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Court : Punjab and Haryana

Decided On : May-28-1992

Reported in : (1993)103PLR736

Judge : A.S. Nehra, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 41, Rule 22

Appeal No. : Civil Revision No. 21 of 1992

Appellant : Assa Ram

Respondent : Sugna and anr.

Advocate for Def. : R.K. Chokhar, Adv.

Advocate for Pet/Ap. : C.B. Goel and; Rajinder Goel, Adv.

Judgement :

A.S. Nehra, J.

1. This revision petition is directed against the decision of the Additional District Judge, Panipat, dated 28 9.1991, by which the cross-appeal filed by the petitioner was dismissed, because the petitioner did not file a certified copy of the judgment of the trial court alongwith the appeal.

2. Briefly stated, the facts of the case are that the plaintiff-respondents filed a suit seeking a decree for possession against the defendant petitioner, inter alia, on the ground that Bhartu was the owner of the suit land; that Bhartu died issueless leaving behind the respondents as his next heirs, and that the petitioner, after the death of Bhartu, has illegally occupied the suit land.

3. This suit Was contested by the defendant-petitioner, inter alia on the ground that the plaintiff-respondents had no locus standi to maintain the suit and that Bhartu had himself filed a suit challenging the decree, which was dismissed and the appeal filed by Bhartu was also dismissed as having abated It was further submitted that the defendant-petitioner is the adopted son of Bhartu and was the sole heir of Bhartu.

4. The trial Court recorded finding on issues Nos. 2, 4, 5 and 6 against the petitioner and dismissed the suit of the plaintiffs-respondents The respondents filed an appeal against the judgment and decree of the trial Court, by which their suit was dismissed, and that appeal is pending before the Additional District Judge.

5. Mr. C. B. Goel, learned counsel for the petitioner submits that the Memorandum of Appeal filed by the petitioner should be treated as Cross-Objections in the appeal filed by the respondents, which is pending before the Additional District Judge and he relies on a Full Bench Judgment of the Lahore High Court in Labhu Ram and Ors. v. Ram Partap, A.I.R. 1944 Lah. 76, wherein it was held that although Cross-Objections cannot be presented after the expiry of 30 days from the date of the service of the notice on the respondents, yet the right to submit Cross Objections accrues to a respondent as soon as an order is made issuing a notice of the date of hearing of the appeal to him and it is not necessary for him to wait until the service is actually effected to him. The learned counsel for the petitioner was served on 15.7.1991 in the cross-appeal filed by the respondents and he filed an appeal on 14.7.1991 i. e. before the service was effected in the cross-appeal and that, therefore, the learned Additional District Judge has erred in law in dismissing his appeal which should have been treated as Cross-Objections on behalf of the petitioner in the cross-appeal filed by the respondents.

6. Mr. Chhokar, learned counsel for the respondents, has submitted that the provisions of Order 41 Ruled, Code of Civil Procedure, are mandatory and, since the petitioner has not filed a certified copy of the judgment and decree passed by the trial Court, therefore the appeal filed by the petitioner was rightly rejected by the Additional District Judge. In support of his argument, he has, relied upon Jagat Dhish Bhargava v. Jawahar Lal Bhargava, (1961) 2 S.C.R. 918 and Niadar v. Bhartu, A.I.R. 1927 Lah. 423(2). In Niadar's case, (supra) it has been held by the Lahore High Court that every memo of appeal should be accompanied by a copy of the judgment of the trial Court and that a notice to the effect that the copy of the trial Court's judgment is already filed in the High Court, though in another case, but between the same parties arising practically out of the same proceedings, is not sufficient compliance with the rule.

7. After hearing the learned counsel for the parties, I hold that the right to submit cross-objection accrued to the petitioner as soon as the order was made for issuing notice of the date of hearing of the cross appeal to him and it was not necessary for him to have waited untill the service was actually effected on him. There is no dispute with the proposition of law laid down in Jagat Dhish Bhargava's case (supra) and Niadar's case (supra) but these judgments are not applicable to the facts of the present case, because in those cases no cross-appeals were pending in the Court and no prayer for treating the cross-appeals as Cross-objections was made. The revision petition is allowed and the order dated 28.9.1991 passed by the Additional District Judge, Panipat, is set aside.

8. I would, therefore, allow the Memorandum of Appeal to be treated as Cross-objections on behalf of the petitioner.