SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Vinay Rai Vs Anil Rai

Vinay Rai Vs Anil Rai

SooperKanoon Citation : sooperkanoon.com/904332

Court : Delhi

Decided On : Aug-25-2010

Judge : Mr. Vikramajit Sen ; Ms. Mukta Gupta. J J.

Appeal No. : FAO(OS) No.485/2008 & CM No.17481/2008

Appellant : Vinay Rai

Respondent : Anil Rai

Advocate for Def. : Mr Arvind Nigam, Sr. Mr Sandeep Mittal, Advs.

Advocate for Pet/Ap. : Mr V.P. Singh, Sr. Adv. Mr Vinod K. Shukla, Mr Shakeel Ahmed, Ms Chitra Sharma, Advs.

Judgement :
1. Whether reporters of local papers may be allowed to see the Judgment? No

2. To be referred to the Reporter or not? Yes

3. Whether the Judgment should be reported in the Digest? Yes

ORDER

1. This Appeal assails the Order dated 23.10.2008, dismissing the Defendants application under Order VII Rule 11 read with Order XII Rule 6 and Section 151 of the Code of Civil Procedure, 1908 (CPC for short). It is undeniably evident that

Order XII Rule 6 of the CPC has no role to play in the present controversy. The application mentions and relies on the details set out in the Written Statement. Succinctly stated, the application raised four grounds for the rejection of the Plaint by the learned Single Judge. The first argument was that no concluded contract had concretized between the parties and what was reduced to writing was merely a Wish List. Secondly, it was averred that the Suit was barred by the principle of prescription. Thirdly, it was pleaded that the Suit had not been correctly valued for the purposes of Court Fees and proper and adequate court fees had not been affixed on the plaint. Fourthly, it had been articulated that the Plaintiff had not obtained leave of the Court for filing a fresh action at the time when CS(OS) No.,118/2005 was dismissed. Each of these four contentions have also been canvassed before us.

2. Mr. V.P. Singh, learned Senior Counsel for the Appellant, has additionally pressed Section 41(h) of the Specific Relief Act, 1963 (SR Act for short) to contend that the Suit itself is not maintainable as it seeks a mandatory and permanent injunction. In this connection, Mr. Arvind Nigam, learned Senior Counsel for the Respondent, submits that this argument had not been raised before the learned Single Judge. We have questioned the Appellant on the legal propriety of raising a ground in an Appeal against an interlocutory Order which ground had not been voiced before the learned Single Judge. In response thereto, Mr Singh has sought to rely on the following observations made in Gurcharan Singh vs- Kamla Singh, (1976) 2 SCC 152:-

11. Before we examine this quintessential aspect presented before us with complex scholarship by Shri S.C. Misra we had better make short shrift of certain other questions raised by him. He has desired us, by way of preliminary objection, not to give quarter to the plea, founded on Section 6 of the Act, to non-suit his client, since it was a point raised de novo at the Letters Patent stage. The High Court gave thought to this objection but overruled it, if we may say so, rightly. The Court narrated the twists and turns of factual and legal circumstances which served to extenuate the omission to urge the point earlier but hit the nail on the head when it held that it was well-settled that a pure question of law going to the root of the case and based on undisputed or proven facts could be raised even

before the Court of last report, provided the opposite side was not taken by surprise or otherwise unfairly prejudiced. Lord Watson, in Connecticut Fire Insurance Company v. Kavanagh, stated the law thus: When a question of law is raided for the first time in a Court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interest of justice to entertain the plea. The expediency of adopting that course may be doubted when the plea cannot be disposed of without deciding nice questions of fact in considering which the Court of ultimate review is placed in a much less advantageous position than the courts below. But Their Lordships have no hesitation in holding that the course ought not in any case to be followed unless the court is satisfied that the evidence upon which they are asked to decide establishes beyond doubt that the facts if fully investigated would have supported the new plea. We agree with the High Court that the new plea springs from the common case of the parties and nothing which may work injustice by allowance of this contention at the late stage of the Letters Patent appeal has been made out to our satisfaction. Therefore, we proceed to consider the impact and applicability of Section 6 of the Act to the circumstances of the present case.

3. A careful reading of the above extract will make it manifest that the case does not support the Appellants stand even in the minutest measure. The proceedings before the Court of Original Jurisdiction had come to their final end, in contradistinction to an intermediary stage as in the case in hand is, since only an interim application has been considered and decided in the impugned Order. For the same reason, reliance on Ravulu Subba Rao vs- CIT, AIR 1956 SC 604 is of no advantage to the Appellant. We think it imperative that all legal points such as limitation, estoppel, res judiciata and maintainability in law of the suit etc. must necessarily be raised before and thereupon cogitated upon and decided by the Trial Court in the intermediary stages of the lis for a decision to be rendered with regard thereto. We think so for the simple reason that in the continuum of the case, corrective action should not be thwarted. We are in no manner of doubt that a party who invites the Court to bring legal proceedings to a conclusion earlier than what is envisaged by established procedure must present all the grounds before the Court of first instance. Such a party cannot be permitted to attack the

order on fresh grounds at the appellate stage as that would work disadvantage to the other party. We are fortified in this view by the observations made in Umashanker Pandey vs- B.K. Uppal, 1991(2) SCC 408 where their Lordships in conclusion held that "the petitioner would not be justified in assailing the impugned order on entirely fresh grounds which he has not raised before the High Court except in review petition, the order of which is not challenged".

4. Nevertheless, since arguments had already advanced appreciably on behalf of the Respondent/Plaintiff before it was brought to light that the prohibition of Section 41(h) of SR Act would bar a suit claiming a mandatory and permanent injunction, we think it expedient to decide the Preliminary Objection. The argument of Mr. Singh is that, assuming an enforceable contract had been entered into between the parties, the said provision proscribes an injunction being granted where an equally efficacious remedy, viz. Specific Performance in the case in hand, can be sought for by the Plaintiff. There cannot be any cavil that the Court is continuously obligated to separate the chaff from the grain, that is, to bring a vexatious or legally ill-founded suit to its earliest conclusion; and that frivolous litigation, which would inexorably lead to a sterile end, must be nipped in the bud. We need not dilate upon this duty beyond merely mentioning T. Arivandandam vs- T.V. Satyapal, (1977) 4 SCC 467. However, it is equally well-established, and for the pragmatic reasons, that a piecemeal consideration of a lis is not envisaged or encouraged in law.

5. In the present context, it should be plainly and facially clear from a reading of the Plaint and [as recently expanded in Liverpool & London S.P. & I Assn. vs- M.V. Sea Success, (2004) 9 SCC 512)] on a perusal of admitted documents that the plaint is bound to fail, and if so, the agony of the litigants should be quickly euthanized. While on this subject, we think it apposite to clarify that a document filed by a party can be relied upon only once it is proved in accordance with law. However, to the contrary, it would always be open to the opposite party to completely rely on the document, even in the absence of its formal proof. In other words, documents filed by the Plaintiff can be used by the Defendant to its advantage and vice versa; the party filing a document cannot be allowed to deny it except where he has clearly caveated in this context.

6. Mr. Nigam explains that since there are multifarious and numerous claims between the parties, the Plaintiff in his own wisdom had sought the relief of mandatory and permanent injunction so that a final and definitive answer may be received from the Court which would then have binding effect and force between the parties on particular and individual disputes. In Abdul Gafur vs- State of Uttarakhand, (2008) 10 SCC 97 their Lordships have again recognized the right of every person to initiate civil proceedings. It would be inopportune and unfair to non suit a party at the threshold as this argument and explanation is a plausible one at the present stage of the litigation. This is especially so since the Defendant, in fact, asserts that no concluded contract/Family Agreement had come into being. No party should be allowed to approbate and reprobate and this is clearly what the Defendant is attempting to achieve. On the one hand, it is affirmed on his behalf that the relief of Specific Performance is available to the Plaintiff and in the very next breath it is asserted by him that no contract had evolved between the parties. There is no gainsaying that parties can take alternative pleas. In such circumstances, however, a suit cannot be defeated at the threshold by taking into consideration pleas that are essentially contradictory. Had the Defendant admitted that the Family Arrangement was for all intents and purposes an enforceable contract, the position would be different. The argument of learned Senior Counsel for the Appellant is rejected. For these reasons also, Rajendra Kumar vs- Mahendra Kumar Mittal, AIR 1992 All 135 and Jasmer Singh vs- Kanwaljit Singh, AIR 1991 P&H; 194 are not of much relevance.

7. We shall now consider each of the four arguments raised by the Appellant/Defendant before us. In respect of the aspect of Court Fees, the learned Single Judge had held against the Respondent/Plaintiff, which led him to file FAO(OS) No.475/2008 assailing the finding. On 10.8.2010, the said Appeal was disposed of in view of the statement made by learned Senior Counsel for the Plaintiff/Respondent that Court Fees in accordance with the determination of the learned Single Judge would be affixed on the Plaint.

8. The vexed question is whether the Rai Family Agreement dated 19.3.2000, which is the subject matter of the injunctory relief, represented a concluded contract or was in the nature of a mere Wish List. The learned Single Judge, in our

view, has pertinently pointed to the legal enunciation made in the trailblazing decision of Kale vs- Dy. Director of Consolidation, (1976) 3 SCC 119. Their Lordships had recommended the upholding of family arrangements rather than setting them at naught on technical or trivial grounds. The same proposition has been reiterated very recently by distinctly different Benches in Manish Mohan Sharma vs- Ram Bahadur Thakur, (2006) 4 SCC 416 and Hari Shankar Singhania vs- Gaur Hari Singhania, (2006) 4 SCC 658 to the effect that family arrangements command special equities and should be enforced. It is these observations that have prompted the learned Single Judge into rejecting the contention of the Appellant, despite noticing that the Plaintiff had labelled the said understanding between the parties before the Settlement Commission as a mere Wish List. We find no reason to disturb this view.

9. Our attention has also been drawn to Anathula Sudhakar vs- P. Buchi Reddy, AIR 2008 SC 2033 : 2008(4) SCC 594 where their Lordships have opined that - "where title of plaintiffs is disputed and claim for possession is purely based on title, and the plaintiffs have to rely on various principles of law relating to ostensible ownership and section 41 of TP Act, validity of a oral gift by way of pasupu kumkum under Hindu Law, estoppels and acquiescence, to put forth a case of title, such complicated questions could properly be examined only in a title suit, that is a suit for declaration and consequential reliefs, and not in a suit for an injunction simpliciter". The parties must be given a fair opportunity to explain their rival stands in the Trial, especially keeping in mind that they are brothers. The close relation between the parties propels us to the opinion that the pronouncements in Kale, subsequently followed in Manish and Hari, should persuade the Court away from a technical and rigorous approach.

10. We shall now proceed to decide the next Objection raised by the Appellant/Defendant which is to the effect that the Suit is barred by limitation. We have already mentioned that the so called Rai Family Agreement is dated 19.3.2000. The Defendant/Appellant contends that the Plaintiff would have gained knowledge of the Defendants unwillingness to implement the Rai Family Agreement through E-mails exchanged between the parties going back to the year 2002, at which time the cause of action would have arisen. The subject Suit has

been filed in February, 2006 and by which time three years had elapsed, the Appellant contends. In the impugned Order, the learned Single Judge has reproduced the events which, according to him, tantamounted towards implementation of the Rai Family Agreement, starting from January, 2001 and allegedly carrying well past 2002. It has also been averred in the Plaint that some events, on which the Settlement is to be completed, occurred as late as in May, 2006. It appears to us, therefore, that evidence will have to be recorded on these events and it is only on their probative and legal appreciation that a final decision on this point can be returned. The CPC envisages the framing of myriad Issues and it is only in respect of the Issues which do not require evidence or those Issues which are purely legal in character, that a dismissal at the preliminary stage is possible. These are essentially appreciation of facts resulting in the exercise of informed discretion. An Appellate Court must not intervene in the exercise of discretion unless it is palpably perverse. The conclusion of the learned Single Judge that this objection must await the conclusion of the Trial Court is not perverse and we are loathe to interfere with it. Furthermore, the rationale in Kale must have prevailed upon the learned Single Judge to give latitude to the Plaintiff in this regard because the dispute stems from a Family Arrangement.

11. The last point, that is, the Suit is barred under Order II Rule 2 of the CPC, was not seriously canvassed before us. In the application, it has been pleaded that no leave to file the present Suit had been granted by the Court entertaining CS(OS) No.118/2005 [as mentioned in the application] and/or CS(OS) No.1158/2005 [as mentioned in the Rejoinder] filed by the Appellant and, therefore, the present Suit should be rejected under Order VII Rule 11(d) of the CPC. In response thereto, it has been pointed out that the previous suit was filed by the relatives of the Plaintiff/Respondent and the present Respondent/Plaintiff was the Defendant therein and hence the aforementioned provisions did not apply. Perhaps, for this reason, the Objection that has been taken has not been pressed before us.

12. For these manifold reasons, we find no reason to interfere with the impugned Order. The Appeal is without merit and is dismissed. Pending application is also dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com