

Sarjit Vs. Hari Singh and ors.

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Court : Himachal Pradesh

Decided On : Aug-05-1953

Reported in : AIR1954HP28

Judge : Chowdhry, J.C.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 115 - Order 22 - Order 47, Rule 1

Appeal No. : Civil Misc. Petn. No. 10 of 1953

Appellant : Sarjit

Respondent : Hari Singh and ors.

Advocate for Def. : A.C. Mehta, Adv.

Advocate for Pet/Ap. : Panna Lal Bahl, Adv.

Judgement :

ORDER

Chowdhry, J.C.

1. Ramanand obtained a decree to pre-empt a sale made by Jai Ram and Mt. Kundal Dei in favour of Sarjit on condition of his depositing the purchase money within two months. The deposit was made beyond the time allowed by the decree and Ramanand's prayer in execution of the decree for possession of the property

was resisted by Sarjit on that ground, but Sarjit's objection was dismissed by the execution Court and so was his appeal by the Senior Subordinate Judge of Rampur. Thereupon Sarjit came up in revision to this Court.

2. In the course of the revision it was stated by the learned counsel for the parties that a compromise had been arrived at, but they were at variance with each other as regards its terms. It was contended on behalf of the petitioner, Sarjit, that this Court should determine and record the terms of the compromise and pass a decree in accordance therewith. On the other hand, the argument on behalf of the decree-holder-respondent was that the certification of the adjustment and the recording of that adjustment as duly certified lay within the jurisdiction of the execution Court under Order 21, Rule 2, Civil P. C., and that no interference by this Court in exercise of its revisional jurisdiction was therefore called for. The latter argument put forward on behalf of the respondent was upheld and it was ordered by this Court on 31-3-1951 that it was not deemed fit to pass any order in the revision and that in the special circumstances of the case there was to be no order as to the costs of the revision. The present application has been filed, by Sarjit under Order 47, Rule 1, Civil P. C., for review of that order.

3. There were two preliminary objections raised on behalf of the respondent. One was that the review petition was time barred, and the other that the petitioner did not apply in time to bring on record Hari Singh and Padam Singh, sons of Ramanand, who died on 6th Magh 2008 B., corresponding to 19-1-1952. It may be stated here that these preliminary objections have been raised on behalf of Hari Singh, the case having proceeded ex parte against Padam Singh.

4. Regarding the review petition being time barred, the order in revision sought to be reviewed was passed on 31-3-1951, while the present review petition was filed on 10-4-1952. Prima, facie, therefore, the review petition is time barred since under Article 173, Limitation Act the period prescribed for review is 90 days from the date of the decree or order sought to be reviewed.

The learned counsel for the petitioner, however, argued that although the present petition purports to be one for review under Order 47, Rule 1, Civil P. C., it should be treated as one for disposing of the aforesaid revision which was not disposed of

by the order dated 31-3-1953. A perusal of the last mentioned order shows that this Court passed no order as regards the merits of the revision on the ground that the proper forum for the determination of the terms of the compromise, which compromise was raised during the pendency of the revision, was the execution Court. An application was accordingly filed by the present petitioner under Order 21, Rule 2, Civil P. C., before the execution Court, but that application was dismissed by that Court on 18-5-1953 upholding the contention put forward on behalf of the decree-holder that there had really been no compromise but only an offer for one.

It is strange that such a defence was put up on behalf of the decree-holder in view of the fact that it had been conceded by counsel for both the parties during the pendency of the aforesaid revision petition that a compromise had in fact been arrived at although the parties were at variance with regard to its terms. However, the aforesaid decision dated 18-5-1953 has been passed by the execution Court and, as conceded by the learned counsel for the parties, there has been no appeal against that order. The matter of compromise raised during the pendency of the revision has, therefore, become infructuous, and consequently the reason on account of which the revision was not heard on merits no longer exists. The learned counsel for the petitioner is, therefore, right in contending that the revision should now be disposed of on merits. The mere fact that the petitioner has wrongly filed the present application as one for review makes no difference. There is, therefore, no question of the present application being time barred.

5. As regards the other objection, Ramanand admittedly died on 19-1-1952, while the application for bringing his legal representatives on record was made on 23-8-1952. Order 22 does not, however, apply to revision applications, nor is any period of limitation prescribed for an application for substitution of names of legal representatives in place of a deceased party in a revision application, as held in--'Khuda Bux Khan v. Maha Nand Tewari', AIR 1948 Oudh 84 (A), a case cited by the learned counsel for the respondent himself. It is true, however, as held in this case, that if the application for bringing on record the legal representatives of a deceased party in revision is not presented within a reasonable time the revision will abate in the sense that the proceedings shall cease unless good cause is

shown for the delay.

All that has, therefore, to be seen is whether it can be said that the aforesaid application dated 23-8-1952 was filed by the petitioner with undue delay. Now, it has been seen that it was only on 18-5-1953 that the petitioner's application under Order 21, Rule 2 was disposed of by the execution Court. And the record shows that those proceedings were had against the two sons of Ramanand. That being so, it is immaterial that there was delay in filing the said application dated 23-8-1952 in this Court. After all, the revision petition could not be revived until after disposal of the proceedings under Order 21, Rule 2. I therefore hold that neither the revision petition nor the present petition, which is in reality a petition for disposing of the revision petition, has abated, and that Hari Singh and Padam Singh should be brought on record in place of Ramanand.

6. Two contentions put forward in this connection on behalf of the respondent may here be disposed of. One was that the view that Order 22 does not apply to revision applications does not hold good in the case of a review petition. It has, however, been already seen that the present petition in reality is not one for review but a petition for hearing on merits the revision petition which has not yet been disposed of and which has revived by reason of dismissal of the petitioner's application under Order 21, Rule 2 by the execution Court.

The other objection was that the present application was liable to dismissal on the ground that it was filed against a dead person for Ramanand had already died on 19-1-1952 prior to the preferment of the present application on 10-4-1952. To this contention also the reply is the same, namely, that the application dated 10-4-1952 was not an application for review but an intimation to the Court that it has to hear on merits the undisposed of revision petition. When the revision petition was filed Ramanand was alive.

7. The present application dated 10-4 1952 is accordingly allowed, treating it as an application not for review of the order of this Court dated 31-3-1951 but as one for hearing on merits the revision petition No. 13 of 1950. The office will now fix a date for further hearing in the said revision petition in consultation with the learned counsel for the parties.

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