

2023 SCC OnLine Guj 2050

In the High Court of Gujarat at Ahmedabad

(BEFORE ILESH J. VORA, J.)

Madhuben Bharatkumar Kapadia

Versus

Govindbhai Khimjibhai Bharwad and Others

R/Special Civil Application No. 8746 of 2014 with R/Special Civil
Application No. 8747 of 2014 with R/Special Civil Application No.
8781 of 2014 with R/Special Civil Application No. 8782 of 2014
with R/Special Civil Application No. 8783 of 2014

Decided on July 1, 2023

Advocates who appeared in this case:

Mr. Dhaval Dave, Sr. Adv. with Mr. Ashish H. Shah(2142) for the
Petitioner(s) No. 1

Notice Served by DS for the Respondent(s) No. 1, 10, 2, 3, 4, 5, 6,
7, 8.1, 8.2, 8.3, 9

Viral K. Shah(5210) for the Respondent(s) No. 2, 5, 6

The Judgment of the Court was delivered by

ILESH J. VORA, J.:— This order will dispose of all the above petitions
and they were heard together on account of common legal issue raised
therein.

2. This Court has heard learned Senior Counsel Dhaval Dave assisted
by Mr. Ashish Shah, and Mr. Viral K. Shah for the respective parties.

3. For the sake of convenience and reference, necessary facts of
Special Civil Application No. 8746 of 2014 are referred to hereinafter.

4. The present petitioner Madhuben Kapadia being a member of
society namely, Vishal Industrial Cooperative Service Society Limited,
Division-II, duly registered with the Registrar, Cooperative Societies at
Surat, had moved an application Exh.74, for impleading her as party in
the Civil Suit RCS No. 541 of 2008, which is pending on the file of 3rd
Additional Senior Civil Judge, Surat. The said suit is filed by the
respondents No. 1 to 6-plaintiffs for permanent injunction and
declaration. The plaintiffs have purchased plot No. 21 to 32 from the
members of the society defendant No. 4 ie. Vishal Industrial
Cooperative Service Society Limited. The society defendant No. 4
purchased the entire land in a public auction as the original owner
Parwatiben Mohanlal etc. failed to honour the financial assistance
advanced by Vaz Cooperative Society. In the year 1981, the defendant
No. 4 society, obtained necessary approval from Bhatar-Majura,

Panchayat Office at Surat and accordingly as per the plan, the different plots including the suit plots were allotted to the respective members. The plaintiffs respondents No. 1 to 6 purchased the aforesaid plots No. 21 to 32 from the respective members, by way of registered sale deed duly registered in the year 2002. It is the case of the plaintiffs that the owner of the plots including the society are legally responsible to clear the title of the plots and failed to handover the possession as per the approved plan. In these circumstances, the plaintiffs respondents have prayed that the defendant be directed to clear the title of the purchased plots and hand over the peaceful and vacant possession thereof and further prayed for permanent injunction, restraining the defendants from transferring, alienating or creating third party rights in the suit land. The suit is filed in representative capacity under Order 1 Rule 8 of the CPC, as there are numerous members in the society, having the same interest in the suit. Vide Exh. No. 6, the trial Court granted permission and order of public notice as provided under Order 1 Rule 8 (2) was passed. Pursuant to the public notice, some of the members of the society defendant no. 4 moved an application to join them as a party and accordingly, without admitting the contention of the application, the plaintiff respondent consented to join them as a party in the suit. Subsequently, the present petitioner Madhuben Kapadia, being a holder of plot Nos. 66 and 67, vide Exh. No. 74 dated 29.10.2010, moved an application to join her as a party in the suit. During the course of hearing, present petitioner, objected the prayer sought by the plaintiffs and supported the claim of the defendant society. The defendant No. 4-society in its written statement raised the issue of maintainability of the suit as suit in the present form before the Civil Court is not maintainable. It is further alleged that the suit is filed in collusion with member of the societies and without NOC from the society, the sale transactions was executed by the plaintiff and the seller of the plots who have been joined as defendants in the suit.

5. In the aforesaid background of facts, the petitioner third party, at the time of hearing before the trial Court, specifically, stated that suit is filed against the interest of the member of the society and their interests with the plaintiff are not similarly situated and, therefore, they may be joined as defendant in the suit.

6. After hearing the parties, the learned trial Court have not accepted the contention raised by the third party petitioner herein and by allowing the application Exh. No. 74, she has been directed to join as a plaintiff in the suit.

7. Being aggrieved with the order of the trial Court dated 19.04.2014, the present petition, invoking supervisory jurisdiction under Article 227 of the Constitution of India has been filed, inter alia stating that the learned trial Court overlooked the facts of the rival

interest of the parties and committed material illegality and failed to exercise jurisdiction vested on it, as a result a grave injustice or gross failure of justice occasioned thereby.

8. Mr. Dhaval Dave, learned Senior Counsel appearing for and on behalf of the petitioners submitted that, the respondents No. 1 to 6 purchased the plots from the defendant No. 1 to 3 without NOC from the Society-defendant No. 4. Pursuant to the public notice, the petitioner herein, moved an application for impleading them as a party in the suit proceedings and they have specifically, stated before the trial Court that the suit has been filed in collusion with the members who have sold the plots and the petitioners wished to contest the suit as it is against the interest of the members of the defendants No. 4 society and the relief claimed is adverse to the interest of the members of the society and, therefore, they prayed that they may be joined as defendants. The learned trial Court failed to appreciate the admitted facts and impugned order passed against the very object of the statutory provision Order 1 Rule 8 of the CPC. He submitted that the provision Order 1 Rule 8 provides that where there are numerous persons having same interest in the one suit, one or more such persons, may with the permission of the Court, sue or be sued or may defend such suit, on behalf of or for the benefit of, all persons so interested. It is in this context, he submitted that when interest of the petitioner and plaintiffs are not same, then the Court below could not have compelled the petitioner third party to support the case of the plaintiff and add her in the suit as a co-plaintiff. Relying on the case of *Shripat Mahadu Patil v. CIDCO Limited*, (2012) 12 SCC 754 the learned Senior Counsel, emphasized that the relief claimed in the suit is adverse to the interest of the members of the society and there are sufficient evidence on record to show to show the intention of the plaintiff to file the collusive suit, the Court could not have joined the petitioner third party as the cause of plaintiff.

9. In the aforesaid contention, the learned Senior Counsel prays that the error of law is committed by the Court below which is apparent on record and findings for the conclusion arrived at by non-consideration of the relevant and material facts and, therefore, the case is made out to interfere with the impugned order under supervisory jurisdiction of this Court.

10. On the other hand, countering the submissions, learned counsel Mr. Viral Shah submitted that the impugned order joining the petitioner as a co-plaintiff has been passed after assigning sufficient reasons and it cannot be said to be perverse or arbitrary, and same does not required to be interfered by this Court. He submitted that the interest of the petitioner third party and other plot holders are common and relief claimed in the suit, is also beneficial to all the members, and

therefore, after considering the statutory provision as provided under Order 1 Rule 8, the learned trial Court exercised its discretion and deem it proper to join the petitioner third party as a co-plaintiff and, therefore, by passing the order, no error of law much less an error apparent on the face of the record has been committed by the Court.

11. Thus, in view of the aforesaid contention, Mr. Shah submitted that the scope of interference by the High Court under Article 227 is restricted and the same is to be exercised sparingly and only in exceptional cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting errors and, therefore, no reason or ground is made out for interference by this Court under supervisory jurisdiction.

12. Having heard the learned counsel for the parties and on perusal of the impugned order, it appears that before the Court below it was argued by the learned counsel for the petitioner herein that the relief claimed in the suit is adverse to the interest of the members of the society and considering the collusive nature of the suit, they intend to contest the suit and interest of both the parties cannot be said to be a common interest. Despite the specific prayer made by the petitioner third party to join as a party defendant, the Court below while exercising discretion, passed an order to join the petitioner as a co-plaintiff. The learned trial Court while declining the prayer made by the petitioner, held that the original plaintiff respondent having no any issue against the present petitioner nor any relief is sought against her. The learned trial Court further held that, no specific reasons or relevant facts being mentioned in the application that how and in what manner their interest is adverse to the plaintiffs. Thus, therefore, the learned trial Court has directed the petitioner third party to join as co-plaintiff in the suit proceedings.

13. On careful perusal of the case records and findings recorded by the trial Court, this Court is of the considered view that the trial Court did not have properly considered the case records, as there is sufficient record to show the intention on the part of the plaintiff to file the suit against the defendant society. There is no statutory requirement that how the interest is adverse as against the right claimed by the plaintiff shall require to be plead in the application. The only requirement is to obtain the leave of the Court for joining as a party in the suit. Once the party, discloses before the Court that he or she having no any common interest and is not representing to the interest of the plaintiffs, then Court should not add him or her as a co-plaintiff. Thus, therefore, the findings recorded by the trial Court while impleading the petitioners as co-plaintiff having been arrived by non-consideration of the relevant and material facts. It is settled position of law that the general rule is that all the persons interested in a suit, either as a plaintiff or as a

defendant, must be joined as a parties so that Court may finally adjudicate upon the rights of all parties and orders of the Court may safely be executed by those who are compelled to obey them and future litigations may be avoided. However, the provision of Order 1 Rule 8 is an exception to the general rule that all the persons interested in a suit ought to be made parties thereto. Thus, the rule is an enabling provision which entitles one party to represent many who have a common cause of action; but it does not force any one to represent many, if his action is maintainable without the joinder of the other person.

14. In view of the peculiar facts and circumstances of the case, and in light of the settled position of law, where a person says that he does not want to be represented by the plaintiff, then the only option available to the Court to add him or her as a defendant if his or her interest is adverse to that of the plaintiff. This Court is conscious about the limited jurisdiction of this Court as it is well settled that powers under Article 227 is of judicial superintendence, which cannot be used to upset conclusion of the facts, howsoever, erroneous those may be, unless such conclusion are so perverse or so unreasonable that no Court ever have reached.

15. Reverting to the facts of the present case, the disclosure made by the petitioner third party before the trial Court that their interest is not common with the cause of action of the plaintiffs and it is adverse to that of the relief claimed to that of the plaintiff, and the same has not been properly considered by the Court below in its true prospective, whereby the Court below in utter disregard to the provisions of Order 1 Rule 8, committed an error of law and the same is warranting interference by this Court under Article 227 of the Constitution of India.

16. For the foregoing reasons and considering the peculiar facts and circumstances of this case, this Court is of the firm view that the common orders impugned passed below Exh. Nos. 74, 77, 80, 83 and 86 is not sustainable in law and is hereby quashed. The petitioner in all petitions are ordered to be joined as a party defendant in the suit and accordingly, amendment to this effect may be carried out in accordance with law.

17. Accordingly, all the above petitions are allowed in the aforesaid terms.