Maharaj Bali And Anr. vs Mt. Tirath Dei And Ors. on 13 February, 1951

Equivalent citations: AIR1952ALL608, AIR 1952 ALLAHABAD 608

Author: Ghulam Hasan

Bench: Ghulam Hasan

JUDGMENT

1. This revision application under Section 115, Civil P. C. is directed against an order of the Civil Judge of Gonda dated 6-12-1914, rejecting the application of the applicants for leave to sue in forma pauperis.

2. It appears that the applicants claimed title to succeed as reversioners to the property of one Sheo Dayal upon the death of his daughter Ganesha in 1932. The case put forward in the plaint was that Sheo Dayal died in 1865 leaving two widows Maharani & Rani. The former died in 1888 & the latter in 1908. Upon the death of Rani, Ganesha succeeded to the property which she held till her death in 1932. The defts. to the suit were some of the descendants of Ganesha & some transferees from her. The suit was brought in 1944. An application under Order XXXIII, Rule 1, Civil P.C. was made on the ground that the applicants were paupers & were unable to pay the court-fee which, according to the valuation fixed in the plaint, came to a sum of Rs. 2, 143/12. The value of the property set out in the schedule attached to the application was a sum of Rs. 250 in addition to some tenancy holdings. One of the applicants Maharaj Bali was examined in support of the application. In his statement Maharaj Bali stated that Sheo Dayal had a son Jai Ram, who survived him. He also stated that he owned some utensils which he had not shown in the schedule of assets & a decree against one Bishwa Nath for costs for Rs. 250. This was brought out in the cross-examination of Maharaj Bali. The statement was made on 2-12-1944, & the Ct. reserved orders for December 5.

3. ON December 4 Maharaj Bali filed an application stating that he had by an oversight mentioned that Jai Ram survived Sheo Dayal. As a matter of fact he should have stated that he had predeceased his father. Maharaj Bali also prayed that a copy of the judgment between him & Ganesha which supported him in this respect might be allowed to be admitted.

4. The Court pronounced orders on 6-12-1944 dismissing the application for pauperism. Relying upon the evidence of Maharaj Bali to the effect that Sheo Dayal's son Jai Ram survived him, the Court held that upon this statement the plffs.

appets. had no cause of action. The Ct. further held that the applicants had not shown the decree for Rs. 250 against Bishwanath in the schedule filed by them & relying upon a decision in Kuppuswami Naidu v. Varadappa Naidu, A. I. R. (30) 1943 Mad. 11 the Ct. took the view that this amounted to a fraudulent suppression of assets & must, therefore, result in the dismissal of the application. Both

these points have been challenged before as in revision.

5. So far as the first point is concerned, it is not necessary to deal with the matter at any length for the Counsel for the opposite parties is unable to support the view of the lower Court on that point.

6. As regards the second point, it has been contended before us that the decree for costs of of Rs. 250 was obtained by the applicants against a pauper & that even if that decree had been included in the schedule, it would not have made any material difference to the question of pauperism for the applicants were required, according to the plaint, to pay a sum of Rs. 2,143/12 as court-fee. We are of opinion that there is no substance in this contention. Order XXXIII, Rule 2, Civil P. C. required that an application for pauperism shall contain a schedule of the moveable or immoveable property belonging to the applicant, with the estimated value thereof. By Rule 5 it is provided that the Court shall reject the application for permission to sue as a pauper where it is not framed & presented in the manner prescribed by Rules 2 & 3. The language used in these two rules appears to suggest that the provision is mandatory in its nature. The Madras High Court in Kuppuswami Naidu v. Varadappa Naidu, A. I. R. (30) 1943 Mad 11 ruled that in an application for leave to sue in forma pauperis the utmost bona fide is required of the petnr. in the matter of disclosure of his or her assets & any intentional departure from good faith whatever the motive might be, must attract the consequence of a dismissal of the petition. It was also ruled that the fact that even if the suppressed assets were disclosed, it would not affect the question of pauperism, is not relevant.

7. In a Bench decision of the Patna High Court reported in Durga Prasad v. Srinivasa Sureka, A. I. R. (17) 1930 Pat. 368 the appellants had filed an application for leave to appeal as paupers but in the list of properties had omitted to mention the equity of redemption which they possessed in the property in suit. The appeal was filed against a decree which had been obtained by the mortgagees, against the mortgagor-appellants. The learned Judges held that the applicants not having stated the whole of their assets, their application was liable to be rejected on that ground. It was suggested to the learned Judges in the course of the arguments on behalf of the applicants that the case might be sent to the lower Court for an investigation to ascertain whether the applicants had acted in good faith or otherwise. The learned Judges refused to comply with this request holding that once it was shown that the application did not set forth the assets without most good faith, it was open to the Court to reject it ab initio & not to send it down for a further enquiry. This case was distinguished in a latter case of the Patna High Court Mt. Chamela Kuar v. Pursottam Das, A. I. R. (19) 1932 Pat. 308 which has been relied on for the applicants before us. That case is, however, distinguisable on facts. That was a case of a wife against the husband for maintenance which was brought alone with an application to sue in forma pauperis. The wife had mentioned the moveable property she possessed but had omitted to mention a few boxes & chaukis. Upon this statement of the wife the Subordinate Judge rejected the application as being not in accordance with the provision of Rule 2 of Order XXXIII of the Civil P. C. The learned Judge held upon the facts & circumstances of the case that there was nothing to suggest that the omission of these minor properties was a mala fide omission from the schedule. The case of Durga Prasad and Anr. v. Srinivasa Sureka was referred to & distinguished upon its own facts.

8. Another decision reported in Gangabai v. Shridhar Annaji, 8 Bom. L. R. 642 was brought to our notice on behalf of the applicants. The report of that case only shows that the court-fee required was Rs. 1,775 & the applicant possessed property of the value of Rs. 1,600. The lower Court had held that the applicant was not a pauper but this view was reversed upon the ground that Under Section 401, which corresponds to Rule 1 of Order 33 the applicant was not possessed of sufficient means to enable her to pay the fee prescribed for the plaint. There is nothing in the report of that case to suggest that the property, or any portion thereof, was deliberately omitted by the applicant from the list of the properties or that the applicant was guilty of bad faith in not including any property which she possessed.

9. Coming to the merits of the case, it appears to us that the applicants made no attempt to amend the schedule of the properties by including the decree for costs of Rs. 250 after the disclosure of this fact in the statement of Maharaj Bali on December 2. The statement was made in cross-examination & although the applicants, filed an application asking the Court to correct the statement made by Maharaj Bali that Jai Ram survived his father Sheo Dayal, no attempt was made to ask the Court to allow the applicants, to include the decree for costs in the schedule of assets. No decree was filed in that Court nor was any attempt made to show that the decree was worthless, as it is now pointed out on behalf of the applicants. Even do-day Mr. Tandon, who appears for the applicants, is unable to furnish any details of this decree. There is no evidence before us to suggest that this decree was obtained against a pauper or it was otherwise not recoverable. The trend of the order of the lower Court shows that that Court came to a finding, though impliedly, that in omitting the decree for costs the applicants were guilty of fraudulent suppression of assets. That is a finding of fact which the lower Court was perfectly competent to arrive at & it is not open to the applicants to ask this Court under Section 115, Civil P. C. to interfere with that finding.

10. Upon the whole we are satisfied that the decision of the lower Court dismissing the application of the applicants to sue in forma pauperis is correct. Having regard to the view we have taken on the merits it is not necessary to deal with the objection raised on behalf of the opposite parties that the revision under Section 115, Civil P. C. is not competent. We accordingly refuse to interfere.

11. It has been urged before us that the lower Court should have allowed the applicants to deposit the court fee within a reasonable period of time to be fixed by it. This seems to have been an oversight on the part of the Court. The opposite-parties have no objection to time being granted to the applicants for payment of court fee. We accordingly grant three months' time from to day for payment of the court fee in the Court below.

12. Subject to the modification above stated, the revision fails & is dismissed with costs.