

Baldeo Vs. Lachhmi Narain and ors.

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SooperKanoon Citation : sooperkanoon.com/466018

Court : Allahabad

Decided On : Mar-06-1934

Reported in : AIR1934All810; 153Ind.Cas.857

Appellant : Baldeo

Respondent : Lachhmi Narain and ors.

Judgement :

ORDER

Bennet, J.

1. This is an application in civil revision by a defendant against an interlocutory order of the Munsif of Mirzapur. The case was filed in the Court of the Munsif, the plaint being presented by Mr. Kanita Prasad Tandon vakil. Later it was discovered that in the vakalatnama which Mr. Kamta Prasad had signed on the back in token of acceptance his name had been omitted from the body of the vakalatnama. It is obvious that this was a mere clerical error and that when the plaintiffs executed the vakalatnama they undoubtedly intended to appoint Mr. Tandon and when Mr. Tandon signed the vakalatnama, as accepting that appointment he intended to act for the plaintiffs. An application was made to the Munsif to correct the vakalatnama by entering the name of Mr. Tandon in the body of the vakalatnama and the Munsif has directed that that correction should be made.

2. It is against this order that the revision has been filed on the ground that the Munsif had no jurisdiction to make such an order or to give retrospective effect to the correction. Learned Counsel relies on *Chhita v. Mt. Jaffo* : AIR1931 All767 . In that case however there was no application for correction and it was held that the presentation of the plaint would be invalid. In the same volume there was a Full Bench, ruling of three Judges on *Wali Mohammad Khan v. Ishak Ali Khan* A.I.R. 1931 All. 507, in a somewhat similar case where a suit had been filed in the name of a plaintiff as a minor through his mother as his guardian and it was found that in fact the plaintiff was of full age. It was held that the plaint was validly presented and that the defect in its form was due to a bona fide mistake and could be cured. This ruling again was a case in which there was no application for correction. This remark also applies to the ruling reported in *Muhammad Ali Khan v. Jas Ram* A.I.R. 1914 All. 536. There is a clear provision in the Civil Procedure Code for the correction of any proceeding. Section 153 states:

The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceedings.

3. The Munsif has apparently acted under this section and has made the correction in the vakalatnama accordingly. Learned Counsel has also referred to a ruling reported in *Loknath Misir v. Sheo Saran Misir* : AIR1927 All816 . In that case a vakil had filed an appeal in the lower appellate Court and the vakalatnama did not contain his name although he had signed the vakalatnama. The lower appellate Court dismissed the appeal. A learned single Judge of this Court remarked that the lower appellate Court had taken too technical a view and that the lower appellate Court should have given the appellant an opportunity to file an application under Section 5, Limitation Act. I do not see how this ruling, supports the applicant for revision. Under the circumstances I consider that it has not been shown that the lower appellate Court had not jurisdiction to pass the order in question under Section 153, Civil P.C. Accordingly I refuse this application in revision.

