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Court : Kolkata

Decided On : Jun-28-2006

Reported in : AIR2006Cal315,2006(3)CHN550

Judge : Bhaskar Bhattacharya and ;Debasish Kar Gupta, JJ.

Acts : Code of Civil Procedure (CPC) , 1976 - Order 23, Rule 3

Appeal No. : C.S. No. 302 of 1997, A.P.O. No. 226 of 2002 and A.P.O.T. No. 204 of 2002

Appellant : Joydeb Chandra Dey and ors.

Respondent : Sukumar Chandra Dey and ors.

Advocate for Def. : Ajoy Kumar Chatterjee, Adv. for the Defendant No. 1 and ;Dipak Kumar Basu and ;A, Dutta, Advs. for the Defendant No. 2

Advocate for Pet/Ap. : Jayanta Kumar Mitter, ;Pratap Chatterjee, ;Abhrajit Mitra and ;Sakya Sen, Advs.

Judgement :

Bhaskar Bhattacharya, J.

1. This Letters Patent appeal is at the instance of the plaintiffs in a suit for declaration, permanent injunction and mandatory injunction and is directed against

the judgment and decree dated 8th March, 2002, passed by a learned Single Judge thereby passing a decree in terms of prayer (a) of an application filed by the defendant Nos. 1 and 2 by accepting the report given by a valuer appointed in the proceedings.

2. The plaintiffs, six in number, filed a suit being Suit No. 302 of 1997 before the Original Side of this Court against seven different defendants thereby praying for the following relief:

a) Perpetual injunction restraining the defendants from taking part in administration of the company and/or deal with any of the assets and properties of the company.

b) Perpetual injunction restraining the defendant Nos. 1 and 2 from holding themselves out as directors or officers of the company.

c) Mandatory injunction directing the defendant Nos. 1 and 2 to render true and faithful accounts of the dealings and transactions entered into by them in relation to the defendant No. 1/company and decree for such sums as may be found due and payable upon such enquiry.

d) Mandatory injunction directing the defendant Nos. 1 and 2 to hand over all books and records of the company to the plaintiffs and especially the plaintiff No. 1.

e) Declaration that the defendant Nos. 1 and 2 have ceased to be directors of the company.

f) Declaration that the shareholding pattern of the company is as mentioned in paragraph 7 hereinabove.

g) An administrator be appointed for the purpose of calling a general meeting for transacting, inter alia, the following business:

i) Election of Directors:

ii) Reconstruction of the Books of Accounts:

iii).Completion of the necessary statutory and legal formalities.

h) Perpetual injunction restraining the defendants from obstructing the smooth running of the company as also functioning of the plaintiffs as majority shareholders of the company and the functioning of the plaintiff No. 1 as Managing Director of the company:

i) Receiver:

j) Injunction

k) Injunction:

l) Such further or other reliefs."

3. It appears from record that in the suit ,no written statement was filed by either of defendants but on the basis of interlocutory application, joint-receivers were appointed over the suit - property and in course of interlocutory proceeding , several applications were filed including one for appointment of a valuer for assessing the valuation of the subject -matter of the dispute. The valuer appointed by the Court gave a report and an appeal was preferred against such report of the valuer but the said appeal was dismissed and the valuation-report given by the valuer was accepted by the Appellate Court.

4. Subsequently, Sukumar Chandra Dey, the defendant No. 1 and Basudeb Chandra Dey, the defendant No. 2 of the said suit, filed an application before the learned Trial Judge thereby praying for the following relief:

a) A decree be passed on the basis of the report of the said Surveyor and Valuer which has since been confirmed by the Hon'ble Appeal Court.

b) Mr. S. N. Pal, be appointed as Receiver to take over the possession of all the assets and properties immediately as mentioned in his reports dated 26th February, 2000 and 13th March, 2000.

c) Mr. S. N. Pal as Receiver be directed to allot the said properties and assets to the parties in accordance with an order in compliance with the said report.

d) Ad interim orders in terms of prayers (a), (b) and (c) above.

e) Such other and further order or orders be passed and/or direction or directions be given as to this Hon'ble Court may deem fit and proper.

f) Costs in this application be paid by the plaintiffs.

5. Ultimately, the learned Trial Judge, by the judgment and decree impugned herein, has allowed such application thereby directing that there should be a decree in terms of prayer (a) mentioned above in the application filed by the defendant No Section 1 and 2 and it was further decreed that the owelty money should be paid by the plaintiff Nos. 1 and 4 in accordance with the report within a specified time. The remuneration of the joint-receivers, earlier appointed, was fixed at 500 G.Ms. each, to be paid by the parties in equal share.

6. Being dissatisfied, the plaintiffs have come up with the present appeal.

7. After hearing the learned Counsel for the parties and after going through the materials on record we are unable to approve the course of action taken by the learned Trial Judge in passing a decree in the suit filed by the plaintiffs.

8. As indicated earlier, in the suit, no written statement was filed by either of the defendants and in course of hearing of the interlocutory applications, a valuer was appointed and the valuation-report was no doubt accepted. But the question is, whether in a suit for declaration, permanent injunction and mandatory injunction filed by the plaintiffs, on the prayer of two of the defendants before they file any written statements, the Court can pass a decree against the parties by accepting the report submitted in interlocutory proceedings.

9. Mr. Dipak Kumar Basu and Mr. Ajoy Kumar Chatterjee, the learned Advocates appearing on behalf of the defendant Nos. 2 and 1 respectively, desperately supported the judgment and decree passed by the learned Trial Judge thereby contending that it would appear from the various documents annexed in the paper book that in the past the parties agreed to the various terms and the report submitted by the valuer had also been accepted by the Appellate Court in an appeal against the interlocutory order and as such, there was no bar in passing a

decree in accordance with the report which was prepared practically on the basis of agreed terms. Mr. Basu and Mr. Chatterjee placed before us the minutes of various meetings of the parties of the year 1994 i.e. at a point of time prior to the filing of the suit, for the purpose of convincing us that the parties agreed to separate allotments and consequently, the learned Trial Court rightly passed the decree.

10. In our view, after the amendment of the Code of Civil Procedure in 1976, a suit can be decreed on compromise only on the basis of lawful agreement, if the same is in writing and signed by the parties. In this case, undisputedly, the parties have not filed any joint petition for compromise and the suit filed by the appellant is not one for partition of the property but for various types of declarations and injunctions as consequential relief as mentioned earlier. In such a case, if the plaintiffs fail to prove the case made out in the plaint, their suit will be dismissed; on the other hand, if they prove their case and they are entitled to get the relief claimed in the suit in accordance with law, they will be favoured with a decree. But in such a case, at the instance of defendant Nos. 1 and 2, out of seven defendants, the Court cannot pass altogether a new type of a decree by treating that all the parties agreed to some sort of settlements three years prior to institution of the suit notwithstanding the fact that no such agreement had been arrived at after the filing of the suit. In fact, those documents of 1994 cannot be relied upon, unless, first, the written statement is filed alleging such fact and then issues are framed and evidence is led in support of such defence and those are accepted as documentary evidence and finally, those pieces of evidence are believed by the learned Trial Court after considering the other evidence on record. Thereafter, comes the question whether in a suit filed by the plaintiffs, a decree on the prayer of the defendant can be given in the absence of any counter-claim of the defendant when the suit is not one for partition.

11. Mr. Chatterjee strenuously submitted before us that for the purpose of complying with the provisions under Order 23 Rule 3 of the Code of Civil Procedure, it is not necessary that the agreement must be entered into between the parties after the filing of the suit and that a suit can be compromised even on the basis of past agreement not even ratified after the institution of the suit. From

the clear language of the provisions contained in Order 23 Rule 3 of the Code, it is apparent that for the above purpose, the agreement must be a post-suit one, by which the suit must be adjusted wholly or in part or the defendant should satisfy the plaintiff in respect of the whole or the part of the subject-matter of the suit or even in respect of some other property which is not the subject-matter. If, there was any earlier enforceable agreement covering the subject-matter of the suit, and a party wants to enforce that earlier agreement it is for that willing party to implement that agreement in accordance with law by filing a suit for specific performance of the agreement. We have already indicated that in this case, the defendants have not filed any counter-claim for enforcing a pre-suit agreement but it is a simple suit for declaration, mandatory injunction and permanent injunction by six plaintiffs against seven different defendants. In such a suit, it is preposterous to suggest that a decree can be passed at the instance of defendant Nos. 1 and 2 though they have not filed any written statement nor have they filed any counter-claim. Therefore, the procedure adopted by the learned Trial Judge is in direct conflict with the norms mentioned in the Code of Civil Procedure resulting in failure of justice and we, accordingly, set aside the decree passed in the suit. We make it clear that we have not gone into the veracity of the respective claims of the parties.

12. Let the matter go back to the learned Trial Judge for disposal of the suit after complying with the provisions contained in the Code of Civil Procedure.

13. The appeal is, thus, allowed with costs which we assess at Rs. 10,000/- (Rupees Ten Thousand) in favour of the appellants to be paid by the defendant Nos. 1 and 2.

Debasish Kar Gupta, J.

14. I agree.