

Hanuman and ors. Vs. Shakru and ors.

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Court : Rajasthan

Decided On : Jan-18-1972

Reported in : AIR1972Raj176; 1972()WLN22

Judge : Jagat Narayan, C.J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rules 4 and 20

Appeal No. : Civil Revn. Appln. No. 127 of 1970

Appellant : Hanuman and ors.

Respondent : Shakru and ors.

Advocate for Def. : Sumer Chand Bhandari, Adv.

Advocate for Pet/Ap. : D.P. Gupta, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Jagat Narayan, C.J.

1. This is a revision application by the defendant-respondents against an order of the appellate Court impleading Fattu, plaintiff, as a respondent under Order 41, Rule 20, C. P. C.

2. Shakru and Fattu filed the present suit for a permanent injunction restraining the defendants from opening doors on a piece of land of which Shakru and Fattu claimed to be co-owners. The suit was dismissed on 3-8-68 by the Munsif on the ground that the plaintiffs had failed to establish their ownership of the land. Shakru alone filed an appeal on 2-9-68. He did not join Fattu even as a respondent. The defendants filed an objection that the appeal was incompetent as Fattu had not been impleaded either as an appellant or as a respondent. This objection was filed on 29-10-68. Long after the expiry of the period of limitation Shakru filed an application on 2-5-69 that Fattu was a necessary party and should be impleaded as a respondent under Order 41, Rule 20, C. P. C. read with Section 151, C. P. C. This application was allowed by the appellate Court on 7-2-70.

3. It is contended on behalf of the applicants that Order 41, Rule 20, C. P. C. contemplates that there should be a competent appeal before the appellate Court and

an incompetent appeal cannot be converted into a competent one by the exercise of power under this provision. Reliance was placed on the decision in *Badri Narain v. E. I. Rly. Co.*, AIR 1927 Pat 23.

4. On behalf of Shakru it is contended that the appeal by him alone was competent in view of the provisions of Order 41, Rule 4, C. P. C. and the decision of the Supreme Court in *Mahabir Prasad v. Jage Ram*, AIR 1971 SC 742.

5. In the above case 3 plaintiffs Mahabir Prasad, his mother Smt. Gunwanti Devi and his wife Smt, Saroj Devi were joint owners of certain property. They brought a suit for recovery of arrears of rent against the defendants. This suit was decreed by the Subordinate Judge. Execution of the decree was resisted by the defendants on the plea inter alia that the decree was inexecutable because of the provisions of the Delhi Land Reforms Act, 1954. This contention was upheld by the Subordinate Judge and the execution application was dismissed. Mahabir Prasad alone appealed against that order and impleaded Smt. Gunwanti Devi and Smt. Saroj Devi as party-respondents. Saroj Devi died in November, 1962 and Mahabir Prasad applied that the name of Saroj Devi be struck off from the array of respondents. The High Court made an order granting the application 'subject to all just exceptions', but dismissed the appeal holding that because the heirs and legal representatives of Saroj Devi were not brought on the record within the period of limitation prescribed by the Limitation Act the appeal abated in its entirety. Against that order Mahabir Prasad filed an appeal before the Supreme Court It was held that the appeal by Mahabir Prasad alone was competent in view of the provisions of Order 41, Rule 4, C. P. C. In view of the above decision of the Supreme Court the appeal by Shakru alone was competent and the appellate Court had jurisdiction to add Fattu as a party under Order 41, Rule 20, C. P. C. beyond the period of limitation.

6. It may be mentioned here that it was held in *Razia Begum v. Anwar Begum*, AIR 1958 SC 886, that the question of addition of parties raises a question of jurisdiction in the limited sense in which it is used in Section 115 of the Code.

7. The revision application is accordingly dismissed. In the circumstances of the case, I leave the parties to bear their own costs of it.

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