Pawan Kumar Vs. Narinder Kumar Jain

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Court : Jammu and Kashmir

Decided On : Feb-14-2001

Reported in : AIR2002J& K29

Judge : B.P. Saraf, C.J. and; N.A. Kakru, J.

Acts : Code of Civil Procedure (CPC), 1908 - Section 92

Appeal No. : LPA (C) No. 21/1994

Appellant : Pawan Kumar

Respondent : Narinder Kumar Jain

Advocate for Def. : A.V. Gupta and; Yaser Tak, Advs.

Advocate for Pet/Ap. : Rohit Kapoor, Adv.

Judgement :

N.A. Kakru, J.

1. This appeal stems from the suit filed on the original side of this Court by the respondents 1 to 3 against one Shadilal and others, seeking partition of the property which forms subject-matter of the suit. During pendency of the suit, Shadilal defendant died (deceased-defendant hereinafter), leaving behind a widow namely Mrs. Sarla Jain, besides, two sons, namely, M/S Anand Jain and Ashok

Jain. Being legal heirs of the deceased defendant, they sought their impleadment in the array of defendants through the CMP bearing No.288/90. The CMP was allowed. All the three applicants came to be impleaded as defendants by order of the learned Single Judge dated 07.04.1994.This order is called in question through this appeal under clause 12 of the Letters Patent. For facility of reference, clause 12 is extracted below:

'12. And we do further ordain that an appeal shall lie to the said High Court of Judicature from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of the appellate jurisdiction by a court subject to the superintendence of the High Court, and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in theexrcise of the power of superintendence) of one Judge of the said High Court or one Judge of any Division court and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, consistently with the provisisons of the Civil Procedure Code, made in the exercise of appeallate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit onefor appeal, but that the right of appeal fromother judgments of the Judges of the said High court or of such Division court shall be to Us, our heirs or Successors and be heard by our Board of Judicial Advisors for report to us.'

2. A plain reading of clause 12 makes it manifestly clear that an appeal is competent from the decision of a Single bench provided such decision falls within the ambit of judgment. Therefore, a moot question arises as to whether an order of impleadment amounts to a judgment. The contention of the learned counsel for the appellants is that it does. He has placed reliance on Shah Babulal Khimji v Jayaben Kania and another (AIR 1981 SC 1786). In its para 120, illustrations of orders are given which may be treated as judgments but these illustrations do not include an order of impleadment of the legal heirs. Thus it needs to be determined whether an order of impleadment can be said to be a judgment. In this behalf it is

appropriate to notice the observations of the apex court in paras 106 and 119 of the judgment supra, which are reproduced hereunder:

'106. Thus, the only point which emerges from this decision is that whenever a trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgment within the meaning of the Letters Patent.

119. Apart from the tests laid down by Sir White, C.J., the following considerations must prevail with the court:

(1) That the trial Judge being a senior court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with due regard to the well settled principles of civil justice. Thus,any discretion exercised or routine orders passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice one party or the other cannot be treated as a judgment otherwise the appellate court (Division Bench) will be flooded with appeals from all kinds of orders passed by the trial Judge. The courts must give sufficient allowance to the trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is ex facie legally erroneous or causes grave and substantial injustice.

(2) That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings.'

3. Analysing the aforementioned guidelines, it emerges that:

(a) an order which contains the traits and trappings of finality and affects the rights of a party amounts to judgment within the meaning of clause 12 of Letters Patent;

(b) a discretionary order has to be presumed to be correct unless it is ex facie erroneous or causes grave and substantial injustice.

4. The learned counsel for the appellants has vehemently contended that the legal heirs of Shadilal have no right whatsoever to claim the proprietary rights over the

suit property because same was bequeathed to the appellants by the deceased defendant during his life time.To appreciate the contention it needs to be borne in mind that fall out of the order impugned in essence facilitates the final adjudication of the controversy involved in the suit. Whether property has been bequeathed to the appellants is an issue which is to be gone into. If such stand is available to the appellants nothing prevents them to press it into service, for, the impleadment does not debar them to urge such contention in opposition to the claim. The rights and liabilities of the parties with respect to the suit property are yet to be determined, obviously, the impleadment does not affect the merits of the controversy involved in the suit. As a matter of fact, ample opportunity is available to the appellants to contest the claim of the legal heirs. Thus we hold that an order of impleadment does not amount to judgment within the meaning of clause 12 of the Letters Patent. However, we may hasten to add that cases are conceivable where serious injustice may cause to a party by allowing the application for impleadment. Take the instance of an application which is barred by limitation. By allowing such application, grave and substantial injustice is likely to cause to a party, therefore, unless delay is condonable under law and is codoned, the application has to be rejected. Sufficie it to say that admittedly the application in the case in hand was not barred by limitation, therefore, the order impugned no way works injustice to the appellants. Viewed thus, the learned Single Judge was quite justified to pass the order impugned.Same being sound in law, we are loath to display interference.

5. Before parting with, it needs to be observed that the consequences are quite different where the application seeking impleadment is rejected. The rejection deprives a party of the opportunity to advance and establish his claim. It brings the claim to an end. It has the effect of finally deciding the controversy forming the subject-matter of the suit itself, therefore, it is bound to constitute 'judgment' within the meaning of clause 12 of Letters Patent. Here it is advantageous to mention that the apex court in judgment supra, while examining the orders to ascertain whether there is determination of right or liability, has held that an order refusing to add necessary parties in a suit under section 92 of the Code of Civil Procedure is a judgment within the meaning of clause 12 of Letters Patent (see para 120 sub-para 7 of the judgment aforementioned). In our opinion the said illustration is

analogous to an order rejecting the application for impleadment. Thus the view taken by us that rejection of application seeking impleadment amounts to judgment is substantially supported by the judgment supra. Accordingldy, we hold that the Letters Patent is competent against rejection of the application of impleadment.

6. In the result, the appeal is dismissed. However, in view of peculiar circumstances of thecase, no order as to costs.