

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.173 of 2022

Before :

Mr. Justice Nadeem Akhtar
Mr. Justice Zulfiqar Ali Sangi

Appellant : Hussain Dawood,
through : Mr. Arshad M. Tayebaly Advocate.

Respondent No.1 : Haji Maqbool Ahmed & others,
through Mr. Abdul Qadir Khan Advocate.

Date of hearing : 05.12.2022.

ORDER

NADEEM AKHTAR, J. – This High Court Appeal is directed against the order passed on 06.04.2022 by a learned single judge of this Court in Suit No.1172 of 1997, whereby the application under Order I Rule 10 CPC filed by respondent No.1 / plaintiff for impleading the appellant in the said Suit as a defendant was allowed.

2. Relevant facts of the case are that the above mentioned Suit was instituted by respondent No.1 against his mother Mst. Sikandar. His case was that the suit property viz. Bungalow No.48/1, 5th Street, Phase V, Defence Housing Authority, Karachi, measuring 1,000 sq. yds., was purchased by him with his own funds in the name of his mother. In view of his said claim, it was prayed by him that he should be declared as the real owner of the suit property and possession thereof be handed over to him. He had also prayed for mense profits and consequential relief of injunction. The said Suit was dismissed for non-prosecution on 03.12.2003, however, it was restored on 18.11.2019. Meanwhile, the suit property was purchased by the appellant for valuable consideration from the mother of respondent No.1 (defendant in the Suit) through a sale deed executed and registered in his favour on 26.03.2018, whereafter the suit property was mutated / transferred in his name in the record of the Military Estates Office and Cantonment Board Clifton. After the demise of the respondent No.1's mother / defendant, all her legal heirs, including the plaintiff, were substituted in her place as defendants in the Suit. On 03.09.2021, respondent No.1 / plaintiff filed an application under Order I Rule 10 CPC bearing CMA No.13959/2021 (**'the application'**), praying that the appellant be impleaded in his above Suit as a defendant on the ground that after purchasing the suit property from the respondent No.1's mother / defendant, he had become a necessary party to the Suit. A detailed counter affidavit to the application

was filed by the appellant wherein it was asserted by him that he was not a necessary party to the Suit and also that the Suit was not pending when the suit property was purchased by him. It appears that respondent No.1 did not file any affidavit-in-rejoinder to the counter affidavit filed by the appellant.

3. The application came up for hearing before the learned single judge on 06.04.2022 when only the learned counsel for the plaintiff was present and no one was present on behalf of the appellant / proposed defendant. Through the impugned order passed on that date, the application was allowed in the following terms :

“ Through this application, learned counsel for the plaintiff prays that intervener-Hussain Dawood may be impleaded as defendant No.2 in the instant Suit as he has purchased the suit property vide sale deed dated 14.03.2018. None is present for the defendant as well as intervener. Learned counsel for the plaintiff points out that since long, none has appeared for the defendant. Since, third party interest has been created on the subject property and the defendant has sold out the said property to the intervener, who now becomes necessary party in the instant Suit therefore, this application is allowed and intervener-Hussain Dawood is hereby impleaded as defendant No.2. Accordingly, learned counsel for the plaintiff is directed to file amended title on or before the next date of hearing ”.

4. We have heard learned counsel for the parties at considerable length and have also examined the material available on record with their able assistance. Sub-Rule (2) of Rule 10 of Order I CPC empowers the Court to strike out the name of any party improperly joined, whether as plaintiff or defendant, or to add any person as plaintiff or defendant who ought to have been joined or whose presence before the Court is necessary in order to enable the Court to adjudicate upon and settle all the questions involved in the Suit effectually and completely. Sub-Rule (2) *ibid* further provides that the Court may exercise such power at any stage of the proceedings either upon an application filed by either party or even without any such application, and on such terms as may appear to the Court to be just. Thus, while making an order under the above provision, the main criteria should be whether or not the presence of the person, who is seeking to be added as a party or whose addition as a party is sought by any of the parties, is necessary to enable the Court to adjudicate upon and settle all the questions involved in the Suit effectually and completely. In other words, before adding any person as a party to the Suit, the Court has to ensure that the Suit cannot proceed in his absence nor can the questions involved therein be decided effectually and completely in his absence.

5. Perusal of the impugned order shows that the application was allowed by adding the appellant as defendant on the sole ground that the suit property had been sold to him by the defendant / respondent No.1's mother. The conclusion that the appellant was a necessary party to the Suit was drawn in the impugned order

admittedly in the absence of the appellant and without affording him any opportunity of hearing. It was observed in the impugned order that no one was present on behalf of the appellant and no one had been appearing for the defendants since long. Needless to say the absence of the defendants on the relevant date and for the purposes of the application was inconsequential. The question whether by purchasing the suit property when the Suit was not pending the appellant could be deemed to be a necessary party, has not been considered or decided in the impugned order. This plea along with other pleas was specifically raised by the appellant in his counter affidavit. The addition of a person as a defendant in a Suit, without his consent and despite his opposition, casts a heavy responsibility and duty upon him to defend the Suit by going through the rigors of formal and lengthy court proceedings, by facing consequences of such proceedings and also by incurring heavy expenses. Therefore, if a person opposes his addition as a party to a proceeding, a fair opportunity of hearing must be given to him by the Court before making a decision. We are of the view that the fate of the application ought to have been decided after hearing the appellant, especially when he was on notice and had filed a detailed counter affidavit to oppose the application.

6. In the above circumstances, the impugned order is set aside and the application is remanded to the learned single judge for decision afresh preferably within two (02) months on merits after providing opportunity of hearing to the parties. The appeal and the application pending therein stand disposed of in the above terms with no order as to costs.

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