Seth Fida HussaIn Vs. Fazal HussaIn and ors.

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Court : Madhya Pradesh

Decided On : Jan-09-1963

Reported in : AIR1963MP232; 1963MPLJ243

Judge : P.V. Dixit, C.J., and ;N.M. Golvalker, J.

Acts : Arbitration Act, 1940 - Sections 21; Evidence Act - Sections 116

Appeal No. : Civil Revn. No. 103 of 1962

Appellant : Seth Fida Hussain

Respondent : Fazal HussaIn and ors.

Advocate for Def. : Rameshwar Prasad Verma, Adv. for non-applicants Nos. 1 to 4 and ;R.K. Pandey, Adv. for non-applicants Nos. 5 and 6

Advocate for Pet/Ap. : J.V. Jakatdar, Adv.

Disposition : Petition dismissed

Judgement :

Dixit, C.J.

1. This civil revision has come up before us for dispose on a reference by Shiv Dayal J. before whom a first came up for hearing.

2. The material facts are that the opponents Nos. 1 to 4 instituted a suit in the Court of the Civil Judge, Class 1, Khandwa, against the petitioner Fida Hussain and the opponents Nos. 5 and 6 Gehimal and Totaram for possession of a plot described in Schedule A attached to the plaint. It was alleged by the plaintiffs that they were the owners of the plot, and that on or about 5th March 1957 Gehimal and Tolaram wrongfully and forcibly took possession of the plot; and that when they were asked to restore the possession of the land, they refused to do so according that they had taken it on rent from the petitioner Fida Hussain.

3. Gehimal and Tolaram contested the suit by pleading that Fida Hussain was the owner of the land and that no had let out the property to them. The petitioner also cent-ed the plaintiffs' title. He, however, added that he has leased out a major portion of the plot to one Meghraj Sindhi who had sub-let the same to the opponents Gehimal and Tolaram and that he being the owner of the plot was entitled to receive the rent in respect of the LAND from Meghraj or compensation or damages from Gehimal and Tolaram.

4. On the pleadings of the parties, the trial judge framed, inter alia, the following issues:

'1. Issue 1: Whether the disputed plot fully describes in Schedule-A attached with the plaint is the exclusive property of the plaintiffs?

2. Issue 3(a): Whether defendants Nos. 1 and 2 as partners of the Jawahar Oil Mill took the suit property on lease from defendant No. 3?

3. Issue 6: Whether defendant No. 3 himself is the sole and exclusive owner of the suit land and the plaintiffs have no title to it?'

During the pendency of the suit the plaintiffs and the petitioner filed an application embodying their agreement to refer the first and the third issues stated above to arbitration. Accordingly, the trial Court made an order on 26th June 1959 referring the two issues for decision to an arbitrator appointed for the purpose. The defendants Gehimal and Tolaram, who were present through a counsel on the dates when the application for reference to arbitration was filed and when the order referring the two issues to arbitration was passed, did not oppose the reference to arbitration. The arbitrator gave his award on 22nd December 1959. When the award was filed, the petitioner moved the court for setting aside the award alleging several acts of misconduct on the part of the arbitrator. The objections were overruled- by the trial Court.

Thereupon Fida Hussain preferred an appeal in theCourt of the District Judge, Khandwa, against the order ofthe Civil Judge refusing to set aside the award. The learn.District Judge dismissed the appeal. Fida Hussain thenpreferred this revision petition. In the revision petition theapplicant raised for the first time the objection that theaward was a nullity inasmuch as Gehimal and Tolaram wereparties interested in the dispute between the plaintiffsand the petitioner with regard to the title to the propertyand as they did not agree that this dispute should be referred to arbitration, there was no valid reference to arbitration.

5. The learned Single Judge was inclined to think that Gehimal and Tolaram were parties interested in the question of title to the property. According to him, if the decision on the issues referred to arbitration was that the plaintiffs were the owners of the land in suit, then Gehimal and Tolaram would be prejudiced seriously, whether they were in occupation of the land as tenants of Fida Hussain or as sub-tenants of Meghraj Sindhi, and that if Fida Hussain was found to be the owner, then the plaintiffs could not get a decree for possession of the land in question. After taking this view, the learned Single Judge proceeded to consider the questions:

'1. Whether an objection as to the validity of the reference to arbitration could be raised in an application made under Section 20 of the Arbitration Act for setting aside the award;

2. Whether when a party agreed that a certain matter should be referred to arbitration, he can ask for setting aside the award on the ground that some other persons who were interested in the matter referred to arbitration did not join in the agreement;

3. Whether under Sections 21 and 24 the reference of the matter of title to the

property to arbitration and the award on the question was valid and binding so tar as the petitioner Fida Hussain and the plaintiffs were concerned; and

4. Whether the petitioner was entitled to take for the first time in this revision petition an objection as to the invalidity of the reference to arbitration.'

The learned Single Judge thought that these questions should be decided by a larger Bench rather than by mm sitting singly. But, instead of referring only these questions for decision by a larger Bench, he has referred the entire case to us for disposal.

6. The questions which the learned Single Judge formulated for decision by a larger Bench do not includea question as to whether Gehimal and Tolaram were 'parties interested' within the meaning of Section 21 of the Act in the matter of title in difference between the plaintiffs and the petitioner. It is plain that if it is held that they were not parties interested in the dispute on the question of title to the property, then the other questions raised in the petition would not arise for consideration. As the whole case has been referred to us, we are not precluded from considering the main and important question whether Gehimal and Tolaram were 'parties interested'.

7. Shri Jakatdar, learned counsel appearing for the petitioner, argued that for a valid and binding award there must be a valid order of reference under Section 21 of the Act; that under Section 21 all the parties interested in the specific dispute referred to arbitration must agree to a reference to arbitration; that Gehimal and Tolaram were parties interested in the dispute relating to the title? to the property as their tenancy rights and the right to remain in possession of the properly depended on the adjudication whether the plaintiffs were the owners of the property or the petitioner Fida Hussain; and that as the opponents Gehimal and Tolaram did not join in the reference to arbitration, the reference was bad and consequently the award was a nullity.

8. It is no doubt true that for the applicability or Section 21 two conditions must be satisfied before an application in writing for reference is made. These are that all the interested parties must agree to obtain a reference and the subject-matter of arbitration must be any matter in difference between them : (see Nachiappa v. Subramaniam, AIR 1960 SC 307). In regard to the dispute about title the petitioner and the plaintiffs were undoubtedly parties interested in the matter, but we are unable to accept the contention that the opponents Gehimal and Tolaram were parties interested in that matter which was in difference between the petitioner and the plaintiffs. Now, the question whether in any particular case a party is or is not interested in the specific dispute referred to arbitration must be determined on the facts of the case and the nature of the suit and the entire circumstances of the case including the conduct of the parties concerned up to the end of the proceedings. No general rule can be laid down for determining whether for the purposes of Section 21 a party is or is not interested in the dispute referred to arbitration.

The question cannot also be decided solely on the averments made in the plaint or the written statement. In some cases it has been held that an important test for determining whether a party is interested is to consider whether he is a necessary party or such, if not originally impleaded, the Court would direct him to be joined under Order 1, Rule 10 of the Code of Civil Procedure. See Sharafat Ali v. Mt. Bhagwati, AIR 1929 All 763. But, as pointed out in Madan Lal v. Nabi Baksh, AIR 1947 Lan 177 every necessary party is not necessarily an interested party in all

matter of difference between those actively litigating and that there may be cases where a person' may be a necessary party and yet not an interested party in regard to any matter in difference between them. A necessary party may not be an interested party for the purpose of Section 21. But there can be no doubt that an interested party within the meaning of Section 21 must be a necessary party to the suit. If, therefore, a person is not a necessary party to the suit, then it cannot be maintained with any degree of force that he is still a party interested within the meaning of Section 21 of the Arbitration Act.

9. Now, the plaintiffs' suit is for possession of the plot from the petitioner and the opponents Gehimal and Tolaram. The cause of action as alleged by the plaintiffs is the wrongful taking of the possession of the plot by the defendants. The plaintiffs could have brought an ejectment suit against the opponents Gehimal and Tolaram only without making the petitioner a party to their action. To such a suit the petitioner would not have been a necessary party even if the said opponents had raised the plea that the petitioner Fida Hussain was the owner of the land. If the plaintiffs could have filed such a suit, then there can be no substance in the argument that Gehimal and Tolaram were parties interested in dispute with regard to the title to the property. This question was considered in Kashi v. Sadashiv, ILR 21 Bom 229. That was a case in which the plaintiffs filed a suit for recovery of possession of certain Crown land alleging that their predecessor had obtained it from Government. The defendants claimed to hold the land under a lease granted by the Government. It was contended by the defendants that the Government was a necessary party to the suit and that in its absence the suit could not proceed. Rejecting this contention Farran C.J. said:

'The owner of land is entitled to maintain a suit for its recovery from the person in possession without regard to the question how he (the owner) has been deprived of possession or how the present possessor has obtained it. The cause of action is the wrongful retention of the land by the defendants from its owners.

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'We consider that if the plaintiff in an ejectment suit can make out a legal title to land, he is entitled to maintain a suit against the person in actual juridical possession of such land for its recovery without making the person under whom the latter claims to hold a party to the suit.'

This passage makes it abundantly clear that in an ejectment suit the cause of action is the wrongful retention of the land by the defendant from its owner and not the denial of the plaintiff's title by a third party. It follows from this that the opponents Gehimal and Tolaram cannot say that in relation to the plaintiffs' claim for ejectment against them, the question of title as between the plaintiffs and the petitioner should be investigated and that they are interested in the dispute with regard to the title. Again, if the plaintiffs had filed a suit against the petitioner alone for a declaration of their title to the property and possession of it, Gehimal and Tolaram would not have been necessary parties to the suit. It they could not be necessary parties in such a suit, then clearly they cannot be regarded as parties interested in the dispute between the plaintiffs and the petitioner with regard to the title to the property.

10. The argument that the question of possession of the property was closely linked

up with that of the plaintiffs' title and that, therefore, the defendants Gehimal and Tolaram were parties interested inasmuch as it is be held that the plaintiffs had the title then the plaintiffs would have a right to claim damages as against them and their tenancy rights would come to an end and they would be entitled to claim damages as against their lessor, the petitioner or Meghraj Sindhi, proceeds on a misconception of the meaning of the word 'interested' and of the nature of the contract of tenancy. A party can-not be said to be interested in a thing when he has no rights, advantages, duties, liabilities or the like connected with it. He must have an advantageous or beneficial interest in the thing. The opponents Gehimal and Tolaram have clearly no such interest in the matter of title to the property. A tenant cannot say, during the continuance of the tenancy, that the landlord who let him into possession had no title at the time of his (tenant's) entry, this is the rule of estoppel embodied in Section 116 of the Indian Evidence Act. But from this rule it does not follow that a tenant is enjoined to defend always the title of the, person who let him into possession of the property. As is well known, the rule of estoppel in Section 116 is subject to the important qualification that a tenant Is not estopped from contending either before or after the expiration of the lease that his landlord's title has terminated by transfer or otherwise, or been lost or defeated by title paramount. Erie J. in Mountnoy v. Collier, (1853) 118 ER 573 at p. 577 stated the reason for this rule thus--

'.....a tenant is liable to the person who has the real title, and may be forced to pay him, either in an action for use and occupation, if there has been a fresh demise or an arrangement equivalent to one, or in trespass for the mesne profits. It would be unjust if, being so liable he could not show that as a defence;.....' The tenant's liability to pay rent or compensation to the person who has the real title and to restore possession of the property to him is inherent in the contract of tenancy under which he obtained possession of the property as tenant from a person who assumed to have title to it. Adjudication, one way or the other, of the title to the property does not, therefore, impose on the tenant any new obligation or liability. That being so, the tenant cannot claim any beneficial or advantageous interest in the question of title to the property; nor can he do so merely because of the possibility of his having any interest in a future litigation which may arise as a result of the adjudication.

11. In our judgment, the opponents Gehimal and, Tolaram were not parties interested in the dispute with regard to title to the property which was referred to arbitration and the agreement to refer that dispute to arbitration at the instance of the petitioner and the plaintiffs was a valid one. Learned counsel for the petitioner did not dispute that if there was a valid reference under Section 21 and if Gehimal and Tolaram were not parties interested, then Section 24 of the Arbitration Act applied. In this view of the matter it is not necessary to consider and decide the other questions debated before the learned Single Judge. Learned counsel for the petitioner did not rightly ask us to review the concurrent finding of fact reached by the Courts below that there was no misconduct on the part of the arbitrator.

12. For these reasons, this revision petition is dismissed with costs. Counsel's fee is fixed at Rs. 50/-.