

## **Ch. Surat Singh (Dead) And Ors. vs Manohar Lal And Ors. on 25 August, 1970**

**Equivalent citations: AIR1971SC240, (1971)3SCC889, AIR 1971 SUPREME COURT 240**

**Author: K.S. Hegde**

**Bench: A.N. Grover, K.S. Hegde**

### **JUDGMENT**

K.S. Hegde, J.

1. In these appeals a preliminary objection has been taken to the effect that these appeals are not maintainable as one Lt. Col. G.S. Yadav one of the parties to these cases at an earlier stage had not been impleaded. After hearing the counsel for the parties we accept this preliminary objection and dismiss these appeals as having been not properly instituted. We shall now proceed to give our reasons in support of that conclusion.

2. We shall first take up Civil Appeal No. 610 of 1966. This appeal arises from a suit instituted by one Surat Singh and others. In that suit Surat Singh was the first plaintiff. The plaintiffs therein claimed a permanent injunction restraining the defendants from interfering with their possession of the suit premises. That suit was substantially dismissed in the trial Court. As against that decision the plaintiffs went up in appeal to the Senior Sub-Judge, Delhi. In the appellate Court the plaintiffs prayed for an amendment of the plaint. They sought to include therein a prayer seeking a mandatory injunction requiring the defendants to vacate the building. The learned appellate Judge allowed that application and remanded the suit to the trial Court for a fresh trial.

3. As against that decision defendants-respondents went up in appeal to the High Court. During the pendency of the appeal in the High Court Surat Singh died and his legal representatives including Lt. Col. Yadav, his son were brought on record. In the High Court Lt. Col. Yadav was represented by a counsel. The High Court allowed that appeal and dismissed the suit. Civil Appeal No. 610 of 1966 was brought against that decision of the High Court. In this appeal Lt. Col. Yadav has not been made a party. The only explanation offered for not making him a party is that the judgment of the High Court did not show clearly that Lt. Col. Yadav was a party to the appeal. The fact that he was impleaded as party in the appeal was undoubtedly within the knowledge of the appellants. That fact is not denied. Further the certified copy of the order of the High Court, produced along with the appeal memo, clearly shows that Lt. Col. Yadav was represented by a counsel. The appellants have not shown any good ground for not impleading Lt. Col. Yadav as a party in the appeal. He is a

necessary party to the appeal. Today an application has been filed for impleading him as a party-respondent in the appeal. It is a highly belated application. On their own showing it is clear that the appellant did not act with due diligence. We do not think that we should entertain that application. In the result Civil Appeal No. 610 of 1966 is dismissed for the reasons mentioned above.

4. Now, coming to Civil Appeal No. 611 of 1966, this appeal arises from a suit filed by the respondent No. 1 in this appeal. In the suit he prayed for a permanent injunction restraining Surat Singh and others from interfering with his possession of the suit premises. His case was that the suit premises had been leased to him and that he had paid a substantial sum as a construction loan. The trial Court accepted his plea and granted a decree in his favour. As against that Surat Singh and others went up in appeal. During the pendency of the appeal Surat Singh died. Some of the legal representatives of Surat Singh applied for being impleaded in the appeal as appellants. To that an objection was taken by respondent No. 1 herein to the effect that the estate of Surat Singh will not be fully represented unless Lt. Col. Yadav is also made a party. The contention of the opposite party was that Lt. Col. Yadav had no right in the suit premises as the same had been bequeathed by Surat Singh to some of his sons. The appellate Court framed an issue as to whether Lt. Col. Yadav was a necessary party to the appeal.

5. We were told that after some evidence was led on that issue some of the appellants herein made an application to implead Lt. Col. Yadav at the same time reserving their right to dispute Lt. Col. Yadav's right to the suit premises. That application was accepted by the first appellate Court and Lt. Col. Yadav was impleaded as a party-respondent in that appeal. Ultimately the appeal failed and it was dismissed. As against that decision the appellants herein went up in second appeal to the High Court. In that appeal they did not implead Lt. Col. Yadav. No objection appears to have been taken by the respondents in the High Court as regards his non-impleading. The High Court dismissed that appeal on merits. Civil Appeal No. 611 of 1966 has been brought against that decision of the High Court. In this Court also Lt. Col. Yadav has not been impleaded. The only reason given for not impleading him is that the decree prepared by the High Court did not show Lt. Col. Yadav as one of the parties to the appeal. This plea has no substance. The appellants knew that Lt. Col. Yadav had been impleaded as party in the first appeal. They cannot take advantage of their own omission in the High Court. It is clear that the appellants have been callous in conducting the afore-mentioned cases.

6. This day an application has been made seeking to implead Lt. Col. Yadav as a respondent in this appeal. It is a highly belated application. We see no reason to allow the same. The contention that Lt. Col. Yadav has no interest in the suit premises cannot be gone into in his absence or in these proceedings. In the result Civil Appeal No. 611 of 1966 also fails and the same is dismissed. Parties to bear their own costs in both the appeals.