

# **Kamlesh Gupta vs Mangat Rai on 23 September, 2019**

**Equivalent citations: AIRONLINE 2019 SC 1142, (2019) 12 SCALE 805, (2019) 2 CLR 1053 (SC), (2019) 4 RECCIVR 674, (2020) 1 CIVLJ 60, (2020) 1 ICC 608, (2020) 1 RENTLR 24**

**Author: Mohan M. Shantanagoudar**

**Bench: Indira Banerjee, Mohan M. Shantanagoudar**

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7556 OF 2019  
(@ S.L.P. (C) NO. 13980 OF 2018)

Kamlesh Gupta

....Appellant

Versus

Mangat Rai & Anr.

. ....Respondents

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.

Leave granted.

2. The present appeal has been filed against the order dated 17.01.2018 passed by the High Court of Punjab and Haryana dismissing Civil Revision No. 6019/2016 (O&M) filed by the appellant herein. The aforesaid revision petition was filed against an order passed by the Civil Judge (Junior Division) on 20.08.2016, vide which the appellant's Reason: application for amendment of the plaint and for impleading another party to C.S. No. 950/2013 had been dismissed.

3. The brief facts leading to the instant appeal are as follows:

Kamlesh Gupta, the plaintiff in the abovementioned suit (the appellant herein), had mortgaged shop bearing MC No. B-22/56 (15'X60') with Mangat Rai, the first defendant in the suit (the first respondent herein), for a sum of Rs. 7 lakhs vide a

mortgage deed dated 22.09.2009. The plaintiff later filed C.S. No. 950/2013 for possession of the suit shop by way of redemption on the payment of the aforesaid mortgage amount. The first defendant in the said suit admitted the claim of the plaintiff, but averred that he had permitted Rakesh Kumar, the second defendant (the second respondent herein), to use the suit shop to run a business. As per the first defendant, the second defendant had agreed to vacate the suit shop when the mortgage was redeemed, but had failed to vacate it at the time of redemption, which gave rise to the suit.

4. On the other hand, the second defendant denied the validity and execution of the mortgage deed, and denied being in possession of the suit shop. As per the second defendant, the father of the plaintiff, who was the original owner of the suit shop, had inducted one Pawan Kumar as a tenant.

5. After the issues had been framed and the affidavits in lieu of examination-in-chief of four witnesses for the plaintiff taken on record, but before the cross-examination of the plaintiff herself was done, she filed an application on 25.01.2016 under Order I Rule 10 and Order VI Rule 17, read with Section 151 of the Code of Civil Procedure, 1908 (in short “the CPC”) to implead the aforesaid Pawan Kumar as the third defendant, as well as to add a paragraph in the plaint to the effect that the said Pawan Kumar, who was the father of the second defendant, had colluded with the defendants to obtain possession of the suit shop.

6. The Trial Court dismissed this application on the ground that the facts stated in the application were already within its knowledge.

7. The Single Judge of the High Court, while deciding the revision petition arising from the dismissal of the application, also came to the conclusion that since the facts that were sought to be added by way of amending the plaint were within the knowledge of the plaintiff, her application was hit by the proviso to Order VI Rule 17 of the CPC, which prevents a party from amending the plaint post the commencement of the trial, unless the Court concludes that in spite of due diligence, the party could not have raised the matter before the commencement of trial. Notably, the Single Judge did not provide any reason for rejecting the prayer for impleadment, and proceeded to dismiss the entire application only by referring to the proviso to Order VI Rule 17 of the CPC.

8. It is evident that the High Court failed to examine the application on merits as far as the question of the impleadment of the aforesaid Pawan Kumar is concerned. In this regard, it is relevant to note that even as per the written statement filed by the second defendant, the said Pawan Kumar is in possession of the suit shop, where he is carrying on a business in the name and style of ‘Pawan Cloth House’ as its sole proprietor. Additionally, though the second defendant never mentioned in his written statement that Pawan Kumar was his father, it has now come on record that Pawan Kumar is none other than the father of the second defendant. Furthermore, going by the written statement of the first defendant, the second defendant is his nephew, being his sister’s son. Prima facie, the two defendants and Pawan Kumar appear to be close relatives. Such fact is suppressed by the second defendant in his written statement.

9. So far as the possession of the suit shop is concerned, as per the first defendant's own admission, possession was handed over to the second defendant by the first defendant. We fail to understand how the first defendant, as the mortgagee of the suit shop, handed over its possession to a third party without even informing the mortgagor, i.e. the plaintiff. Furthermore, it is unclear in what capacity the second defendant obtained possession of the suit shop, as no lease deed or any such document has been produced before us. In any case, the fact that Pawan Kumar is now in possession, though unauthorised, has not been disputed by any of the parties. In the present scenario, therefore, even if a decree is granted in favour of the plaintiff, Pawan Kumar may object to the execution of the said decree on the ground that he was not made a party to the suit despite being in possession of the suit shop.

10. We are of the opinion that by virtue of actual possession being enjoyed by Pawan Kumar, he is a necessary party to the present suit. Even otherwise, he is a proper party for the reasons elucidated above.

11. We are aware that, ordinarily, such an application needs to be filed before the commencement of the trial. Undoubtedly, in the present case, the trial has commenced, and the affidavits in lieu of examination-in-chief of four witnesses for the plaintiff have been filed. However, having regard to the fact that the two defendants and Pawan Kumar are close relatives, it seems possible that the plaintiff may have been kept in the dark regarding the possession of the suit shop. We do not wish to comment on whether the defendants and Pawan Kumar colluded to actively withhold this information from the plaintiff. But the fact remains that the plaintiff did not know about the internal arrangement between the defendants and Pawan Kumar. Therefore, even though the application for impleadment and amendment of the plaint was filed by the plaintiff belatedly, the interest of justice demands that the application be allowed, to ensure that in the eventuality of the suit being decreed in his favour, the plaintiff does not become vulnerable to another round of litigation at the stage of execution. We deem it fit, however, to impose costs of Rs.10,000 on the plaintiff.

12. For these reasons, we set aside the orders passed by the Trial Court and the High Court rejecting the application for impleadment and amendment of the plaint, and hereby allow the aforesaid application. We direct the appellant to deposit costs of Rs. 10,000 before the Trial Court within 8 weeks from today.

13. At the same time, we direct the Trial Court to decide the case on merits, based on the evidence produced before it, uninfluenced by the observations made by us.

14. The instant appeal is thus allowed as per the aforesaid terms.

.....J. (MOHAN M. SHANTANAGOUDAR) .....J.  
(INDIRA BANERJEE) NEW DELHI;

SEPTEMBER 23, 2019