

New Redbank Tea Co. Pvt.Ltd vs Kumkum Mittal (Agrawal,J.) on 16 November, 1993

Equivalent citations: 1994 SCC (1) 402 JT 1993 SUPL., 589, AIRONLINE 1993 SC 8, 2016 (16) SCC 93, (1994) 1 RENT LR 4, 1994 (1) SCC 402, (1993) JT (SUPP) 589, (1994) 1 RRR 686, (1995) 2 SCR 482 (SC), (1995) 3 JT 42 (SC), 1995 SCC (SUPP) 3 81, (2016) 9 SCALE 388

Author: S.C. Agrawal

Bench: S.C. Agrawal, Kuldeep Singh

PETITIONER:

NEW REDBANK TEA CO. PVT.LTD.

Vs.

RESPONDENT:

KUMKUM MITTAL (Agrawal,J.)

DATE OF JUDGMENT 16/11/1993

BENCH:

AGRAWAL, S.C. (J)

BENCH:

AGRAWAL, S.C. (J)

KULDIP SINGH (J)

CITATION:

1994 SCC (1) 402 JT 1993 Supl. 589

1993 SCALE (4) 480

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by S.C. AGRAWAL, J.- Leave granted.

2. This appeal raises the question whether Terai Tea Company Pvt. Ltd., respondent 11 herein, is entitled to be impleaded as a party (defendant) in E.O. Suit No. 1 of 1985 pending in the Calcutta

High Court.

3. The subject-matter of the dispute between the parties is Dharanipur Tea Estate situate in District Jalpaiguri in West Bengal. One Dharendra Nath Bhowmick (deceased) had obtained the lease of the land of the said tea estate from the Government of West Bengal. The said lease was for a term of thirty years commencing from October 27, 1964. The New Red Bank Tea Co. Pvt. Ltd., appellant 1 owns the Red Bank Tea Estate and Surendra Nagar Tea Co. Pvt. Ltd., appellant 2 herein, owns the Surendra Nagar Tea Estate. Dharendra Nath Bhowmick and his wife, Smt Reba Bhowmick, respondent 3 herein, were having controlling block of shares in both these companies.

+ From the Judgment and Order- dated September 22, 1993 of the Division Bench, Calcutta in A. No. Nil of 1993

4. On March 16, 1977, Dharendra Nath Bhowmick granted a sub-lease for the Dharanipur Tea Estate in favour of appellant 1. By virtue of his control over appellants 1 and 2, Dharendra Nath Bhowmick was the Managing Director of the said two companies and the three tea gardens were under his management. On May 14, 1981, Dharendra Nath Bhowmick and respondent 3 sold their controlling shares in appellants 1 and 2 to Robin Paul, appellant 3, and his group for valuable consideration and the charge of the three tea estates was handed over to appellant 3 and his group. In May 1984, Dharendra Nath Bhowmick and respondent No. 3 filed a suit (Title Suit No. 8 of 1984) against the appellants as well as respondents 4 to 10 and 12 in the court of Assistant District Judge, Jalpaiguri seeking for a declaration that the transfer of controlling interest of shares in appellants 1 and 2 are not valid and prayed for a declaration that Dharendra Nath Bhowmick had all the legal and equitable rights, title and interest in respect of the Dharanipur Tea Estate and for restoration of possession. The said suit was subsequently transferred to the High Court on November 27, 1984 under Clause 13 of the Letters Patent and it was renumbered as Extraordinary Suit No. 1 of 1985.

5. While the said suit was pending, respondent 11 filed a suit (Suit No. 240 of 1990) in the High Court for specific performance of an agreement dated January 15, 1990 said to be executed by Dharendra Nath Bhowmick and M/s Dharanipur Tea Industries Pvt. Ltd., respondent 7 herein, in favour of respondent 11 for the sale of the Dharanipur Tea Estate. In the said suit respondent 11 filed applications for injunction as well as for appointment of receiver which were dismissed by the learned Single Judge of the High Court by order dated April 1, 1991. Respondent 11 filed appeals against the said order of the learned Single Judge and the said appeals were disposed of by a Division Bench of the High Court by a consent order dated August 2, 1991 wherein it was recorded that the respondents (defendants in Suit No. 240 of 1990) had agreed to execute the Deed of Conveyance in favour of plaintiff appellants (respondent 11 herein). By the said order a receiver was appointed over the Dharanipur Tea Estate who was empowered to take possession of Dharanipur Tea Estate and allow respondent 11 to run the said tea estate until the Deed of Conveyance was executed and the Registering Authority was directed to register the Deed of Conveyance without insisting upon production of "no objection certificate" under Section 269-UC and a certificate under Section 230-A(1) of the Income Tax Act, 1961 and the police authorities and other appropriate administrative authorities were directed to afford all facilities, cooperation and help for the purpose of carrying out of the said order. On the basis of the said order the Receiver on August 3, 1991

obtained symbolic possession of the Dharanipur Tea Estate and posted Mr Rungta as the authorised representative for respondent 11 to run, manage and look after the affairs of the said tea estate and the appellants were dispossessed from the said tea gardens The said order of the High Court dated August 2, 1991 was set aside by this Court by order dated September 9, 1991 in C.A. No. 3569 of 1991, New Red Bank Pvt. Ltd. v. Tarai Tea Company Pvt. Ltd. on the view that Extraordinary Suit No. 1 of 1985 as well as Suit No. 240 of 1990 ought to have been tried together and the suit for specific performance filed by respondent 11 could not have been decreed by consent without determining the legal title to and factum of possession of the suit property and that the title and possession could not have been decided without impleading appellant 1 as a party to the suit. This Court, while setting aside the decree for specific performance as well as the order appointing the Receiver, directed the Receiver to deliver back the possession of the property to appellant 1. With the setting aside the decree for specific performance, the sale deed that had been executed and registered stood automatically cancelled. Thereafter appellant 1 was impleaded as a defendant in Suit No. 240 of 1990 by order dated November 18, 1992.

6. Dharendra Nath Bhowmick died on March 15, 1992 and his legal representatives have been brought on record in both the suits.

7. On behalf of respondent II an oral prayer was made before the learned Single Judge for being impleaded as a defendant in Extraordinary Suit No. 1 of 1985. The said oral prayer was rejected by the learned Single Judge by order dated March 22, 1993 on the view that it would be proper if a formal application was filed giving opportunity to all the parties to put forward their objections in specific terms. Thereafter respondent 11 filed a written application on April 1, 1993 for being added as a defendant in Extraordinary Suit No. 1 of 1985. The said application of respondent 11 was opposed by the defendants in the said suit but the plaintiffs had no objection to the said application being allowed. The application was rejected by the learned Single Judge by order dated July 5, 1993. The learned Single Judge was of the view:

"Upon perusal of the materials on record and on appreciation of the point of law, and the ratio of the reported decisions cited from the Bar, this Court finds that M/s Terai Tea Co. Pvt. Ltd. has already filed an independent title suit and disclosed all its claims in its plaint. While the said suit is being heard along with Extraordinary Suit No. 1 of 1985, and when there is no conflict of interest between the plaintiff in Extraordinary Suit No. 1 of 1985 and the plaintiff in Suit No. 240 of 1990 and where Terai Tea Co. Pvt. Ltd. stands for success only when the plaintiff in Extraordinary Suit No. 1 of 1985 will succeed, there is no scope for impleading Terai Tea Co.

Pvt. Ltd. as a defendant again in Extraordinary Suit No. 1 of 1985. While both the suits would be heard analogously and/or together, Terai Tea Co. Pvt. Ltd. is entitled to take effective steps so far as its own suit of 1985 it cannot claim to be added as a party to help and/or assist the plaintiff in any manner whatsoever. Mr Gupta appearing for the defendant has tried to impress upon this Court that several complications will arise if Terai Tea Co. Pvt. Ltd. is added as party- defendant, and at the time of trial it can lead evidence to the prejudice of the interest of other

defendants. Apart from any technical difficulty, this Court is of the view that the presence of Terai Tea Co. Pvt. Ltd. is not necessary for effectual and complete adjudication of the matter in dispute."

8. Feeling aggrieved by the said order of the learned Single Judge, respondent II filed an appeal which was allowed by the Division Bench of the High Court by judgment dated September 22, 1993 on the view that the learned Single Judge was not right in holding that the presence of respondent 11 was not necessary for effectual and complete adjudication of the matter in dispute. According to the learned Judges the addition of respondent 11 is necessary to avoid the possibility of a multiplicity of the judicial proceedings and that if respondent 11 is kept out of the suit and ultimately the same is dismissed, such outcome will not bind them and they will nonetheless have to challenge the decree passed in such suit by way of a separate proceeding only to continue the suit for specific performance. The present appeal is directed against the said judgment of the Division Bench of the High Court.

9. The application for being impleaded as a defendant was moved by respondent 11 under Order 1, Rule 10(2) CPC which provides as under:

"(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

10. The said provision empowers the court to implead as a party to a suit a person (i) who ought to have been joined, whether as plaintiff or defendant; or (ii) whose presence before the court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit. It is not the case of respondent 11 that they ought to have been joined as a defendant in E.O. Suit No. 1 of 1985. Their application has been allowed by the Division Bench of the High Court on the ground that presence of respondent 11 is necessary for effectual and complete adjudication of the matter in dispute. We find it difficult to agree with this view of the High Court.

11. In the leading English case of *Moser v. Marsden*¹, Lindly L.J. has held that a party who is not directly interested in the issues between the plaintiff and the defendant but is only indirectly or commercially affected cannot be added as a defendant because the court has no jurisdiction under the relevant rule to bring him on record even as a proper party. The position is no different under the Indian law. As laid down by this Court, "in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of the litigation". [See: *Razia Begum v. Sahebzadi Anwar* 1 (1892) 1 Ch 487: 66 LT 570 Begum².] In *Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay*³ this Court has held: (SCC p. 53 1, para

14) "It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action."

12. In the instant case respondent 11, admittedly, have no legal interest in the subject-matter of the dispute in E.O. Suit No. 1 of 1985. All that they are claiming is specific performance of the agreement for sale of Dharanipur Tea Estate said to have been executed by Dharendra Nath Bhowmick and respondent 7 on January 15, 1990. The said agreement was executed long after the institution of E.O. Suit No. 1 of 1985. Moreover, the reliefs claimed by the plaintiffs in E.O. Suit No. 1 of 1985 relate to the validity of the agreement dated May 14, 1981 whereby the plaintiffs in that suit had transferred their controlling shares in appellants 1 and 2 in favour of appellant 3 and his group. In the said suit, the possession of Dharanipur Tea Estate is claimed only on the basis of control over appellant 1 which is a sub-lessee of the said tea estate. On the other hand Suit No. 240 of 1990 filed by respondent 11 relates to specific performance of the agreement relating to the sale by Dharendra Nath Bhowmick and respondent 7 of Dharanipur Tea Estate. Respondent 11 cannot be said to be directly interested in the matter of validity of agreement executed by Dharendra Nath Bhowmick and respondent 3 on May 14, 1981. We are, therefore, unable to hold that the presence of respondent 11 is necessary for effectual and complete adjudication of the matter in E.O. Suit No. 1 of 1985. The presence of respondent 11 in those proceedings, on the other hand, might cause prejudice to the rights of the appellants in the said suit. Moreover, both the suits are being tried together in accordance with the directions given by this Court by its order dated September 9, 1991.

13. For the reason aforesaid, the appeal is allowed, the judgment dated September 22, 1993 passed by the Division Bench of the Calcutta High Court in Appeal directed against the order dated July 5, 1993 in E.O. Suit No. 1 of 1985 is set aside and the order dated July 5, 1993 passed by the learned Single Judge dismissing the application filed by respondent 11. Is restored. There is no order as to costs. 2 1959 SCR 11 11, 1132: AIR 1958 SC 886 3 (1992) 2 SCC 524