadment of respondent No.1. [Para 22] [812-G]

F 10. In the eviction suit, the question of title or the extent of the shares held by the appellants and respondent No. 1 against each other in the suit premises cannot be decided and nor can be made the subject matter for its determination. The reason being that this is not a suit between the appellants (plaintiffs) and respondent No.1 where their *inter se* rights relating to the suit premises can be gone into but rather is an ejection suit filed by the appellants against respondent Nos. 2 to 5 for their eviction from the suit premises. [Paras 23, 24] [812-H; 813-A]

G 11. The *Lis* in the suit is between the appellants on the one hand and respondent Nos. 2 to 5 on the other hand and the decision in the suit would depend upon the question as to whether there H exists any relationship of landlord and tenant between the

appellants and respondent Nos. 2 to 5 in relation to the suit premises and, if so, whether the grounds pleaded in the plaint for claiming eviction of respondent Nos. 2 to 5 are established or not. For deciding these two main questions, the presence of respondent No. 1 is not necessary. Respondent No.1 is neither a necessary and nor a proper party in the suit. As a consequence, the application filed by respondent No. 1 under Order 1 Rule 10(2) of the CPC in the aforementioned ejection suit is dismissed. [Paras 25, 26 and 29] [813-B-D, F-G]

Dr. Ranbir Singh v. Asharfi Lal (1995) 6 SCC 580: [1995] 3 Suppl. SCR 847; *Ruma Chakraborty v. Sudha Rani Banerjee & Anr.* (2005) 8 SCC 140: [2005] 3 Suppl. SCR 1051; *Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar & Anr.* AIR 1963 786: [1963] Suppl. SCR 676; *Kasthuri Radhakrishnan & Ors. v. M. Chinniyar & Anr.* (2016) 3 SCC 296 : [2016] 1 SCR 18 – relied on

Case Law Reference

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|--------------------------|-----------|---------|---|
| [1995] 3 Suppl. SCR 847 | relied on | Para 16 | |
| [2005] 3 Suppl. SCR 1051 | relied on | Para 17 | |
| [1963] Suppl. SCR 676 | relied on | Para 19 | E |
| [2016] 1 SCR 18 | relied on | Para 20 | |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3018 of 2008

From the Judgment and Order dated 21.09.2006 of the High Court of Kolkata in C. O. No. 1759 of 2006.

Ranjan Mukherjee, Adv. for the Appellants.

Naba Kumar Das, Respondent-in-person

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is directed against the final judgment and order dated 21.09.2006 passed by the High Court of Kolkata in C.O. No.1759 of 2006 whereby the High Court allowed the application filed by respondent No.1 herein and reversed the judgment and order dated 15.12.2005 passed by the Judge, Small

- A Causes Court, Kolkata in Ejectment Suit No.1615 of 2000 wherein the Trial Court dismissed the application filed by respondent No.1 herein under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) for impleadment as Plaintiff in the pending ejectment suit.
- B 2. The controversy involved in this appeal is short and it would be clear from the few relevant facts mentioned hereinbelow.
3. The appellants are the plaintiffs whereas respondent Nos. 2 to 5 are the defendants in an Ejectment Suit out of which this appeal arises.
- C 4. The appellants have filed a suit for ejectment being Ejectment Suit No.1615/2000 against respondent Nos. 2 to 5 before the Small Causes Court at Calcutta for their eviction on the grounds of non-payment of rent, subletting, and *bona fide* need of the suit premises for their personal use under the provisions of the West Bengal Tenancy Act. Respondent Nos. 2 to 5 have entered appearance and are contesting the suit which is pending.
- D 5. In the Ejectment Suit, respondent No. 1 herein filed an application under Order 1 Rule 10(2) of the Code praying therein that he may be allowed to become the co-plaintiff along with the appellants. Respondent No. 1 sought his impleadment alleging that he is a member of the appellants’ family and being so, has a right, title and interest not only in the suit premises but also in other family properties as one of the co-owners. It is essentially on these allegations and with a view to protect his interest in the suit premises, respondent No. 1 sought his impleadment in the suit.
- E 6. The said application for impleadment made by respondent No. 1 was dismissed by the Trial Court by order 15.12.2005(Annexure-P-7) but it was allowed by the High Court by the impugned order giving rise to filing of this appeal by way of special leave in this Court against the order of the High Court by the appellants (plaintiffs).
- F 7. Therefore, the short question, which arises for consideration in this appeal, is whether the High Court was justified in allowing the application filed by respondent No. 1 under Order 1 Rule 10 (2) of the Code thereby permitting him to become co-plaintiff in the Ejectment Suit filed by the appellants against respondent Nos. 2 to 5 for their eviction from the suit premises.
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8. Heard Mr. Ranjan Mukherjee, learned counsel for the appellants and respondent No.1, who appeared in-person. A

9. Having heard the learned counsel for the appellants and respondent No. 1, in-person, who alone is the contesting respondent in this appeal and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned order of the High Court, restore the order of the Trial Court with observations hereinbelow. B

10. In other words, we are inclined to dismiss the application filed by respondent No. 1 under Order 1 Rule 10(2) of the Code in appellants' ejection suit.

11. There are some well-settled principles of law on the question involved in this appeal, which need to be taken into consideration while deciding the question arose in this appeal. These principles are mentioned *infra*. C

12. First, in an eviction suit filed by the plaintiff (Landlord) against the defendant (Tenant) under the State Rent Act, the landlord and tenant are the only necessary parties. D

13. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.

14. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff-landlord has sought defendant's-tenant's eviction under the Rent Act exists. When these two things are proved, eviction suit succeeds. E F

15. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. G

16. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (**See-Dr. Ranbir Singh vs. Asharfi Lal**, 1995(6) SCC 580). H

A 17. Fourth, the plaintiff being a *dominus litis* cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively.

B 18. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (See-**Ruma Chakraborty vs. Sudha Rani Banerjee & Anr.**, 2005(8) SCC 140)

C 19. Fifth, 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. (See-**Udit Narain Singh Malpaharia vs. Additional Member Board of Revenue, Bihar & Anr.**, AIR 1963 786)

D 20. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners/landlords should join in filing the eviction suit against the tenant. (See-**Kasthuri Radhakrishnan & Ors. vs. M. Chinnian & Anr.**, 2016(3) SCC 296)

E 21. Keeping in mind the aforementioned well settled principles of law and on examining the legality of the impugned order, we find that the impugned order is not legally sustainable and hence deserves to be set aside.

F 22. In our considered opinion, respondent No. 1, who claims to be the co-sharer or/and co-owner with the plaintiffs (appellants herein) of the suit property is neither a necessary and nor a proper party in the eviction suit of the appellants against respondent Nos. 2 to 5. In other words, such eviction suit can be decreed or dismissed on merits even without the impleadment of respondent No.1.

G 23. In the eviction suit, the question of title or the extent of the shares held by the appellants and respondent No. 1 against each other in the suit premises cannot be decided and nor can be made the subject matter for its determination.

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24. The reason being that this is not a suit between the appellants (plaintiffs) and respondent No.1 where their *inter se* rights relating to the suit premises can be gone into but rather is an ejection suit filed by the appellants against respondent Nos. 2 to 5 for their eviction from the suit premises. A

25. Therefore, the *Lis* in the suit is between the appellants on the one hand and respondent Nos. 2 to 5 on the other hand and the decision in the suit would depend upon the question as to whether there exists any relationship of landlord and tenant between the appellants and respondent Nos. 2 to 5 in relation to the suit premises and, if so, whether the grounds pleaded in the plaint for claiming eviction of respondent Nos. 2 to 5 are established or not. For deciding these two main questions, the presence of respondent No. 1 is not necessary. B C

26. For these reasons, we are of the considered opinion that respondent No. 1 is neither a necessary and nor a proper party in the suit. D

27. We, however, make it clear that any finding whether directly or indirectly, if recorded by the Trial Court touching the question of title over the suit property, would not be binding on respondent No.1 regardless of the outcome of the suit and respondent No. 1 would be free to file an independent civil suit against the appellants for a declaration of his right, title and interest in the suit premises and in any other properties, if so, and claim partition and separate possession of his share by metes and bounds in all such properties. E

28. In view of the foregoing discussion, the appeal succeeds and is allowed. The impugned order is set aside and the order of the Trial Court is restored. F

29. As a consequence, the application filed by respondent No. 1 under Order 1 Rule 10(2) of the Code in the aforementioned ejection suit is dismissed.

30. The Trial Court is directed to decide the ejection suit on merits in accordance with law expeditiously. G