

Hari Ram Vs. Balak Ram

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Court : Himachal Pradesh

Decided On : Aug-08-1972

Reported in : AIR1973HP38

Judge : R.S. Pathak, C.J.

Acts : Registration Act, 1988 - Sections 72(1), 73 and 73(1); ;[Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 15

Appeal No. : Civil Revn. Petn. Nos. 5 and 19 of 1971

Appellant : Hari Ram

Respondent : Balak Ram

Advocate for Def. : H.S. Thakur, Adv.

Advocate for Pet/Ap. : K.D. Sud, Adv.

Disposition : Petitions dismissed

Judgement :

ORDER

R.S. Pathak, C.J.

1. This and the connected petition have been made under Article 227 of the Constitution, The first respondent, Balak Ram. presented two documents of sale,

which purported to have been executed by Hira. before the Sub-Registrar, Theog for registration. Hira had already died and the petitioners, who are his legal representatives, denied execution. Accordingly, on June 1, 1970 the Sub-Registrar, acting under Section 5 (3) of the Indian Registration Act. refused registration. In June, 1970. Balak Ram made two applications under Section 73 (1) of the Act before the Registrar in order to establish his right to have the documents registered. An objection, was raised by the petitioners that the applications did not conform to Section 73 (2) inasmuch as they were not signed by Balak Ram and had not been verified in the manner required by law for the verification of plaints. It is contended that the defects were defects of substance and not merely formal and they could not be rectified subsequently. The objection was overruled by the Registrar by his order dated January 19, 1971 and he permitted Balak Ram to remove the defects observing that the removal of the defects would not be barred by limitation. The petitioners now apply under Article 227 of the Constitution for relief against that order.

2. Having heard learned counsel, for the parties. I am of opinion that the writ petition must fail. There is no dispute that the applications under Section 73 (1) were in fact made on behalf of Balak Ram and pursuant to instructions from him. When that is so. the mere omission of Balak Ram to sign the applications is of no moment. The objection proceeds upon a pure technicality. The omission to verify the applications is also one which can be removed subsequently. It is not shown that by giving Balak Ram an opportunity to remove those defects, any irreparable injury or damage has been caused to the petitioners. In *Uttam Singh v. Ratan Devi*. AIR 1924 Lah 28 a Division Bench of the Lahore High Court held that the mere omission to verify a petition moved under Section 73 of the Indian Registration Act would not invalidate the petition. The learned Judges pointed out that when a plaint with defective verification or with no verification at all was filed in Court it could always be amended and the defect remedied, the defect being one merely of form and not one of substance. Reference was made to Order 6. Rule 15 of the Code of Civil Procedure. Section 73 (2) of the Indian Registration Act it was observed, was identical in terms. Following the view taken in that case. It seems to me that the Registrar was right in proceeding as he did.

Learned counsel for the petitioners relies on *Magan Devi v. State Transport Tribunal, Lucknow, AIR 1964 All 19*. In that case, the application for a stage carriage permit did not contain the declaration that the statements made in the application were correct and that the applicant agreed that the various terms mentioned in the application should be conditions of the permit issued to her. The Regional Transport Authority, notwithstanding those defects, made an order granting a permit to the applicant, but on appeal the State Transport Tribunal set aside the order. The Allahabad High Court upheld the decision of the Tribunal because of the peculiar position obtaining under the Motor Vehicles Act which, the Court pointed out, could not be compared with the position under the Code of Civil Procedure. Another case cited for the petitioners is *Rev. G. Harish Chaplain v. Prem Nath. (1966) 68 Pun LR 16* where *Dua. J.* disapproved of an order of the Court below directing the plaintiff to amend the plaint in case he wanted certain documents to be admitted in evidence, and placed on the record. The learned Judge observed:

'Evidence is to be admitted if it is relevant to the issue, arising out of the pleadings, and at the stage of evidence the Court is not, strictly speaking, concerned with the question of amendment of pleadings. If the pleadings and the issues framed thereon do not justify admission of the documentary evidence in question, then the Court in this case was, in my view transgressing the bounds of its legitimate function in suggesting to the plaintiff to amend the plaint in order to bring the documents within the realm of relevancy and in adjourning the case for that purpose.'

The last case upon which learned counsel for the petitioner relies is *Mehar Singh v. Mahant Avtar Singh. (1967) 69 Pun LR 238* *Mehar Singh. C. J.* held in that case that if pleadings were not signed by a party, subsequent signatures on the pleadings could not date back to an earlier date on which the unsigned pleadings were filed. That comment was made in a case in which the contesting party had throughout urged that the application had never been signed by the applicant and that he had not given any power to his counsel to sign on his behalf. In my opinion, the cases upon which reliance is placed by the petitioners are not relevant in this case.

3. In my opinion, the course adopted by the Registrar was plainly right in law. The defects were such as could be removed by Balak Ram. and the Registrar acted within the bounds of his jurisdiction in allowing him an opportunity to remove those defects.

4. Another submission for the petitioner is that the order of the Registrar should not be sustained because it defeats the right of the petitioners to compel Balak Ram to institute a suit for the declaration of his rights. I am unable to appreciate this submission. I think it has long been settled that unless by reason of other circumstances equity bars relief, defects of mere form should not preclude the grant of relief.

5. As regards the other grounds taken by learned counsel for the Petitioners, he states that he does not press them at this stage as he wishes to raise them before the Registrar.

6. Both the petitions fail and are dismissed with costs.

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