

(18) For the aforesaid reasons, the provisions of the Ordinance are declared *ultra vires* the Constitution, beyond the Legislative competence of the Parliament as well as violative of Articles 14, 19(1)(a) and 19(1)(c) of the Constitution of India. Accordingly the writ of mandamus is issued directing the respondents not to execute the Ordinance against the petitioners. All the assets of the Society, if taken over, should be returned to the Society forthwith.

S.C.K.

Before S. S. Sodhi, J.

RAJ KUMAR,—Petitioner.

versus

SMT. BIMLA KUMARI AND ANOTHER.—Respondents.

Civil Revision No. 2316 of 1990.

12th November, 1990.

Code of Civil Procedure, 1908 (V of 1908)—O. 1, rl. 10—Scope of—Court's jurisdiction to implead a party to suit—Claim of plaintiff founded upon family settlement—Applicant seeking to set up will—Introduction of new cause of action—Impleading of applicant, held. unjustified.

Held, that the plaintiff is the dominus litis and no person can thus be impleaded as a party whom he opposes. It is only in exceptional cases where the court finds that addition of a party is absolutely necessary to enable it to adjudicate effectively and completely in the matter between the parties that a person is permitted to be added as a party despite the opposition of the plaintiff. Where the claim of the plaintiff is founded upon a Family Settlement, whereas, the respondent seeks to set up a Will, by impleading the respondent as a party, a new cause of action is introduced for the court to adjudicate upon, namely, the validity of the Will set up by the respondent. Such a respondent cannot be impleaded as a party.

(Paras 5 & 8)

Petition under Section 115 C.P.C. for revision of the order of the Court of Shri Deepak Gupta, HCS, Sub Judge III Class, Faridabad dated 30th July, 1990 allowing the application. Applicant be impleaded as defendant No. 2. Plaintiff may file fresh plaint, if he wishes, impleading the applicant as defendant No. 2.

Claim :—Suit for declaration.

Claim in revision:—For reversal of the order of lower court.

S. C. Kapoor, Advocate. for the Petitioner.

A. P. Bhandari, Advocate, for the Respondent.

Raj Kumar v. Smt. Bimla Kumari and another (S. S. Sodhi, J.)

ORDER

(1) The matter here pertains to the impleading of a party to the suit under Order 1 Rule 10 of the Code of Civil Procedure.

(2) The plaintiff—Raj Kumar—filed a suit against his mother—Bimla Kumari seeking a declaration that he was the owner in possession of a portion of the house in suit. This house was owned by his father—Remal Dass, who died on February 9, 1989. The plaintiff claimed ownership under a Family Settlement of October 1, 1988.

(3) During the pendency of the suit, Raj Kumar, son of Tara Chand sought to be impleaded as a defendant in the suit on the plea that the said Remal Dass had executed a Will in his favour on January 6, 1989, bequeathing the property in suit to him. It was also averred that the plaintiff and his mother Bimla Kumari were not the legal heirs of Remal Das as Remal Dass had divorced Bimla Kumari and thereafter she had married one Bachan Singh of Amritsar and three children were thereafter born to them. It was alleged that the plaintiff was in fact the son of this Bachan Singh and not Remal Das.

(4) The plaintiff—Raj Kumar opposed the application of Raj Kumar, son of Tara Chand to be impleaded as a party and also controverted the other allegations made in the application. The trial court, however, allowed the application of Raj Kumar, son of Tara Chand to be impleaded as a party holding that grave suspicion had been created in the mind of the court regarding the legal status of the plaintiff and his mother and further that the Will set up by Raj Kumar, son of Tara Chand was later in time than the family settlement relied upon by the plaintiff.

(5) The law regarding impleading of parties to a suit is well-settled. The plaintiff is the *dominus litis* and no person can thus be impleaded as a party whom he opposes. It is only in exceptional cases where the court finds that addition of a party is absolutely necessary to enable it to adjudicate effectively and completely in the matter between the parties that a person is permitted to be added as a party despite the opposition of the plaintiff.

(6) Counsel for the respondent—Raj Kumar however, sought to justify the impleading of Raj Kumar, son of Tara Chand as a party to the suit by adverting to the judgment of this Court in *Smt. Ram*

Kali v. Ujala and another, (1). There a suit for declaration was filed regarding ownership of land which originally vested in one Ujala Ram. This suit was filed by the grand-daughter of Ujala Ram claiming ownership under a family settlement. This claim was admitted by the said Ujala Ram in his statement made in court. During the pendency of the suit, the widow of Ujala Ram's grandson sought to be impleaded as a party to the suit on the plea that by an earlier Family Settlement, the land in suit already stood transferred to her late husband,—*vide* a civil suit decided in May 1977. It was held that with the real controversy being whether the land was transferred by Ujala Ram to his grandson or to his grand daughter, it could not be effectively or completely decided without impleading the widow of the grandson. She was thus permitted to be impleaded as such.

(7) In dealing with this matter, J. S. Sekhon, J. observed:—

“Under the provisions of sub-para (2) of Order 1 Rule 10 of the Code of Civil Procedure, a person may be added as a party to the suit in two contingencies, the first being that he ought to have been joined and is not so joined, i.e. when he is necessary party, or, when without his presence the questions in the suit cannot be effectually and completely adjudicated, but there is no jurisdiction to add a party merely because that would save a third person the expense and botheration of a separate suit for seeking adjudication of a collateral matter, which was not directly and substantially in issue under the suit into which he seeks intrusion. The very factum that the findings in the suit would incidentally affect the intervener is also no good ground for impleading such person as a party.....”.

(8) In the present case, on the other hand, it will be seen that the issue raised between the parties is quite different and distinct from that sought to be raised by the respondent—Raj Kumar, son of Tara Chand even though it pertains to the same land, inasmuch as the claim of the plaintiff is founded upon a Family Settlement, whereas, the respondent—Raj Kumar seeks to set up a Will. By impleading the respondent, as a party, a new cause of action is introduced for the court to adjudicate upon, namely the validity of the Will set up by the respondent—Raj Kumar. This is not what

(1) 1989 P.L.J. 361.

Commissioner of Income-tax v. Shri Prem Chand Jain
(G. C. Mital, J.)

Order 1 Rule 10 of the Code of Civil Procedure envisages. The point in issue really stands covered by; *Rohi Ram and others vs. Mukhtiar Kaur and others*, (2), where the plaintiff, sought a declaration of ownership on the basis of a Will, whereas the person impleaded as a party under Order 1 Rule 10 of the Code of Civil Procedure claimed to be the owner of the property in suit by succession it was held that the trial court was not justified in impleading the latter as a party, as it would bring in a new cause of action for the court to adjudicate upon.

(9) There can thus be no escape from the conclusion that the trial court clearly fell in error in impleading respondent—Raj Kumar, son of Tara Chand, as a party to the suit. The impugned order of the trial court is consequently hereby set aside and this revision petition is accepted with costs. Counsel fee Rs. 500.

S.C.K.

Before G. C. Mital & G. S. Chahal, JJ.

COMMISSIONER OF INCOME-TAX,—Appellant.

versus

SHRI PREM CHAND JAIN,—Respondent.

Income-tax Reference Nos. 65 to 69 of 1978.

14th November, 1990.

Income-tax Act, 1961 (XLIII of 1961)—Income from undisclosed source—Past intangible additions allocated to assessee's share—Assessee agreeing to some additions—Set off—Entitlement of—Assessee entitled to claim set-off in respect of agreed additions.

Held, that the assessee is entitled to take advantage of the past intangible additions to explain the source which was considered by the Income-tax Department as income from un-disclosed source and shall be available to the assessee for set off in respect of the agreed additions in low household expenses.

(Paras 3, 4 & 5)