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Court : Kolkata

Decided On : Feb-21-1934

Reported in : 151Ind.Cas.635

Judge : Mallik and ;Patterson, JJ.

Appellant : Bagala Sundari Devi

Respondent : River Steam Navigation Co., Ltd., and ors.

Judgement :

Mallik, J.

1. The petitioner Bagala Sundari Devi filed an application on January 16, 1933, for permission to sue as a pauper. In the application which she filed were given particulars that are required with regard to a plaint in a suit and the petition was duly signed and verified according to the prescribed rules and to the application was also attached a schedule wherein some moveable properties were mentioned with an estimated value thereof. This application of Bagala Sundari was opposed. When the matter was taken up for hearing on June 26, 1933, it was disclosed from the cross-examination of a witness examined on the side of Bagala that Bagala had inherited some property from a deceased son of hers. Thereupon, within a couple of days, namely, on June 28, 1933, Bagala applied to have her application amended by including the property which had just been disclosed as having been inherited by her in the schedule which had been attached to her original

application for permission to sue as a pauper. The learned Subordinate Judge refused to entertain this application for amendment being of the opinion that in view of the provisions of Order XXXIII, Rule 5, clause (a), he had no other alternative than to reject her application of January 16, 1933. It is against this order of refusal to entertain the application for amendment that the present Rule is directed. This Rule, in my opinion, should be made absolute. From what I have stated above, it would appear that Bagala's original application for permission to sue as a pauper had all the particulars that are required with regard to a plaint in a suit, it had been duly signed and verified and it had attached to it a schedule containing the name of some immovable properties with an estimated value thereof. That being so, I here was in my opinion no defect in the form or frame of the application and the omission to include one solitary item of property was, in my judgment, not a non-compliance with the provisions of Order XXXIII, Rule 2, Civil Procedure Code. This view of mine is in agreement with the decision of the Patna High Court in the case of Birj Ballab Lallji v. Benoy Krishna 104 Ind. Cas 364 : A. I. R. 1928 Pat. 28 : 8 P. L. T. 794, and also of the Madras High Court in Kuppusamy Ayyar v. Muthu-swamy Ayyar 27 Ind. Cas 891 : A. I. R. 1915 Mad 652 : I. L. W. 1068 : (1915) M. W. N. 31, I am therefore of opinion that the order of the learned Subordinate Judge by which he refused to consider the application for amendment simply on the ground that he had no other alternative than to reject the application of June 16, 1933, cannot therefore be sustained.

2. Now the question is whether the application for amendment which the learned Subordinate Judge refused to consider was an application fit to be allowed. This will depend on the question whether the leaving out of the immova(sic)e property was an inadvertent omission or a deliberate suppression. Having regard to the facts of the case I am of opinion that it was not a case of a deliberate suppression. The property that was sought to be included was a one-third share in a small area of land, 5 kanis in area, which had been inherited by a deceased son of the petitioner who was himself a posthumous child and who died before attaining majority. The deceased son of the petitioner was not in existence at the time when the father died and the property left by him was taken possession of by the other sons of Bagala. In these circumstances, remembering specially the fact that the deceased son died before attaining majority, it was by no means easy for the

petitioner to realise that the deceased son also had inherited any share in the property left by his father. The property that was sought to be included was a petty one, one-third of 5 kanis of land. The value of the property was as given in the petition for amendment Rs. 100. The figure was by no means unreasonably low, regard being had to the fact that the area was less than 2 bighas. There was a verified statement that the value was Rs. 100 and this statement was nowhere controverted. In these circumstances, for our present purpose we can take the value of the property to be Rs. 100 and if the value of the property did not exceed Rs. 100, there was no point in wilfully suppressing it in the original application for permission to sue as a pauper. Taking all these facts together, I am of opinion, as stated at the outset, that the case was not a case of deliberate suppression but only of inadvertent omission. When to this is added the fact that the application for amendment was made almost immediately after it had been disclosed that there was the immovable property to which the petitioner had a title the application for amendment was, in my judgment, a fit one to be allowed.

3. I would, therefore, make the Rule absolute, set aside the order made by the learned Subordinate Judge and allow the application for amendment. The learned Subordinate Judge will now proceed to consider and determine the question of the petitioner's pauperism in accordance with law. The petitioner will get her costs in this Rule from the opposite party, the hearing fee being assessed at one gold mohur.

Patterson, J.

1. I agree.

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