

Before Sanjay Kumar, J.

GIANI RAM (DECEASED) THROUGH LRS—Petitioner

versus

BABA PRITAM SEWA SAMITI AND OTHERS—Respondent

CR No. 936 of 2016

November 22, 2019

Constitution of India, 1950—Art. 227—Revision Petition—Code of Civil Procedure, 1908—O.1 RL.10—Suit for permanent injunction—Dominus litis—Necessary and proper party—Application by a third party to be impleaded as defendant—Plea of suit property being under its care and control—Allowed by the trial court—Held, it is for the plaintiff to choose the parties to sue—Unless a third party is either ‘necessary’ or ‘proper’ party, it is not to be impleaded against the plaintiff’s wishes—‘Necessary’ and ‘proper party’ explained.

*Held that, in the light of the aforestated precedential law, it is clear that unless a third party is shown to be either a ‘necessary’ or a ‘proper’ party, it cannot seek to be impleaded in the suit proceedings against the wishes of the plaintiff, who is **dominus litis**. It is ordinarily for the plaintiff to choose as to whom he wishes to sue or proceed against and in a suit for a mere injunction, such exercise of option by the plaintiff acquires a higher degree of acceptance.*

(Para 13)

Code of Civil Procedure, 1908 – O.1 RL.10—Rule of Dominus Litis—Not absolute—Held, necessary and/or proper party forms the only exception to the Rule - Plaintiff’s choice of party acquires higher acceptance—No third party to an injunction suit would be bound by any decree—On facts, respondent held not essential for adjudication of the injunction suit—Would not be bound by any injunction granted.

Held that, needless to state, no third party to a suit for injunction would be bound by any decree passed therein. Further, as the issue of title would be gone into only incidentally, if at all, it can have no binding force as against any such third party to that suit.

(Para 13)

Further held that, the presence of the Samiti was not essential

for adjudication of the suit claim for a permanent injunction against the named defendants. The possibility of the trial Court not being in a position to pass a decree in the absence of the Samiti therefore did not arise. Further, as the Samiti would not be bound by any injunction granted by the trial Court in the subject suit and all that would be considered by the trial Court in such suit proceedings would be the claim of the plaintiffs as against the named defendants only, the Samiti could not be taken to be even a proper party to such suit proceedings.

(Para 14)

Sanjiv Gupta, Advocate
for the petitioner.

Gaurav Tyagi, Advocate
for respondent No.1.

SANJAY KUMAR, J.

(1) The petitioners in this civil revision, filed under Article 227 of the Constitution, are the present plaintiffs in Civil Suit No.318 of 2010 on the file of the learned Civil Judge (Junior Division), Gurgaon (hereinafter, ‘the trial Court’). They were brought on record as the legal representatives of the deceased original sole plaintiff. The said suit was filed by him for a permanent injunction restraining the named defendants therein, 11 in number, from interfering with his possession over the suit property and dispossessing him therefrom. In the alternative, if he was dispossessed from the suit property, he sought a mandatory injunction to the defendants to hand over vacant possession of the suit property to him.

(2) While so, the first respondent herein, Baba Pritam Sewa Samiti, Village Jouri, Farrukh Nagar, Gurgaon (hereinafter, ‘the Samiti’), filed an application in the suit under Order 1 Rule 10 CPC seeking to be impleaded as a party defendant therein. By order dated 27.07.2015, the trial Court allowed the application and impleaded the Samiti as defendant No.12. Aggrieved thereby, the petitioners are before this Court.

(3) By order dated 21.04.2016 passed in this revision, this Court permitted the trial/suit to go on but stayed the order of impleadment.

(4) Mr. Sanjiv Gupta, learned counsel for the petitioners, would contend that the trial Court completely lost sight of the principle of *dominus litis* and erred in directing impleadment of a third party to

an injunction suit, at its behest.

(5) *Per contra*, Mr. Gaurav Tyagi, learned counsel for the Samiti, would assert that the trial Court was justified in directing its impleadment as the same would enable the Court to adjudicate upon the issues raised in the suit comprehensively and effectively.

(6) Both the learned counsel placed reliance on case law.

(7) Perusal of the impleadment application filed by the Samiti demonstrates that it asserted that the suit property was a Samadhi, known as Baba Pritam Dass Saadh Samadhi, in the abadi of Village Jouri Kalan and the same was under its care and control. It is on this basis that the Samiti asserted that it was a necessary party to the suit and sought impleadment.

(8) The original sole plaintiff resisted this application contending that the Samiti was neither a necessary nor a proper party. He denied that the Samiti was a registered society and that the suit property was owned and possessed by it. He asserted that registration of the Samiti as a society had already been cancelled by the Registrar of Societies.

(9) Perusal of the order under revision reflects that the trial Court found that the Samiti was a registered society in the light of the revised Certificate of Registration dated 15.03.2013. The trial Court opined that, keeping in view the entirety of the facts and circumstances, the presence of the Samiti was necessary in order to enable the Court to adjudicate and settle all the questions in the suit effectually and completely. The trial Court therefore concluded that the Samiti was a necessary party and ordered its impleadment as defendant No.12 in the suit.

(10) In terms of Order 1 Rule 10 CPC, it is within the power of the Court to implead any third party to the suit proceedings as a party thereto, if such party is found to be either a necessary or a proper party. The settled legal position is that a party would be construed to be a 'necessary party' if no effective decree can be passed in the absence of such party. However, if the suit adjudication is capable of being undertaken, but the third party shows that it has some vital interest in the subject matter of the suit, such a party would be deemed to be a 'proper party'. In effect, a 'proper party' may not be a 'necessary party', but would still be entitled to come on record in the suit proceedings by virtue of such established interest in the suit subject matter. This was the import of the decision of the Supreme Court in

Kasturi versus Iyyamperumal and other¹. The suit under consideration in this decision was one for specific performance of an agreement of sale. A third party to the agreement, claiming independent title over the suit agreement property, sought to be added as a party thereto. In this context, the Supreme Court held that, to qualify as a ‘necessary party’, two tests have to be satisfied: (i) there must be a right to some relief against such party in respect of the controversy involved in the proceedings, and (ii) no effective decree can be passed in the absence of such party. The Supreme Court concluded that ‘necessary parties’ are those persons in whose absence, no decree can be passed by the Court or there must be a right to some relief against such parties in respect of the controversy involved in the proceedings, while ‘proper parties’ are those whose presence before the Court would be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit, although no relief was claimed in the suit against such persons. The Supreme Court further observed that a plaintiff, being *dominus litis*, could not be forced to add a party against whom he did not want to fight unless it was by compulsion of the rule of law. The *ratio* laid down in ***Kasturi's case*** (*supra*) was recently affirmed by the Supreme Court in ***Gurmit Singh Bhatia versus Kiran Kant Robinson and others***².

(11) The decision of a learned Judge of this Court in ***Bhulla Ram versus Zile Singh***³ is distinguishable inasmuch as it was held therein that, where the interest of the implead applicant was shown to be directly involved and likely to be adversely affected by the adjudication of the suit, the doctrine of *dominus litis* would not be applicable and the presence of such party would be deemed to be necessary for effective adjudication of the suit controversy. Significantly in that case, a permanent injunction was sought against the State and its officials but the implead applicant, who was the allottee of the suit property therein under the State, was not arrayed as a party. Thus, it was clearly manifest that the allottee had a direct interest in the suit proceedings. Similarly, the decision of a learned Judge of this Court in ***Gram Panchayat Garhi versus Dharambir***⁴ is also distinguishable on facts. This was a case relating to a suit for a permanent prohibitory injunction and the implead applicants claimed

¹ 2005 AIR (SC) 2813 : 2005 (6) SCC 733

² 2019 AIR (SC) 3577

³ 2001(3) R.C.R. (Civil) 673 : 2001(3) PLR 500

⁴ 1998(2) R.CV.R. (Civil) 98 : 1998(1) PLR 809

that they had entered into an agreement of sale with the named defendant but they could not execute the sale deed in his favour. They also claimed to be in possession of the property in question and were therefore vitally affected by the grant of an injunction. In such circumstances, the learned Judge held that the rule of *dominus litis* was not an absolute rule and the law provided for exceptions thereto. The learned Judge indicated the factors which would be considered while determining the question as to whether a party should be impleaded to the suit proceedings against the wishes of the plaintiff, on the strength of the principles laid down in **Krishan Lal versus Suresh Kumar and others**⁵ and **Jaspal Kaur and others versus Hazara Singh**⁶:-

‘(a) Whether the applicant is a necessary and proper party keeping in view the facts and circumstances of the case ?

(b) Whether presence of such a party before the Court is necessary for effectively and completely adjudicating the matter and granting a complete and effective decree to the party entitled to?

(c) Whether such a party interested would be directly effected as a result of culmination of such persons into decree or it would only be effected remotely, indirectly and distantly?

In addition to above, where the Court considers the presence of a party necessary for proper and complete adjudication, then it may well be considered relevant whether non-impleadment of such a party would result in avoidable multiplicity of litigation, then effort should be to implead a party rather than to force the party to go to a fresh litigation.

The above principles are not exhaustive but are merely indicating what may be considered by the Court in addition to such consideration, which may be appropriately considered by the Court, keeping in view the facts and circumstances of a given case. The Legislative intent to provide an effective protection to a party who may be affected by the questions to be determined by a Court in a suit or proceedings and to have complete adjudication, is clear from the introduction of rule 10- A in Order 1 of the

⁵ 1998(2) R.C.R. (Civil) 364

⁶ 1998(2) R.C.R. (Civil) 100

Code vide Civil Procedure Code Amendment Act, 1976.'

(12) Reference may also be made to the judgment of this Court in *Shri Gurudwara Sahib Sidhsar and another versus Shromani Gurudwara Parbandhak Committee and others*⁷, wherein a learned Judge was considering impleadment of a third party to a suit for permanent injunction, at its behest, and observed that when a plaintiff files a suit for a simple permanent injunction against the named defendant, a third party, even if it claimed to be the owner of the property in question, could not be said to be a proper or necessary party thereto, as any decree that may be passed against the named defendant would not be binding on such third party, as it was not impleaded as a defendant in the suit. Similar was the *ratio* laid down by this Court in *Sarup Singh and another versus Sinder Kaur and others*⁸ and *Rampat versus Shri Mandir Thakur Dwara at Suhra and others*⁹.

(13) In the light of the aforestated precedential law, it is clear that unless a third party is shown to be either a 'necessary' or a 'proper' party, it cannot seek to be impleaded in the suit proceedings against the wishes of the plaintiff, who is *dominus litis*. It is ordinarily for the plaintiff to choose as to whom he wishes to sue or proceed against and in a suit for a mere injunction, such exercise of option by the plaintiff acquires a higher degree of acceptance. Needless to state, no third party to a suit for injunction would be bound by any decree passed therein. Further, as the issue of title would be gone into only incidentally, if at all, it can have no binding force as against any such third party to that suit.

(14) In the case on hand, though the trial Court opined that the Samiti was a 'necessary party', this Court is at a loss to understand as to how the trial Court arrived at such a conclusion. The presence of the Samiti was not essential for adjudication of the suit claim for a permanent injunction against the named defendants. The possibility of the trial Court not being in a position to pass a decree in the absence of the Samiti therefore did not arise. Further, as the Samiti would not be bound by any injunction granted by the trial Court in the subject suit and all that would be considered by the trial Court in such suit proceedings would be the claim of the plaintiffs as against the named defendants only, the Samiti could not be taken to be even a proper party

⁷ 2012 AIR CC 2326 : 2013(7) R.C.R. (Civil) 2216

⁸ 2011(2) Law Herald 1470

⁹ 1988(2) R.R.R. 257 : 1987 PLJ 654

to such suit proceedings.

(15) Viewed thus, the order of the trial Court impleading the Samiti does not withstand judicial scrutiny. The order dated 27.07.2015 passed by the learned Civil Judge (Junior Division), Gurgaon, is therefore set aside. The civil revision is accordingly allowed.

(16) There shall be no order as to costs.

Tribhuvan Dahiya