

Kapildeo Prasad and anr. Vs. Ramanand Prasad and ors.

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Court : Patna

Decided On : Aug-04-2006

Judge : Navaniti Pd. Singh, J.

Appellant : Kapildeo Prasad and anr.

Respondent : Ramanand Prasad and ors.

Disposition : Application dismissed

Judgement :

Navaniti Pd. Singh, J.

1. Heard Shri S.S. Dwivedi, the learned Senior Counsel appearing for the defendants petitioners and Shri Sidheshwari Prasad Singh, learned Senior Counsel appearing on behalf of the plaintiffs-opposite parties.

2. The present application is directed against order dated 22.9.2005 passed by the learned Subordinate Judge I, Bettiah in Partition Suit No. 73 of 2004 by which he has rejected the defendants-petitioners' application for rejection of plaint in terms of Order VII Rule 11 of Civil Procedure Code (In short 'CPC').

3. In substance the defendants-petitioners' claim is that the plaintiffs-opposite parties had earlier filed a Partition Suit as against the defendants-petitioners. In the said Partition Suit, the defendants-petitioners appeared and filed a detailed

written statement, inter alia, taking the stand that the properties in question had already been partitioned earlier. There was nothing to partition. Thereafter, when the said suit was taken up for hearing, the plaintiffs did not contest and abandoned the suit. Now another suit for identical relief has been filed. It is submitted on behalf of the defendants -petitioners that in terms of Order IX Rules 8 and 9 of CPC, the fresh suit by plaintiffs-opposite parties was clearly barred for the same cause of action and in respect of the same properties as between the same parties. Accordingly, the fresh suit having been filed, the defendants-petitioners appeared, filed their written statement and also an application in terms of Order VII Rule 11 of CPC for rejecting the plaint as it disclosed no fresh cause of action and was barred in terms of Order IX Rules 8 and 9 of CPC. The plaintiffs opposite parties filed their rejoinder to the said application. The trial Court, after hearing the parties, rejected the application of the defendant-petitioners on the ground that in order to determine whether the plaint ought to be rejected in terms of Order VII Rule 11 of CPC. lie had to look only to the plaint. The question, as raised by the defendants-petitioners, involves investigation of facts and questions of law which could not be taken up at this stage. This is what has brought the defendants-petitioners to this Court.

4. Shri S.S. Dwivedi, in support of the application, has submitted firstly that the plaintiffs are playing fraud upon Court by suppressing material facts. The plaintiffs were duty bound to disclose the happenings of the earlier suit and partition and not having disclosed the same, they are not entitled to any relief and the plaint ought to be rejected. He relied on the principle of fraud vitiates all as established by series of judicial decisions including those as noticed in the case of S.P. Chengalvaraya Naidu v. Jagannath and Ors. : AIR 1994 SC853 . Secondly, he submitted that there being an earlier partition, there being an earlier suit which was dismissed in terms of Order IX Rules 8 and 9 of CPC, clearly the present suit was barred and the plaint ought to have been rejected in terms of Order VII Rule 11(a) and (d) of CPC.

5. On the other hand, Shri Sidheshwari Prasad Singh, the learned Senior Counsel appearing for the plaintiffs opposite parties submitted that so far as question of fraud is concerned, it is a matter of fact which has to be established by evidence.

There may be several defence available. He further submitted that in all the cases where the principle 'fraud vitiates all' is applied, some benefit had accrued to the party by perpetuating fraud and on the principle of the said doctrine, that benefit was taken away whereas in the present case only a plaint had been filed. No benefit had yet accrued to the plaintiffs-opposite parties and, as such, the said principle was inapplicable at this stage of the proceeding. It was secondly contended that in order to decide whether or not to reject the plaint in terms of Order VII Rule 11 of CPC, the Court was competent only to look into the averments as made in the plaint and is precluded from travelling beyond the averments made in the plaint. The defence of the defendant cannot be looked into much less considered. On plain reading of the plaint, it does not suffer from any of the disqualifications as provided in Order VII Rule 11(a) or (d) of CPC. His principal reliance is on the case of Saleem Bhai and Ors. v. State of Maharashtra and Ors. since reported in : [2002]SUPP5SCR491 and in particular Paragraph-9 thereof.

6. I have considered the rival submissions made by the two learned Senior Counsel. The facts have been noted above. So far as the present Partition Suit is concerned, the plaint nowhere mentions earlier proceedings. It merely states that there are joint family properties, the properties are held in jointness and the family continues in jointness and the same is required to be partitioned. All that about earlier Partition Suit and earlier partition have been brought on record by the defendants in their written statement and/or in their application under Order VII Rule 11. They do not find part of the plaint.

7. Now coming to the first ground raised in support of the application that by concealing material particulars, the plaintiffs have committed fraud which disentitles them to any relief and, accordingly, the plaint should be rejected. I am afraid, the principle has been argued beyond its obvious application. The principle that 'fraud vitiates all' cannot be extended to rejection of a plaint. Fraud is a question of fact to be established in course of trial. What is stated in the written statement is merely the defence of the defendant which has to be proved in accordance with law and received in evidence. It is then that those facts can be taken note of and acted upon. Moreover, a reference to the judgment of the Apex

Court in the case of S.P. Chengalvaraya Naidu AIR 1994 SC 853 (supra), as referred to by Shri S.S. Dwivedi, and those line of cases would show that in all those cases, some benefit had accrued to the party by practising fraud. The Courts, using the said principle, cancelled, the benefit accrued. In the present case, it cannot be said that any benefit has yet accrued to the plaintiffs even if it be assumed that the plaintiffs intended to commit a fraud. The principle is unexceptionable but has no application to the facts of the present case. I am aware of the principle of *suppressio veri suggestio falsi* but that principle also applies when the end result has to be considered in a trial or in a proceeding. Here, the Court is requested to use the said principle to throw out the plaint at the very threshold. In my opinion, those principles cannot be applied at this stage of the proceeding.

8. Now coming to the second ground raised in support of the application that in terms of Order IX Rules 8 and 9 of CPC, a second Partition Suit was barred, the first suit having been dismissed and, therefore, there was no fresh cause of action nor could the plaint be filed as it was barred by law and, as such, the trial Court failed to exercise the jurisdiction by not rejecting the plaint in terms of Order VII Rule 11 of CPC. What Shri Dwivedi, the learned Senior Counsel appearing for the defendants petitioners wants this Court to look into is his defence. It may be that his defence is mistakable but yet it is his defence which does not find mention even obliquely in the plaint. Shri Dwivedi submits that if such crafty drafting is permitted then anyone can file repeated suits concealing material particulars and the defendants would then be obliged to go through the entire gamut of civil proceedings, face the harassment and expenses without there being a just cause. My answer to this is that when law prescribes a procedure for anything to be done then those things have to be done in the manner prescribed by that procedure and all other manner and/or procedure are impliedly prohibited. This principle had been laid down way back by the Privy Council in the celebrated decision of Nazir Ahmad's case and followed repeatedly by Courts in India. Here, in the present case, CPC is a complete Code in itself. It provides for initiation of resolution of civil disputes and all procedures ending to its resolution by a judicial pronounce. Once proceedings are initiated thereunder. Shri Sidheshwari Prasad Singh, learned Senior Counsel for the plaintiffs has rightly taken aid of case of Saleem Bhai and

Ors. AIR 2003 SC 759 (supra) wherein the Apex Court, while dealing with an application under Order VII Rule 11 of CPC has clearly held in Paragraph-9 that while deciding to accept or to reject the plaint what can be seen is only the averments made in the plaint. This has been the consistent view of all the Courts. The defence cannot be looked into. Reference can be made to AIR 1996 Delhi 14 : AIR 1996 Orissa 163 and AIR 1983 Rajasthan 1 wherein it has been consistently held that the first point when a decision has to be taken in terms of Order VII Rule 11 of CPC is when the plaint is presented in the Court for being registered as a suit. At that point of time, there is no defendant present. It is only the plaint that has to be looked in. Applying the above principle, it is clear that the plaint thus discloses a cause of action, the averments do not disclose that the suit is barred by any law. In that view of the matter, it cannot be said that the trial Court erred in any manner of jurisdiction in rejecting the application of defendants petitioners.

9. Shri Dwivedi then submits that if such plaints are allowed to continue to be filed then the defendants would be put to unnecessary harassment. To this, the answer lies in the judgment of the Apex Court in the case of T. Arivandandam v. T.V. Satyapal and Anr. : [1978]1SCR742 . The Apex Court has taken note of said unscrupulous litigants and the role of an activist Judge in this regard. The Court has pointed out that such unscrupulous litigations should be nipped at the bud but then at what stage and in what manner it is for the Courts to decide. As noted above, if the plaint suffers from the defect as pointed out in Rule 11 of Order VII, the plaint will be rejected but, as pointed out in the judgment of the Apex Court aforesaid if there has been crafty drafting by shrewd lawyers to conceal material particulars then once the written statement is filed, the Court can exercise jurisdiction under Order X of CPC and question the parties. If for any reason that stage crosses then the parties are at liberty to use Order XI of CPC, the power to serve interrogatories to get admissions and evidences. Even if that stage is crossed then they can resort to dismissal of the suit on preliminary issues as contemplated under Order XIV Rule 2(2) of CPC. This is only to indicate that at various stages, various remedies are available to the defendants to protect their interest against such fictitious litigation and to (sic) it all as indicated by the Apex Court, the Court has power under Code to meet such ends.

10. In view of the aforesaid facts, I find that on the plain reading of the averments made in the plaint, it cannot be said that the plaint was liable to be rejected. It is another matter that when the stage, comes where the defence of the defendants can be looked into or the stage of Order X, Order XI comes or of Order XIV, the Court may then take a different view of the matter on the facts as pleaded and established. Therefore, I find no merit in this application and find that the learned trial Court has not committed any error of jurisdiction calling for interference by this Court. This application is, accordingly, dismissed.

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