

CIVIL REVISION

Present :

The Hon'ble Mr. Justice **Prasenjit Mandal**

Judgment on 08.09.2010

C.O. No.3492 of 2009

Acarya Dhruvanand Avadhuta & anr.

Versus

Ananda Marga Pracarak Samgha and Ors.

Points:

Addition of party- Newly elected office bearers whether should be added as a party though the relief sought for in respect of earlier year.-Code of Civil Procedure, 1908- O1 R 10

Facts:

The opposite parties instituted a suit praying for a decree of declaration that all the 15 members of governing body including the plaintiff nos.1 to 4 are the elected office bearers and members of the governing body for the year 2003-04 of the plaintiff no.1/association, and that the defendant nos.1 and 2 jointly and severally have no right and competence to withhold charge of the office of the plaintiff no.1 and they are the present existing office bearers of the governing body of the plaintiff no.1/association, permanent injunction restraining the defendants from functioning as President and the Joint Secretary of the plaintiff no.1. The suit was at the stage of recording evidence on behalf of the plaintiffs. At that stage, the plaintiffs filed an application under Order 1 Rule 10 of the Code of Civil Procedure for adding the plaintiffs/opposite party nos.5 to 7 as co-plaintiffs in the suit on the plea that the opposite party nos.5 to 7 have been elected in the office bearers of the society for the period of 2008-09 and for the subsequent period until replaced by election. The plaintiffs gathered such information from another court case. Trial Judge by the impugned order allowed the application.

Held:

Though the reliefs are related to the period of 2003-04, since the reliefs are very much related to the persons who are to be impleaded by the proposed amendment, I am of the view that these persons appear to be the proper parties before whom the suit should be heard; otherwise the relief sought for may appear to be meaningless to the persons to be impleaded who are at present the office bearers of the plaintiff no.1. There may be arise complications in executing the decree if granted, in case the execution of the decree is to be needed afterwards. Para 8

Cases cited:

P. H. Patil Vs. Kalgonda Shidgonda Patil & ors AIR 1957 SC 363; Om Prakash Gupta Vs. Ranbir B. Goyal 2002 SC 665; Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Ors., AIR 1974 SC 1178, Vineet Kumar Vs. Mangal Sain Wadhera, AIR 1985 SC 817, Surender Kumar Sharma Vs. Makhan Singh, (2009) 10 SCC 626 and Shyamal Mitra Mustafi Vs. J. G. Saggi, 1988 (2) CLJ 429

For the Petitioners: Mr. S. P. Roychowdhury,
Mr. P. Chatterjee.

For the opposite parties: Mr. A. Kanti Ghosal,
Mrs. Chandramala Mukherjee.

Prasenjit Mandal, J.: This application is at the instance of the defendants and is directed against the order dated September 14, 2009 passed by the learned Civil Judge (Senior Division), Additional Court, Purulia in Title Suit No.305 of 2003.

2. The short fact of the case is that the plaintiffs/opposite parties instituted the Title Suit No.305 of 2003 before the learned Civil Judge (Senior Division), Additional Court, Purulia against the defendants praying for a

decree of declaration that all the 15 members of governing body including the plaintiff nos.1 to 4 as listed in Annexure – 2 are the elected office bearers and members of the governing body for the year 2003-04 of the plaintiff no.1/association, further declaration that the defendant nos.1 and 2 jointly and severally have no right and competence to withhold charge of the office of the plaintiff no.1 and they are the present existing office bearers of the governing body of the plaintiff no.1/association, permanent injunction restraining the defendants from functioning as President and the Joint Secretary of the plaintiff no.1 and other reliefs.

3. In that suit, the defendants/petitioners appeared and they filed a written statement. The suit was at the stage of recording evidence on behalf of the plaintiffs. At that stage, the plaintiffs filed an application under Order 1 Rule 10 of the Code of Civil Procedure. The plaintiffs/opposite parties filed another application seeking impleadment of the plaintiffs/opposite party nos.5 to 7 as co-plaintiffs in the suit on the plea that the opposite party nos.5 to 7 have been elected in the office bearers of the society for the period of 2008-09 and for the subsequent period until replaced by election. The plaintiffs gathered such information when they received about such fact on January 5, 2009 from the copy of the Misc. Appeal no.3 of 2009 filed in the Court of the learned District Judge, Purulia by Acharya Vishvadevananda Avadhuta. That application was allowed by the learned Trial Judge by the impugned order. Being aggrieved, the petitioners have filed this application.

4. Mr. S. P. Roychowdhury points out the main prayer of the plaint case as appearing at page no.36 and thus, he submits that main relief of the plaintiffs is that the 15 members as listed in Annexure – 2 to the plaint are the office bearers and members of the governing body for the year 2003-04 and for other consequential reliefs on the basis of the election for the year 2003-04. Therefore, the entire claim of the plaintiffs in the suit are related to the period of 2003-04 only. By the proposed amendment of addition of parties,

the plaintiffs have wanted to incorporate the names of the other persons as plaintiff nos.5 to 7 and defendant in the suit on the ground that they are the office bearers for the year 2008-09. The election of the plaintiff no.1 is to be held every year and so there is a change of the office bearers of the plaintiff no.1 for each year. The plaintiffs did not take note of the change of the subsequent years after the period 2003-04 but they have wanted to include the office bearers who were elected for the year 2008-09 with note that they should remain in such capacity until new election. He also contends that such measures were taken when the suit was at the stage of peremptory hearing and if the amendment as sought for as subsequent events to the filing of the suit is allowed to continue, there will not be any end of the suit and it will be a perpetual one and so without intervening the all other intervening office bearers after the period of 2003-04 and before 2008-09, such amendment cannot be allowed. The learned Trial Judge has failed to take notice of such fact. He also contends that the defendants were permitted to submit the return as per order of Justice Soumitra Pal in W.P. No.26072 (w) of 2007. Under the circumstances, that this submission of return is essential to run the society. This has been done in compliance with the rules of the society. So, for that reason the proposed impleadment should not have been granted by the learned Trial Judge. Mr. Roychowdhury also points out the effect of the proposed amendment appearing at page no.64 in Annexure P-5 to the application and thus he submits that such type of prayer of the amendment of the plaint should not be granted.

5. On the other hand, Mr. Ghosal, learned Advocate appearing on behalf of the opposite party, submits that since the plaintiff no.1 is a registered society under the West Bengal Societies Registration Act, 1961 and as per provision of the regulations of the 'sangha' the annual general meeting and the election of the governing body must be held but during the last five years from 2003 to 2007 there was no change in the office bearers and members of

the governing body and the same persons were re-elected as the office bearers and the members in due process of election. So, there was no occasion for change of the names of the office bearers or to cause amendment of the plaint but the election of the governing body for the term of 2008-09 was held on October 19, 2008 and the proposed office bearers are the members of the governing body of the plaintiff no.1 by election. So, an occasion for amendment of the plaint has arisen. Therefore, he supports the proposed amendment.

6. Therefore, the point that arises for decision is whether the proposed amendment should be sustained.

7. After due consideration of the submission of the learned Advocate for both the parties and on consideration of the materials on record, I find that there is no doubt that the last election for the governing body of the plaintiff no.1 was held on October 19, 2008 and by the proposed amendment, the plaintiffs have wanted to incorporate their names and to suitably amend the plaint accordingly. Therefore, the proposed amendment relates to the fact subsequent to the date of filing of the suit. The plaintiffs have explained in their application as to why they could not file the application for amendment of the plaint earlier as the annual reports of the plaintiff no.1 and the list of office bearers and members of the governing body were under the consideration of the W.P. No.26072(w) of 2007 with CAN No.9742 of 2008 with CAN No.2338 of 2008. The Hon'ble Justice Pal passed the orders on February 17, 2009 directing the Registrar of Firms & Societies to accept the annual returns and other returns of the petitioners for the year 2007-08 and on onwards till disposal of the suits pending before the District Courts of Purulia. I find that the Registrar of Firms had accepted the returns filed by the petitioners of the writ petition and there was a direction that till disposal of the suits, the annual return and other returns of the petitioners are to be filed by them.

8. Though the reliefs are related to the period of 2003-04, since the reliefs are very much related to the persons who are to be impleaded by the proposed amendment, I am of the view that these persons appear to be the proper parties before whom the suit should be heard; otherwise the relief sought for may appear to be meaningless to the persons to be impleaded who are at present the office bearers of the plaintiff no.1. There may be arise complications in executing the decree if granted, in case the execution of the decree is to be needed afterwards.

9. As regards non-taking of incorporation of names of other office bearers during the intervening period the plaintiffs have explained that since the governing body was not changed during the intervening period they did not seek for change of the governing body. Therefore, in view of the order passed in W.P. No.26072(w) of 2007 if the amendment as granted by the learned Trial Judge is allowed to continue it will not cause any injustice to the other side and it is also necessary for the purpose of determining the real controversy between the parties. Therefore, the decision in the case of P. H. Patil Vs. Kalgonda Shidgonda Patil & ors reported in AIR 1957 SC 363 supports the impugned order.

10. Mr. Ghosal has referred to the decision of Om Prakash Gupta Vs. Ranbir B. Goyal reported in 2002 SC 665, Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Ors. reported AIR 1974 SC 1178, Vineet Kumar Vs. Mangal Sain Wadhwa reported in AIR 1985 SC 817, Surender Kumar Sharma Vs. Makhan Singh reported in (2009) 10 SCC 626 and Shyamal Mitra Mustafi Vs. J. G. Saggi reported in 1988 (2) CLJ 429 that Court should take notice of the subsequent events in order to do full and complete justice and to solve the dispute once for all.

11. If the amendment is not allowed to sustain, I am of the view that several complications are likely to occur. On the other hand, if it is sustained the defendants have nothing to suffer. The loss, if any, sustained by them can

well be compensated by money as done in the instant case. If the impugned order is not maintained, the decree passed afterwards, if any, may become infructuous because of not impleading the present office bearers.

12. This being the position, I am of the view that the learned Trial Judge has rightly passed the impugned order with payment of costs to the contesting defendants. Therefore, I am of the view that there is nothing to interfere with the order impugned.

13. Accordingly, this application fails to succeed. It is dismissed.

14. Considering the circumstances, there will be no order as to costs.

15. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.

(Prasenjit Mandal, J.)