

CASE NO.:
Appeal (crl.) 1557 of 2008

PETITIONER:
JAGDEV & ORS

RESPONDENT:
AGRICULTURAL PRODUCE MKT. COMMITTEE & ORS

DATE OF JUDGMENT: 22/02/2008

BENCH:
ALTAMAS KABIR & J.M. PANCHAL

JUDGMENT:
JUDGMENT
O R D E R

CRIMINAL APPEAL NO. 1557 OF 2008
(Arising out of SLP(C)No. 17976/2006)

Leave granted.

Twenty four persons, including the respondent Nos.2 and 3, namely, Basant Lal and Satish Kumar, filed a suit on 6.4.1993 for perpetual injunction before the Subordinate Judge in Tis Hazari Court at Delhi. The respondent No.1 i.e. the Agricultural Produce Market Committee (hereinafter referred to as an 'APMC') raised an objection regarding the maintainability of the suit. Having regard to the provisions of Sec. 41(h) of the Specific Relief Act upholding the objection, the trial court dismissed the suit on 25.7.1998 holding that the suit was not maintainable. The appellants herein, along with the respondent No.2, preferred an appeal before the Additional District Judge and the same was also rejected on the ground of maintainability.

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Five separate regular second appeals were filed in the High Court, being RSA Nos. 65/00, 66/00, 76/00, 79/00 and 82/00. The respondent Nos.2 and 3 herein, who were originally plaintiff Nos. 10 and 13 in the suit, did not file any second appeal against the judgment of the trial court as upheld by the Ist Appellate Court. On 21st September, 2001, the Regular Second Appeals filed by the petitioners herein were allowed by the following order:

"Having considered the matter in its entirety, this Court is of the considered view that it will be just, proper, and necessary and expedient in interest of justice to allow the amendment applications of the appellants so that the dispute and controversy raised in the present proceedings is finally adjudicated on merits. The applications under Order 6 Rule 17, CPC filed in these appeals are accordingly allowed, however, subject to payment of cost of Rs.2000/- in each appeal. The result of allowing the amendment is that the suits of the appellants will now be maintainable and have to be tried on merits. the matter is, therefore, remanded back to the Trial Court for further trial in accordance with law. Parties are directed to appear in the Trial Court on 4th October, 2001, to receive further directions in the matter."

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By virtue of the said order the applications filed on behalf of the petitioners under Order 6 Rule 17 of the Code of Civil Procedure in the said appeal for amendment of the plaint to include the prayer for declaration was allowed, subject to payment of cost of Rs.2000/- in each appeal. As was indicated in the order itself by allowing the amendment the suit of the appellants herein became maintainable and would have to be tried on merits. The matter was accordingly remanded back to the trial court for further trial in accordance with law.

When the matter went back to the trial court, an application was made by the respondent Nos.2 and 3 under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint, since they had not been made parties, either as plaintiffs or as defendants, in the amended plaint. The said application was dismissed on the ground of maintainability since it was found that the said respondents had no locus standi to maintain the application. Thereafter, the said respondents filed an application under Order 1 Rule 10 of the Code of Civil Procedure for being added as plaintiffs in the suit.

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Despite objections on behalf of the appellants herein the said application was allowed and the respondent Nos. 2 and 3 were added as plaintiffs in the suit. Aggrieved thereby the appellants moved the High Court in revision and the High Court relying on the provisions of Order 41 Rule 4 of the Code was of the view that the respondent Nos.2 and 3 could not be precluded from pursuing their remedy once the suit had been restored.

It is the said order of the High Court which is impugned in the present appeal.

Appearing in support of the appeal, Mr. Ranjit Kumar, learned senior counsel, submitted that both the trial court as well as the High Court had erred in relying upon the provisions of Order 41 Rule 4 in holding that the respondent Nos.2 and 3 would continue to remain as plaintiffs once the suit was restored. According to Mr. Ranjit Kumar, what both the courts failed to consider was the fact that although at the initial stage when the suit was filed the interests of the appellants herein as also of the respondent Nos.2 and 3 were common, differences arose between them during the pendency of the matters before the different courts and at present the stand of the respondent

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Nos. 2 and 3 is, in fact, different from that of the appellants herein and the said respondents are in effect supporting the case which was being made out by the APMC.

Having heard learned counsel of the respective parties, we are of the view that while both the courts below had taken a correct view that the respondent Nos. 2 and 3 were entitled to be parties in the suit, they do not appear to have taken into consideration the events as a result whereof the interests of the appellants and the respondent Nos. 2 and 3 were no longer the same and it was not in the interest of the parties to have the said respondent Nos. 2 and 3 in the array of plaintiffs along with the appellants herein.

We have been taken through certain averments made on behalf of the respondent Nos. 2 and 3 in the applications before the trial court from which the aforesaid position becomes clear.

In that view of the matter, we are inclined to set aside the order passed by the trial court as also the High

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Court adding the respondent Nos. 2 and 3 as plaintiffs in the suit and direct that the said respondents be added as defendants in the suit instead. We make it clear that we have not expressed any opinion as to the case made out by the different parties and the final relief that may be granted and the trial court will be entirely free to proceed in the matter in accordance with law.

The appeal is disposed of. There will be no order as to costs.