

(1966) 11 PAT CK 0029
In the Patna High Court
Case No : Civil Revision No. 50 of 1963

Abdul Gaffar and Others

APPELLANT

Vs

Gayas Singh and Others

RESPONDENT

Date of Decision : 15-11-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 153
Limitation Act, 1963 — Section 5

Citation : AIR 1967 Patna 360

Hon'ble Judges : R.L. Narasimham, C.J; U.N. Sinha, J; Kamla Sahai, J

Bench : Full Bench

Advocate : Nagrendra Prasad No. 1, for the Appellant; Krishna Prakash Sinha and Nageshwar Saran, for the Respondent

Judgement

1. This revision petition was referred to the Full Bench by two Judges of this Court who thought that there was conflict of decisions as regards the true scope of Order 41, Rule 20 of the CPC and they formulated two questions for the consideration of the Full Bench. But after fully hearing Counsel for both sides and scrutinising the records we find it unnecessary to answer those questions. The material facts are as follows.

2. Ten plaintiffs filed a representative suit under Order 1 Rule 8 of the CPC for a declaration that plot No. 2871 having an area of 33 cents was Gairmazrui Am Imambara. The suit was decreed on 13-1-1961. Five of the defendants filed an appeal on 23-2-1961 in which they impleaded as respondents nine of the original plaintiffs. It is now admitted that the name of plaintiff No. 7, Seraiuddin, was omitted in the list of plaintiff-respondents. The appeal was admitted in due course on 9-3-1961 and Serajuddin along with two others filed Vakalatnama on 1-6-1961. But on 19-7-1961, he applied for cancellation of his Vakalatnama on the ground that it was filed by mistake. His prayer was allowed by the Court and his Vakalatnama was cancelled. After several adjournments when the appeal was about to get ready for hearing the respondents on the 7th November, 1962

objected to the maintainability of the appeal on the ground that plaintiff No. 7. Serajuddin, was one of the decree-holders and as he was not made a party the appeal was incompetent. On the next day namely, 8-11-1962, the appellants filed an application under Order 41, Rules 20 and 33 and Section 151 of the CPC saying that by inadvertence and oversight the name of Serajuddin had not been included in the memo of appeal and prayed that his name may be impleaded in the category of respondents. On the same day the appellants filed another petition u/s 6 of the Limitation Act alleging the same reasons for the omission to implead Serajuddin and requesting that the delay may be condoned. The Court heard both parties and posted the case for orders on 14-11-1962. On the latter date the Court, after some discussion of the case law on the subject, held that it had jurisdiction under Order 41, Rule 20, read with Section 161 of the Code to allow the name of Serajuddin to be impleaded as one of the respondents. But in paragraph 7 of the Order the Court further observed as follows:--

"I may also note that it seems that due to inadvertence plaintiff No. 7 was not added as a respondent. So I allow the application filed by the appellants and implead plaintiff No 7 as respondent."

3. If the Order of the lower Court had been based solely on the provisions of Order 41, Rule 20, Code of Civil Procedure, the question of law referred to us by the Division Benon regarding the conflict of decisions on the interpretation of the said provisions would have to be answered by this Court. But it was urged on behalf of the opposite party that the order of the lower Court, on a fair construction, should also be taken to be an order condoning the delay u/s 5 of the Limitation Act. and as this condonation was made in exercise of the discretionary power conferred on the Court by Section 6 of the Limitation Act, it was not revisable by this Court. Mr. Nagendra Prasad Singh. No. 1. on behalf of the petitioners however urged that the lower Court did not pass any order on the petition u/s 5 of the Limitation Act We are. however not impressed with this argument. It is true that the Order, dated 14-11-1962, refers only to the application filed under Order 41 Rule 20 and Section 151 of the CPC But the order of the previous date namely. 8-11 -1962. shows that both the petitions namely one under Order 41, Rules 20 and 33 and Section 151 of the CPC and the other u/s 5 of the Limitation Act. were heard and the case was posted for orders on 14-11-1962 The portion of the Order in paragraph 7 extracted above would further show that apart from the applicability of Order 41, Rule 20 and Section 161 of the CPC to the facts of the case the Court was also satisfied that due to inadvertence Serajuddin was not added as a respondent. We would, therefore, as a matter of construction, hold that the application u/s 6 of the Limitation Act had been allowed by the Appellate Court which undoubtedly had jurisdiction to condone the delay.

4. The question which now arises for consideration is whether this order should be revised by this Court. Our attention was properly invited by Counsel for the opposite party to the certified copy of the decree of the trial Court which was

filed in the appeal and we find there that the name of Serajuddin is completely omitted. Apparently, the mistake was committed while preparing the certified copy, and as is well known the Court's action should not prejudice anybody. Though the opposite party have not expressly stated that the omission of the name of Serajuddin in the certified copy of the decree was mainly responsible for their omission to implead him as a party nevertheless on going through the records we find that the learned lower Appellate Court's observation to the effect that the omission of the name of Serajuddin was due to inadvertence was fully justified. In such circumstances merely because the reasons for condoning the delay have not been fully set out in the order it will not be proper for us as a revisional Court to interfere with the finding of a competent court on the main question as to whether the delay should be condoned on an application u/s 5 of the Limitation Act or not. We are therefore, not inclined to interfere with the order of the learned First Subordinate Judge, Chapra, but at the same time we would draw his attention to the fact that steps should be immediately taken to get the certified copy of the decree corrected and also an opportunity should be given to the appellants to amend the memorandum of appeal by putting the correct names of the plaintiff-respondents. The petition is disposed of accordingly. There will be no order for costs.