Bindeshwari Ahir And Anr. vs Bishwanath Singh And Ors. on 10 February, 1950

Equivalent citations: AIR1950ALL421, AIR 1950 ALLAHABAD 421

JUDGMENT

1. This is a defendant's appeal in a suit for specific performance of a contract to grant a lease of seven agricultural plots to the plaintiffs. The contract, according to the plaintiffs, had been entered into on 22nd September 1937, by the late Maharaja of Banaras, under which he agreed to grant this lease to the plaintiffs on certain terms which are mentioned in para. 3 of the plaint. These terms shortly were that the holding in Schedule A was to be leased to plaintiff 4 and the holding in Schedule B was to be leased to plaintiff's 1 to 3 these plaintiffs paying Rs. 1655/- to the Maharaja as nazrana. As a matter of fact, a similas amount was previously due to the Maharaja as arrears of rent from plaintiff 4 which the other plaintiffs 1 to 3, undertook to pay to him under the contract of lease. There was, according to the plaint allegation, a further understanding that the lease was to take effect from the beginning of the agricultural year following the contract in that behalf.

2. The plaintiffs, no doubt, deposited Rs. 1200/- in two instalments out of the sum of Rs. 1655/- which they had undertaken to pay to the Maharaja. Their case was that, when they saw the Naib Tahsildar on 29th August 1939, and offered to pay the remaining sum of Rs. 455/-the latter gave out that the record not having arrived the amount could not be accepted. In the result, it was not deposited.

3. About a year after this episode, the suit giving rise to the present appeal was filed on 18th September 1940, for a specific performance of the contract of lease and, in the alternative for Rs. 1200/- paid by the plaintiffs under the contract of lease and Rs. 168/- as interest. The defendants to the suit were : the Banaras State through Mr. C. R. Peters, President, Council of Administration, Banaras State' as defendant a and some other persons also arrayed on the same side. These others were persons who were claiming rights in the plots in dispute by virtue of a lease alleged to have been granted to them by the Council of Administration on receipt of a premium of Rs. 3000/-.

4. A number of defences were taken by the defendants, out of which I need mention only three, as these alone have stressed before me by the learned counsel for the appellants during the arguments. They were, (l) that the suit, as framed, was defective in view of the provisions of Sections 86 and 87, Civil P. C., (2) that the suit could not be maintained against the presents Maharaja and (3) that, in any case a decree for monetary compensation and not for specific performance might meet the ends of justice.

5. The contention on the first point by Mr. Shanker Sahai Verma, learned counsel fog the appellants, was that, while the plaintiffs had filed the suit after obtaining the necessary certificate Under Section 86 of the Code, the frame of the suit was defective and, indeed, fatal to the success of the claim. He urged that it was the Maharaja of Banaras himself who should have been mentioned as a defendant

and not only his State. In his support, he cited in particular two oases (1) G. T. Gilmore v. State of Travancore, 23 M. l. J. 605 : (17 I. C. 444) and (2) Gaekwar Baroda State Railway v. Hafiz Habib ul Haq, A. I. R. (25) 1938 P. C. 165 : (I. L. R. (1938) ALL. 601). These rulings were carefully noticed by the learned Munsif, who distinguished them on the ground that no certificate such as required Under Section 86 of the Code had been obtained in either of them. The former case was one in which a suit against the State of Travancore or its Dewan for damages had been brought. The argument was that Section 86 of the Code did not apply and, therefore, no certificate as enjoined by it was required, because the suit was not against a Sovereign Prince or Ruling Chief. The learned Judges held that the section did apply as no suit could be brought against a State as such, that the suit in effect, though not in form, was really against the Maharaja himself, and that, therefore, it was essential for the plaintiff to have obtained a certificate. In the latter case also, the position was that the suit had been filed against the Baroda State Railway without a certificate under the aforesaid section, and their Lordships of the Judicial Committee pointed out that the Railway which was owned and managed by men in the employ of the Maharaja was not a corporation, that a suit could not be brought against an assumed name, but that there must be some juristic entity capable of being sued. In this case also, it was pointed out that the suit against the railway was really against the Ruling Chief and that, therefore, the requisite certificate was necessary. The present suit, however, is not against an assumed name, but against a juristic entity which, in effect, though not in form, was the Maharaja of Banaras himself.

6. The view taken by the learned Munsif, as accepted also by the lower appellate Court, with regard to the above two cases is in consonance with the literal meaning of the language of Sections. 86 and 87 of the Code. While the former section permits a suit to be brought against a Sovereign Prince or Ruling Chief, subject only to the condition of a certificate of permission having been obtained from the Government, the latter section only prescribes the form in which such a suit has to be framed. This latter section is worded thus:

> "A Sovereign Prince or Ruling chief may sue and shall be sued in the name of his State."

The words 'in the name' in the section are very suggestive and they clearly indicate that, where such a Prince or Ruling Chief has to be sued, it is his State that has to be arrayed on the defendant's side and the suit shall be taken as one against the Prince or the Ruling Chief himself. Learned counsel for the defendants-appellants urged that to frame a suit as required by this section, only meant that the Sovereign Prince himself should be mentioned on the defendant's side and that the words 'in the name of his State' only meant that after the name of the Prince, the name of the State merely should be added. If this was the intention of the legislature, it could not have used the words 'in the name of' in the section, as once the name of a Sovereign Prince or Ruling Chief was mentioned on the defendant's side, the plaintiff would naturally also mention the name of the State of which he was the Prince or the Ruling Chief. The idea underlying the words 'in the name of' is that a certain identity of form was intended by the legislature, in the sense that one possible form was taken to be equivalent to the other equally possible form, that is to say, once the plaintiff mentioned the particular State as a defendant, it was intended that the Ruler of the State himself should be taken to have been arrayed. Mogha in his "Pleadings in British India" 5th Edn. p. 160 explained:

> "A suit against a Ruling Chief or Sovereign Prince may be brought in his personal name or in the name of nig State, but one against him should be brought in the name of his State, e.g., the Jaipur Stile or His Highness the Maharaja of Jaipur."

7. The word 'against' in the beginning of this passage is obviously a mistake for the word 'by' as would appear from Section 87 which, while making it optional for a Ruling Prince to sue in his own name or in the name of his State, makes it obligatory upon the plaintiff suing a Ruling Prince to sue him only in the name of his State. I am, therefore, of opinion that the suit, as framed, did lie and that the contention of the learned counsel for the appellants in this behalf is not correct.

8. As regards the other two points, namely that the plaintiffs were not entitled to a decree against the present Maharaja of Banaras or that they were only entitled to a monetary compensation and not to a decree for specific performance, I do not find any mention of them in the judgments of the Courts below, nor, I find, was there any issue on any one of these points. On the merits, I see no reason why the contract entered into by the plaintiffs with the late Maharaja cannot be enforced against his successor, the present Ruler. There is nothing in the provisions of the Specific Relief Act to negative such a position. On the second point too, I am not prepared to accede to the arguments of the learned counsel, as the question of monetary compensation in the alternative is partly a question of fact, in so far as it involves a determination of the amount payable in place of a decree for specific performance. The point not having been raised in defence and no evidence having been offered, it would be too late for me to allow the defendants to raise it for the first time in second appeal. The facts did not disclose any situation in which the Court might find it difficult to grant the relief to which the plaintiffs would certainly be entitled in the first instance. Nothing was involved which might furnish an occasion for the Court to exercise a discretion in favour of the defendants and in disregard of the orginal contract between the parties. I am, therefore, unable to accept the argument of the learned counsel on this point also.

9. For these reasons, there is no alternative but to uphold the decree of the lower appellate Court, and I, accordingly, dismiss this appeal with costs.

10. Leave to appeal under the Letters Patent is refused.