Devi Roop Vs. Smt. Devku and ors.

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SooperKanoon Citation : sooperkanoon.com/890449

Court : Himachal Pradesh

Decided On : May-17-2006

Reported in : AIR2006HP114,2006(2)ShimLC158

Judge : Deepak Gupta, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 152, 153 and 153A - Order 41 Rule 11

Appeal No. : Civil Revision No. 131 of 2005

Appellant : Devi Roop

Respondent : Smt. Devku and ors.

Advocate for Def. : Dinesh Kumar, Adv.

Advocate for Pet/Ap. : G.D. Verma, Sr. Adv. and; Romesh Verma, Adv.

Judgement :

Deepak Gupta, J.

1. This revision petition clearly demonstrates how a technical approach to judicial matters results in total failure of justice for all concerned.

2. One Gokal filed a suit for declaration to the effect that he had become owner of 1/2 share of the land comprised in Khata/Khatauni No. 19/37, Khasra Nos. 12 and

19 measuring 23-13 bighas in Chak Rampur, Tehsil Arki, District Solan, H.P. by efflux of time as statutory period to redeem mortgage had expired and the right to redeem the mortgage stood extinguished. In the alternative it was prayed that he had become owner by way of adverse possession. Consequent relief of permanent injunction was prayed against defendants No. 1 and 2 restraining them from interfering in the possession of the plaintiff over the suit land. This suit was filed before the trial Court, i.e. Sub-Judge 1st Class, Arki on 17.8.1981. In this suit defendant No. 2 was described as follows:

Sh. Inder Datt, son of Shib Ram, resident of village Pakhred, Pargana Sandhurat, Tehsil Arki, District Solan, H.P.

3. An application for amendment of the plaint was filed even before the defendants were served. In the meantime, defendant No. 2 was served and he filed reply to the application for amendment which application was allowed on 8.8.1983. In the amended plaint filed with this application the name of defendant No. 2 was described as follows:

Ishwar Datt, son of Shib Ram, resident of village Pakhred, Pargana Sandhurat, Tehsil Arki, District Solan, H.P.

4. The original plaintiff Gokal died and his legal representatives Thambo (widow) and Devi Roop (son) were ordered to be brought on record vide order dated 30.6.1984.

5. Written statement to the amended plaint was filed by defendant No. 2 in which the defendant No. 2 was described as Ishwar Dutt, son of Shib Ram. However, the written statement was signed by Inder Datt, as defendant No. 2.

6. Thereafter another application for amendment of the plaint alongwith proposed amended plaint was filed on 1.1.1986. This application was allowed on 6.1.1986. In the amended plaint filed, defendant No. 2 was described as follows:

Ishwar Dass, son of Shib Ram, resident of village Pakhred, Pargana Sandhurat, Tehsil Arki, District Solan, H.P.

7. The fact that the name of defendant No. 2 had been changed from Inder Datt to Ishwar Datt and then to Ishwar Dass was not detected either by the Court or by the parties or their Counsel. Written statement to this amended plaint was filed by defendant No. 2. In the heading of the written statement defendant No. 2 was described as Inder Dutt, son of Shib Ram. The suit was finally decreed vide judgment dated 9th July, 1986. In this judgment and-decree defendant No. 2 was described as Ishwar Dass, son of Shib Ram. It is apparent from the record that neither the plaintiff nor defendant No. 2 ever discovered that the name of Inder Datt had firstly been changed to Ishwar Datt and finally to Ishwar Dass. It was Inder Datt: who filed the written statement. It was he who contested the suit. Inder Datt appeared in the witness box and the power of attorney to the Counsel was issued by Inder Datt.

8. After the suit was filed, Inder Datt filed an appeal in the Court of District Judge, Solan challenging the judgment and decree. The appellant was described as follows:

Inder Dutt, son of Shri Shiv Ram, resident of village Pakhrehar, Tehsil Arki, District Solan, H.P.

9. No objection was taken by Devi Roop or Smt. Thamboo that appeal was not properly constituted. Smt. Thamboo died during the pendency of the appeal and her name was deleted. The appeal was admitted and was heard and decided by the learned District Judge, Solan on 31.10.1990. The learned District Judge held that the appeal was not maintainable and dismissed the same accordingly. The operative portion of the judgment of the learned District Judge reads as follows:

3. The said suit was decreed vide judgment and decree, dated July 9, 1986 whereby Smt. Thumbo was declared to have become the owner of the land to the extent of half share comprising in Khata/ Khatauni No. 19/37 and Khasra Nos. 12 and 19 by way of adverse possession. The decree was passed against defendants No. 1 and 2, namely, Sh. Gorkhu and Ishwar Dass. No appeal has been filed either by Sh. Gorkhu or Sh. Ishwar Dass. No judgment or decree has been passed against the present appellant, Sh. Inder Dutt. A perusal of the certified copy of the judgment, decree-sheet as well as the plaint on record of the lower Court shows

that the present appellant was not even a party to the suit.

4. In view of the fact that no decree was passed against the present appellant, and also the fact that the present appellant is not claiming to be the successor of any of the person against whom a decree was passed, the present appeal, on the face of it, is not maintainable at the instance of the present appellant. The same is accordingly dismissed with no orders as to costs.

10. The approach of the learned District Judge to say the least was hyper technical. The original suit had been filed against Inder Dutt. It was Inder Dutt who had been contesting the suit throughout. It was Inder Dutt who had filed the appeal. It appears that during the course of proceedings when the amendment application was filed the name of Inder Dutt firstly got changed to Ishwar Dutt and finally to Ishwar Dass. No application had ever been filed for changing the name of the defendant. In my opinion even if the learned District Judge was of the view that the appeal was not properly constituted he should have either suo motu ordered the correction of the judgment and decree sheet as well as the amended plaints or in the alternative should have asked the parties to file appropriate application in this behalf. However, the learned District Judge thought it fit to dismiss the appeal on the technical ground that no decree had been passed against Inder Dutt. He lost sight of the fact that the description not only ended with the name, but the parentage and address was also given which remained the same throughout the proceedings. Obviously a mistake had occurred which was a clerical or typographical mistake and should have been permitted to be corrected.

11. However, no party challenged the judgment of the learned District Judge which attained finality. It was obvious that Inder Dutt was happy with the order since the learned District Judge had held that there was no decree against him. The learned District Judge had dismissed the appeal on 31.10.1990. The plaintiff also slept over the matter and finally an application was filed by Devi Roop on 4.10.1997 before the trial Court under Sections 152 and 153 CPC for amendment of the judgment and decree to show that Inder Dutt and Ishwar Dass are the same person and that the name of defendant No. 2 be shown as Inder Dutt @ Ishwar Dass, son of Shib Ram. Notice of this application was sent to the judgment

debtors. Inder Dutt again put in appearance through a Counsel. Thereafter Gorkhu defendant/ judgment debtor No. 1 died and the case was adjourned from time to time for bringing on. record his legal representatives. In the meantime, Inder Dutt also died. Thereafter the legal representatives of Inder Dutt namely Kanta, widow and Om Parkash, son of Inder Dutt were ordered to be brought on record as his legal representatives. They contested the application and the learned trial Court vide the impugned order has rejected the application vide order dated 2.5.2005. According to the trial Court since the appeal was dismissed by the appellate Court by holding that Inder Dutt was not party to the original proceedings and the appeal had been disposed of not under Order LXI Rule 11, but after hearing the parties, he had no right to exercise the jurisdiction under Section 153-A CPC. Further, according to him in case the judgment/decree is amended it would amount to setting aside the judgment/decree passed by the learned District Judge which power was not vested in him. The present revision petition is directed against this order.

12. I have heard Mr. G.D. Verma, learned Senior Advocate, for the petitioner and Mr. Dinesh Kumar, learned Counsel for respondents No. 5 and 6 Smt. Kanta and Om Parkash, the legal representatives of Inder Dutt.

13. It is contended by Mr. G.D. Verma, learned Senior Advocate, that the order of the learned Court below refusing to exercise the powers vested in it under Section 153-A CPC is totally illegal and leads to failure of justice and as such is liable to be set aside. He submits that there was no doubt in the minds of any party that it was Inder Dutt, son of Shiv Ram who was the defendant. He further submits that the appeal had not been disposed of on merits by the appellate Court, but had been dismissed as not being maintainable and, therefore, the trial Court had the jurisdiction to make the necessary corrections. On the other hand it is contended by Mr. Dinesh Kumar, Advocate, that the case is not as set up by the petitioner, but it was a deliberate attempt on the part of the petitioner to misguide the Court. He further submits that the petitioner till date has not filed any application for amendment of the amended plaint. Further, according to him the application having been filed at a highly belated stage is liable to be dismissed either on the ground of delay or on account of laches.

14. The first question which arises for decision is as to whether there is any limitation prescribed for making the correction or not.

15. Sections 152, 153 and 153-A of the Code of Civil Procedure read as follows:

152. Amendment of judgments, decrees or orders.Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

153. General power to amend.The Court may, at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for. the purpose of determining the real question or issue raised by or depending on such proceeding.

153-A. Power to amend decree or order where appeal is summarily dismissed.Where an Appellate Court dismisses an appeal under Rule 11 of Order XLI, the power of the Court to amend, under Section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of conforming the decree or order, as the case maybe passed by the Court of first instance.

16. A perusal of these provisions clearly shows that the power to amend and correct the clerical and arithmetical mistakes in a judgment, decree or order may be exercised at any time under Section 152. Similarly, Section 153 gives power to the Court to amend any defect or error in any proceedings in a suit at any time. The settled law is that there no limitation is prescribed for an application to exercise such powers. In this behalf reference may be made to Midnapore Zamindary Co. Ltd. v. Abdul Zalil Mia AIR 1933 Calcutta 627. In this case the Division Bench of Calcutta High Court held that a decree can be amended to bring any conformity with the judgment at any time even after a lapse of years. The only fetter to this power is that no Court should under these provisions or in the exercise of its inherent powers amend or correct the mistake if it is inequitable or

inexpedient to do so, especially where third parties have acquired rights. In the present case no third parties are involved and rights of both the parties can be protected even if proceedings are ordered to be amended at this belated stage. One of the reasons why the Courts have held that there can be no limitation for correcting the mistake is that no party should suffer because of the mistake of the Court. In Australian Steam Navigation Co. v. Smith and Sons (1889) 14 Appeal Cases 318, the Privy Council held thus:

Their Lordships are strong advocates for amendment whenever it can be done without injustice to the otherside, and even where they have been put to certain expense and delay, yet if they can be compensated for that in any way it seems to their Lordships that an amendment ought to be allowed for the purpose of raising the real question between the parties.

17. In Raghunathsingh Nandlal Dangi and Anr. v. Mandir Shri Deo Radhaballabhji and and Ors. AIR 1937 Nagpur 173, incorrect description of the plaintiff in a plaint was ordered to be corrected after decision of the suit in appeal. It would indeed be a great blot on the system of administration of justice if Courts are held powerless to do justice by correcting their own errors and defects only on the ground of limitation. The contention is, therefore, rejected.

18. The next question which has been raised is whether dismissal of the appeal would be a bar to the trial Court exercising the powers under Sections 152 and 153 C.P.C. Section 153-A of the Civil Procedure Code lays down that where the appellate Court dismisses an appeal in limine without issuing notice to the respondents, the power to amend a judgment or order under Section 152 CPC may be exercised by the Court which had passed the original judgment, decree or order. In the present case admittedly the appeal was not dismissed in limine. On the other hand, the appeal was not decided on merits also by the learned District Judge. The appeal was dismissed as not maintainable. According to the learned District Judge the appeal was not properly constituted since there was no decree against Inder Dutt, who had filed the appeal. The principle underlying Section 153-A CPC is the doctrine of merger. As per this doctrine when an appeal is heard and disposed of after a contested hearing the judgment of the trial Court merges in the

judgment of the appellate Court. The Apex Court in M/s. Gojer Brothers (P) Ltd. v. Shri Ratan Lal Singh : [1975]1SCR394 , held as follows:

The fundamental reason of the rule that where there has been an appeal, the decree to be executed is the decree of the appellate Court is that in such cases the decree of the trial Court is merged in the decree of the appellate Court. In course of time, this concept which was originally restricted to appellate decrees on the ground that an appeal is a continuation of the suit, came to be gradually extended to other proceedings like revisions and even to proceedings before quasi-judicial and executive authorities.

19. In view of the law laid down by the Apex Court it is clear that if the decree of the trial Court has merged in the decree of appellate Court then of course the trial Court has no jurisdiction to amend the same. In the present case, however, I am of the opinion that the decree of the trial Court never merged in the decree of the appellate Court. The appellate Court did not decide the appeal on merits. Since the appellate Court held that the appeal itself was not maintainable and was not properly constituted, there was in fact no properly constituted appeal pending before it and the decision by the appellate Court was not a decision on merits. Section 153-A C.P.C. only empowers the trial Court to amend the decree or order even when the appeal has been dismissed in limine. It does not take away the powers otherwise vested in the trial Court. As observed above, the principle underlying this Section is the doctrine of merger that once an appellate Court has passed a decision then the judgment of the trial Court will merge in the judgment of the appellate Court and it will cease to have jurisdiction to amend its own judgment, decree or proceedings. The appellate Court only disposed of the matter by holding that Inder Dutt had no right to file the appeal since no decree had been passed against him. Therefore, the question of merger does not apply and Section 153-A would not be attracted. The mere fact that the appeal was decided after notice and not in limine would not take away the jurisdiction of the trial Court to amend its judgment and decree because of the fact that there was no decision on the case by the learned District Judge.

20. It is well settled law that the rules of procedures are handmaiden of justice. These rules should be used to promote the cause or justice and to ensure that the object of doing substantial and real justice is achieved. If two interpretations are possible then the interpretation favouring the decision of the case on merits resulting in substantial and real justice should be adopted. The rules of procedures should not be used to thwart the ends of justice and to avoid adjudication on merits. Reference in this behalf may be made to the judgment of the Constitutional Bench of the Apex Court in Sardar Amarjit Singh Kalra (dead) by LRS. and Ors. v. Pramod Gupta (Smt.) (Dead) by LRs. and and Ors. : [2002]SUPP5SCR350 , wherein the Apex Court held as follows:

26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice...

31. x x x x x x x. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it....

21. Applying the aforesaid dictum of the Apex Court I am of the considered view that the Court should act in such a manner so as to do substantial justice between the parties. The approach of the learned District Judge, as already observed, was hyper technical in nature. It appears, that the learned District Judge was swayed by the fact that the case was an old case. Every case has a face behind it. No Judicial Officer should lose sight of the fact that a case is not merely a number in his docket, but there are human beings behind the case. They come to the Court for redressal of their grievances. Their grievances may be justified or unjustified. Unless there is statutory mandate directing otherwise the effort should always be to appreciate the grievances on merits and decide them in accordance with law.

The cases should not be slaughtered at the alter of disposal. No doubt it is important to dispose of cases, but mere disposal of cases without doing justice will set to naught our entire judicial system. People have immense faith in the judicial system. This credibility will be entirely eroded if cases are decided on hyper technical grounds, as has been done in the present case.

22. However, the balance has to be struck and both the parties should not suffer because of the fault of the Court. Keeping in view the above discussion it is ordered that the plaintiff shall file two fresh amended plaints showing the name of defendant No. 2 as Inder Dutt. Thereafter the trial Court shall amend its judgment and decree to reflect the correct name of defendant No. 2, i.e. Inder Dutt, son of Shiv Ram, resident of village Pakhred, Pargana Sandhurat, Tehsil Arki, District Solan, H.P. The parties are directed to appear before the trial Court on 19th June, 2006 on which date the plaintiff shall file the two fresh amended plaints. Thereafter the trial Court shall amend the judgment and decree. The heirs of Inder Dutt shall have the right to challenge the amended judgment and decree within a period of 30 days after exclusion of time for obtaining copy of the amended judgment and decree by filing appeal before the learned District Judge. Though the amendment shall relate back to the date of original judgment and decree, however, for the purposes of limitation the time for filing the appeal by the legal representatives of Inder Dutt shall be reckoned from the date when the amendment in the judgment and decree is made. Since this entire mistake has occurred due to the fault on the part of the plaintiff, the plaintiff, is held liable to pay costs of Rs. 5,000/- which shall be paid to Smt. Kanta and Om Parkash, heirs of Inder Dutt. These costs shall also be paid to them before the trial Court on 19th June, 2006. In case the costs are not paid or the amended plaints are not filed then the learned trial Court shall dismiss the application of the plaintiff for amendment of the decree for non-compliance of the orders of this Court.

The revision petition is disposed of in the aforesaid terms.