

Bipan Kumar Vs. Sham Sunder

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Court : Himachal Pradesh

Decided On : Jul-14-1977

Reported in : AIR1977HP90

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

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 15 - Order 14, Rule 3

Appeal No. : Second Appeal No. 16 of 1976

Appellant : Bipan Kumar

Respondent : Sham Sunder

Advocate for Def. : P.N. Nag, Adv.

Advocate for Pet/Ap. : Kedarishwar, Adv.

Disposition : Appeal dismissed

Judgement :

R.S. Pathak, C.J.

1. This is a defendant's second appeal arising out of a suit for pre-emption.
2. The respondent filed a suit for preemption, and the suit was decreed by the learned Senior Subordinate Judge. An appeal against that decree has been

dismissed by the learned District Judge.

3. In this second appeal, two contentions are raised by learned counsel for the appellant. One is that ,the appellant was sued as a minor through his father Ved Brat when in fact the appellant was a major. It is stated that the plea was raised in the written statement, and yet no issue was framed by the learned Senior Subordinate Judge. When the appeal against the trial court decree was pending before the learned District Judge, an application was made by the appellant raising this point and urging that it be taken into consideration for disposing of the appeal. It appears that the application remained undisposed of and the appeal was dismissed. Learned counsel for the appellant urges that the learned Senior Subordinate Judge was under a duty to frame an issue on the point when trying the suit, and because he omitted to do so he Bailed to decide a material point of controversy between the parties. It is also contended that the learned District Judge erred in omitting to dispose of the application filed before him.

It seems to me that having regard to the facts of this case the contention cannot succeed. Although the appellant was sued as a minor, he filed a written statement signed by himself and the defence set forth in the written statement received the consideration of the court when framing issues. That was the only written statement filed in the suit. The pleas raised in defence on the merits by the appellant were tried by the learned Senior Subordinate Judge and adjudicated upon. It has not been shown how the mere circumstance that the appellant was sued as a minor through his father prejudiced the opportunity of defence which the law allows to a defendant, and which, in this case, was actually availed of by the appellant. Then, when the issues were framed by the learned Senior Subordinate Judge counsel for both parties were present in Court. The issues were framed in their presence, and it does not appear that counsel for the appellant pressed for the framing of an issue on the question whether he was a minor. Indeed, the trial court has recorded specifically that besides the issues framed by him no other issues were claimed. It is evident from the material on the record that counsel for the appellant abandoned the plea of minority raised in the written statement. Learned counsel for the appellant has referred me to Haridas v. Indian Cable Co. Ltd., AIR 1965 Cal 369, which supports the proposition that besides the duty of

counsel for the party, there is a clear duty imposed by law on the Court to frame all the issues which relevantly arise. There can be little doubt that the court is under a duty to frame issues on matters in controversy between the parties. But where it appears that the points of controversy at the stage of framing issues are limited and do not include the entire ambit of the controversy initially raised in the pleadings, the court is not bound to frame an issue on points abandoned. The Court is fully justified in concluding that the plea has been abandoned and the point is no longer in controversy. That was the point of distinction adverted to by the learned Judges in Haridas (Supra), where reference was made to Venkata Narasimha Naidu v. Bhashyakarlu Naidu, (1899) ILR 22 Mad 538, Haridas (supra) is a case where counsel were absent at the time when the issues were framed. The first contention is rejected.

4. The other point raised in support of this second appeal is that the suit was barred by limitation. The submission rests on the following facts. The sale deed was registered on March 27, 1968. The plaint was presented before the learned District Judge on March 25, 1969, but the suit lay in the court of the Senior Subordinate Judge and the plaint was placed before the latter on April 1, 1969, beyond one year of the date of registration of the sale deed. It is urged that the plaint must be taken to have been filed on April 1, 1969 and therefore the suit is barred by time. It is beyond dispute that the court of the District Judge has jurisdiction to entertain all suits, including suits which are triable by the Senior Subordinate Judge. Sections 24 and 25 of the Punjab Courts Act, 1918 are clear as to that. It may be that by virtue of Section 15 of the Code of Civil Procedure the plaint should properly have been filed in the court of the Senior Subordinate Judge, which was the court of the lowest grade to entertain it. But as the terms of Section 15 themselves imply, there could be a court of higher grade competent to entertain the suit, and that in the present case was the court of the District Judge. It is now settled law that Section 15 merely prescribes a rule of procedure. It does not deprive the Court of a higher grade of jurisdiction to entertain the suit. When the plaint was filed before the learned District Judge on March 25, 1969 he had jurisdiction to entertain it. That being so, it is that date which must be taken as the date on which the suit was instituted. The second contention must also fail.

5. The appeal fails and is dismissed. In the circumstances there is no order as to costs.

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