

CIVIL REVISION.

Before Costello and Jack J.J.

BANBIHARI MUKHERJI

v.

BHEJNATH SINGH MAHAPATRA.*

1931

May 18.

*Appeal—Addition of party—Code of Civil Procedure (Act V of 1908),
s. 115; O. I, r. 10(2).*

In some circumstances, it may be right and proper that the court should add, as parties to the proceedings, even at the appellate stage, persons who were not amongst the original parties to the suit. But the circumstances must be exceptional and must be such as renders it really necessary, in the interest of the original parties to the suit, that some other persons should be added to the proceedings so that the matters originally in dispute may be properly adjudicated upon and finally determined as between the original parties to the suit.

It is improper to attempt to secure, in appellate proceedings, a consideration of matters, which have not been adjudicated upon or even considered in the court of first instance and which are outside the questions at issue between the original parties.

Rule 10 (2) of Order I of the Code of Civil Procedure is a reproduction of rule 11 of Order XVI of the rules of the Supreme Court in England. A reference to the terms of the rule itself will show that it is only intended to apply where either one or other of the parties makes an application to the court, or the court itself is of opinion that some other persons ought to be brought into the proceedings in order to enable the court effectively and completely to adjudicate upon and settle all questions involved in the suit, *i.e.*, the questions which are involved in the suit as originally framed between the parties to the suit.

CIVIL RULE obtained under section 115 of the Code of Civil Procedure by the substituted plaintiff.

The facts of the case and the arguments appear fully in the judgment.

Bijaykumar Bhattacharya and *Beereshwar Bagchi* for the petitioner.

Rupendrakumar Mitra and *Jateendramohan Chaudhuri* for opposite parties No. 1 and Nos. 2 to 4 respectively.

*Civil Revision, No. 381 of 1931, against the order of J. De, District Judge of Bankura, dated Jan. 10, 1931.

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*Banbihari
Mukherji*
v.
*Bhejnath Singh
Mahapatra.*

COSTELLO AND JACK JJ. This is an application made under section 115, Civil Procedure Code, for an order setting aside the order of the District Judge of Bankura, dated the 10th January, 1931. That order was made in connection with a Title Suit (No. 3/98 of 1927-1930) and in course of a proceeding, which was described as Miscellaneous Case No. 44 of 1930. The Title Suit in question had been instituted by a lady, Sreemati Bibasana Debya, claiming a declaration of her title to and recovery of possession of certain lands and also a sum of money as against a lady, Sreemati Indubala Debya, and certain other persons. The plaintiff was successful at the trial and a decree was made in her favour on all points. Thereupon, the defendants appealed to the court of the District Judge of Bankura.

The plaintiff, Bibasana Debya, died intestate, shortly after the filing of the appeal, and the defendants appellants applied for substitution of the present petitioner in place of the deceased plaintiff respondent, the petitioner being the son of the sister of the plaintiff's deceased husband and as such the reversioner to the estate not of the plaintiff herself, but to the estate of the plaintiff's husband. The matter then proceeded between the original defendant, Indubala, who was the principal defendant, and the substituted plaintiff, whose name was Banbihari Mukherji. It appears that, when the appeal first came before the court, owing to some mistake, oversight or misapprehension, which we need not consider, the appeal was dismissed on the ground that the defendant appellant had not taken certain steps in the proceedings. Thereupon the appellant applied for the restoration of the appeal and it was that application which was registered as Miscellaneous Case No. 44 of 1930. The opposite parties in that application were the present petitioner and the other respondents to the appeal. They all entered an appearance on the 20th September, 1930, but a month later, that is to say, on the 29th

October, 1930, the defendants appellants and the present petitioner decided to settle the matters in dispute in an amicable manner and they entered into a compromise of the proceedings. In order to carry that compromise into effect, they joined together in putting in a petition setting out that all the parties in the Miscellaneous Case No. 44 of 1930 were in agreement, that the appeal in the original Title Suit should be restored and a decree should be made in that appeal embodying the terms of compromise which the parties in the proceedings had agreed upon. It appears that, as the learned Judge was engaged on some other work, the matter was not dealt with immediately but was adjourned for some time, that is to say, till the 8th December, 1930. On that date, a man named Bhejnath Singh Mahapatra put forward an application to the court, which purported to be made under section 151, Civil Procedure Code, and in that application he alleged that he held two mortgages in respect of the property which was the subject matter of the original suit as well as of other properties, which mortgages Bibasana, the original plaintiff in the Title Suit, was said to have executed in favour of Bhejnath Singh Mahapatra. The applicant alleged that the substituted respondent, Banbihari, had entered into the compromise for terminating the appeal in the title suit with the other side solely for the purpose of defeating his just claims as mortgagee of the property in dispute and he accordingly asked that he should be allowed to come into the proceedings and be made a party in the original suit, although it had at that time already become a matter in appeal and was then pending before the court of the District Judge in the way I have mentioned.

Upon the hearing of that application on the part of Bhejnath Singh Mahapatra the learned District Judge made the order of the 10th January, 1931, which is the order now complained of by the present petitioner, who is the substituted respondent, Banbihari Mukherji. He says that the order of the

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10th January, 1931, was made by the District Judge either unlawfully or with such irregularity as would entitle him to get relief at the hands of this Court under the powers vested in the court by section 115, Code of Civil Procedure. I have no doubt that, in some circumstances, it may be right and proper that the court should add as parties to the proceedings, even at the appellate stage, persons who were not amongst the original parties to the suit. But the circumstances must be exceptional and must be such as renders it really necessary in the interest of the original parties to the suit, that some other persons should be added to the proceedings; so that the matters originally in dispute may be properly adjudicated upon and finally determined as between the original parties to the suit.

Now, in the present instance, the learned District Judge by his order, dated the 10th January, 1931, has allowed the alleged mortgagee, Bhejnath Singh Mahapatra, to come into the proceedings in the role of a plaintiff respondent. It is difficult to see how it is possible on any view of the facts and circumstances of this case, that the rights of Bhejnath Singh Mahapatra as mortgagee, could possibly be determined in the course of the proceedings on appeal before the learned District Judge of Bankura. It seems to us to be most improper that an attempt should be made to secure in appellate proceedings a consideration of matters which have not been adjudicated upon or even considered in the court of first instance and which are outside the questions at issue between the original parties. It is to be observed that the learned Judge in making the order now complained of purported to be acting under the provisions of Order I. rule 10 (2). It is quite clear that that order, at any rate, has no application to the circumstances of the present case. That rule is a reproduction of rule 11 of Order XVI of the rules of the Supreme Court in England. A most casual reference to the terms of the rule itself will show that it is only intended to apply where

either one or other of the parties makes an application to the court or the court itself is of opinion that some other persons ought to be brought into the proceedings in order to enable the court effectively and completely to adjudicate upon and settle all questions *involved in the suit*; that is to say: the questions which were involved in the suit as originally framed between the parties to the suit. In no sense can it be maintained or even suggested that it is necessary for the determination of the question at issue between Bibasana or Banbihari on the one hand and Indubala and her fellow defendants on the other, that this man, Bhejnath Singh Mahapatra, should be brought into the proceedings and, in any event, no decision of the District Judge can either determine or affect such rights as Bhejnath Singh Mahapatra may hereafter be able to establish against the persons in the present proceedings or in any future litigation. This Court is always, on principle, reluctant to interfere with the decision of an interlocutory nature made by an inferior court, particularly a decision where independent discretion has been exercised by the court in question. But in the circumstances of this case, it is right that we should hold that the learned Judge had no power to act as he purported to act under the terms of Order I, rule 10, and that the making of the order of the 10th January, 1931, made by him, is in the nature of an irregularity which in the particular circumstances of this case ought to be dealt with by this Court. We think therefore, that the order of the 10th January must be set aside. We order that the Rule be made absolute with costs, two gold mohurs, to be paid by the opposite party No. 1. The opposite parties Nos. 2, 3 and 4 will also get costs, one gold mohur, from the opposite party No. 1.

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G. S.