

Juggal K Sood Vs. Kamal K Sood

Juggal K Sood Vs. Kamal K Sood

SooperKanoon Citation : sooperkanoon.com/996

Court : Delhi

Decided On : Dec-01-2014

Judge : G.P. Mittal

Appellant : Juggal K Sood

Respondent : Kamal K Sood

Advocate for Def. : Mr. Rajat Aneja

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) 484/1998 JUGGAL K SOOD Through: Plaintiff Ch. Shamsuddin Khan, Adv. versus KAMAL K SOOD Through: Defendant Mr. Rajat Aneja, Adv. with Mr.Vijay Kasana, Adv. for D-2. CORAM: HON'BLE MR. JUSTICE G.P. MITTAL

ORDER

% 01.12.2014 IA No.7875/2014 IA No.7876/2014 IA No.7877/2014 IA No.7878/2014 1. (O.XXII Rule 9 CPC) in CS(OS) 484/1998; (delay) in CS(OS) 484/1998 ; (O.XXII Rule 4 CPC) in CS(OS) 484/1998 & (delay) in CS(OS) 484/1998 These applications are for substitution of the legal representatives (LRs) of the deceased Defendant no.1 and for setting aside the order of abatement as the application for substitution of LR's was not moved in time. Since the application for setting aside the abatement was also not moved in time, an application for condonation of delay in moving the application for setting aside of the abatement

has also been moved.

2. As per the averments made in IA No.7878/2014, there is a delay of 439 days in moving the application. The sum and substance of the applications moved by the Plaintiff for delay in moving the application for substitution and for setting aside the abatement are given in paras 5,6 and 7 of the application, on which much stress is led by the learned counsel for the Plaintiff. Paras 5,6 and 7 of the application are extracted hereunder:

5. Since the Plaintiff resides in USA, he came to know of the whereabouts of the Legal Representatives of Defendant no.1 recently when he visited India on 10.04.2014. He immediately contacted his counsel and gave the full details of the Legal Representatives of Defendant no.1.

6. That the counsel for Plaintiff immediately preferred the application for setting aside abatement order dt. 08.05.2013 against Defendant no.1 before this Honble Court.

7. That the setting aside abatement order dated 08.05.2013 against Defendant no.1 is necessary for adjudication of the case. So order may be set aside against Defendant no.1 in the interest of justice.

3. The applications have been opposed by Defendant no.2, who is wife of Defendant no.1. Learned counsel for Defendant no.2 strongly opposes the applications. He urges that on hearing about death of Defendant no.1 on 01.11.2012, the Plaintiff was in India on 02.11.2012. He also attended the kriya ceremony of the deceased on 03.11.2012 at Balasahed Gurudwara. The Plaintiff appeared before the Court on 07.11.2012 when he and his counsel were informed about the death of Defendant no.1 having occurred on 01.11.2012.

4. The learned counsel for the Plaintiff relies on Collector, Land Acquisition Anantnag & Anr. V. Mst. Katiji & Ors., 1987 (28) ELT185(SC), Bhag Singh & Ors. V. Major Daljit Singh & Ors., 1987 (32) ELT258(SC) and State of U.P. v. Bahadur Singh & Ors., AIR 1985 SC845 to urge that there was no negligence on the part of the Plaintiff in taking steps for substituting the legal heirs of deceased Defendant

no.1. As soon as the Plaintiff came to know of the legal heirs, the application was immediately moved.

5. The record, however, speaks to the contrary.

6. First of all, I would like to extract the order dated 07.11.2012 passed by the learned Joint Registrar which records that the Plaintiff and his counsel had appeared before the Joint Registrar after passing of the order and were informed about the order and that Defendant no.1 has expired on 01.11.2012. Defendant no.1 is none other than the real brother of the Plaintiff. The order dated 07.11.2012 reads as under:

Matter was today listed for plaintiffs evidence at 2:15. On request of Ld. counsel for defendant No.1 matter has been taken up in the morning session. It has been informed by Ld. counsel for defendant No.1 that defendant No.1 has expired on 01.11.2012. He has placed on record cremation slip of defendant No.1. It has been submitted that plaintiff and defendants are brothers and plaintiff is well aware of the death of defendant No.1 as well as his legal heirs. Renotify for further proceedings on 12th February, 2013. HEMANI MALHOTRA (DHJS) JOINT REGISTRAR NOVEMBER07 2012 At this stage, Dr.Chaudhary Shamsuddin Khan with Mr.Jamal Akhtar and plaintiff in person have appeared who have been apprised of the order.

7. As against this, the averments made in the instant applications are:

2. That on 01.11.2012, the defendant no.1 died, the plaintiff came to know of it later on through reliable sources of the factum of death.

8. The Plaintiff has intentionally concealed from the Court not only that he was informed by the Joint Registrar on 07.11.2012 of the factum of death of Defendant no.1 having taken place on 01.11.2012 but also that he had attended Kriya ceremony which had taken place on 03.11.2012.

9. In para 5 of the application, which has been extracted above, the Plaintiff vaguely states that he came to know about whereabouts of the legal representatives of Defendant no.1 recently when he visited India on 10.01.2014. It

has nowhere been stated in any of the applications as to what prevented the Plaintiff to find out the whereabouts of the children of his deceased brother, particularly when all the family members were present at the time of Kriya on 03.11.2012. More so, Defendant no.2 is the widow of Defendant no.1 and sister-in-law of the Plaintiff. Not only this that the Plaintiff was highly negligent and dormant in taking steps for substitution of the legal representatives of his own deceased brother, even the conduct of the case before the death was highly dilatory which is evident from some of the orders passed by learned Joint Registrar.

10. By an order dated 09.08.2010, last opportunity was granted to the Plaintiff to produce his evidence, subject to payment of costs of Rs.5,000/-. The order dated 09.08.2010 is extracted hereunder:

No witness of the plaintiff is present today and it has been stated that the witness Mr. Jugal Kishore Sood is abroad and due to certain medical tests he is unable to come to India. Not only the present matter is of the year 1998 but also the previous order shows that there is gross negligence in pursuing the present matter on the part of the plaintiff. Moreover, in case the main witness of the plaintiff was not well then the plaintiff could have very well summoned some other witness as mentioned in his list of witnesses. I, accordingly, grant one last opportunity for leading plaintiff evidence subject to a cost of Rs.5,000/- to be deposited with Delhi High Court Legal Services Authority by plaintiff.

11. On 08.09.2010, the conduct of the Plaintiff was again noted by the Learned Joint Registrar when he closed the evidence of the Plaintiff. Subsequently, OA No.60/2010 was filed. The Plaintiff was again permitted to produce his evidence, subject to payment of costs of Rs.5,000/-.

12. From the orders passed by the Court and the orders by learned Joint Registrar from time to time, it is evident that the costs imposed on the Plaintiff did not deter him from conducting the proceedings at his will and that is why he had the audacity to say that he came to know of death of his brother, Defendant no.1 through reliable sources and that he came to know about LRs of his deceased brother recently and moved this application for substitution after a delay of 439 days.

13. The judgments cited by the learned counsel for the Plaintiff do not help a litigant who is grossly negligent and contumaciously defies the orders of the court.

14. The applications are accordingly dismissed. CS(OS) No.484/1998 15. The suit against Defendant no.1 abates as per the order dated 08.05.2013 already passed.

16. List before the Joint Registrar for recording evidence in terms of the previous order on 11.02.2015. G.P. MITTAL, J.

DECEMBER01 2014 vk

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