

(1973) 01 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1130 of 1972

Bahadur Chand and Others	Vs	APPELLANT
Ashok Sharma and Others		RESPONDENT

Date of Decision : 16-01-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1(1), Order 6 Rule 17, Order 7 Rule 11

Citation : AIR 1974 P&H 52

Hon'ble Judges : Ranjit Singh Sarkaria, J

Bench : Single Bench

Judgement

1. This revision petition is directed against an order, dated 14th June, 1972, of the Subordinate Judge First Class, Rohtak, whereby he allowed the plaintiff to abandon his claim with regard to the non-agricultural property in suit, and also permitted the plaintiff to amend the plaint not only for deleting those portions that related to the abandoned claim, but also to state with clarity that the vendor was a profligate, etc., and the sale was effected without necessity. There is an observation in the impugned order to the effect that the plaint is rejected with regard to that part of the property in respect of which the claim had been abandoned by the plaintiff.

2. Same material facts may be noted.

3. The plaintiff is the son of Pt. Nand Lal. He claimed the usual declaration that the sale effected by his father and uncles in favour of the other defendants was void qua his rights as it was made without consideration and without any legal necessity. The sale in question embraced in its scope three kinds of properties, namely. (a) agricultural land, (b) a house bearing survey Nos. 132 and 133, and (c) a plot of land (building site). He paid Court fee on the value of agricultural land in dispute after calculating that value at 30 times the land revenue. He, however, did not pay ad valorem Court fee with regard to properties (b) and (c). With the aid of a Local Commissioner, the trial Court found that the value of

properties (b) and (c) was Rs. 3990/-. He, therefore, directed the plaintiff to pay ad valorem Court fee on the value of properties (b) and (c) and to file an amended plaint by 25th March, 1972. On 23rd March, 1972, the plaintiff, instead of making up the deficiency in Court fee, made an application under Order 6, Rule 17, Civil Procedure Code, stating that he was abandoning his claim with regard to properties (b) and (c), excepting the plot No. 133, the value of which was found by the Court to be Rs. 559/-. Thereafter, his counsel made a statement at the bar that the plaintiff was giving up his claim with regard to properties (b) and (c) altogether and was confining his suit to the agricultural land only, for which Court fee had already been paid. In the same application, the plaintiff also prayed that he be allowed to incorporate in the plaint itself, some additional facts, which he had pleaded in the replication.

4. The contention of Mr. Ram Rang, the learned counsel for the petitioner, is that since the plaintiff had failed to make up the deficiency in Court fee within the time allowed by the trial Court, the latter was bound to reject the plaint in toto under Order 7, Rule 11(c) Civil Procedure Code. The Court, proceeds the argument, in no circumstances was competent to reject the plaint, in part only. In support of his contention, the learned counsel has referred to *Maqsd Ahmed v. Mathra Datt & Co.* AIR 1936 Lah 1021, and *Bansi Lal Vs. Som Parkash and Others*, . It is also urged that the plaintiff was not entitled to abandon his claim with regard to properties (b) and (c) after the expiry of the time allowed for paying the Court fee, because Order 23, Rule 1(1), Civil Procedure Code, comes into play only after a suit has been properly instituted. It is maintained that there could be no proper suit before the Court till the deficiency in Court fee had been paid and, consequently, no order under Rule 1 of Order 23. Civil Procedure Code, allowing the plaintiff to abandon the claim could be made, in support of this contention, reliance has been placed upon *Mt. Asghari Begum Vs. Fasihuddin*, .

5. I have carefully considered these contentions. A reading of the impugned order, as a whole, shows that thereby the trial Judge accepted the abandonment by the plaintiff of his claim in respect of properties (b) and (c) and also allowed the plaintiff to amend the plaint and state further facts concerning the profligacy of the vendors, and also to delete those portions thereof which related to the abandoned claim. In such a situation, no question of rejecting that part of the plaint, which related to the abandoned claim and which had been allowed to be deleted, could arise. The observation in the impugned order, therefore, that the trial Judge was rejecting the plaint under Order 7, Rule 11(c), Civil Procedure Code, in so far as it related to the properties regarding which the claim had been abandoned, was merely futile and a surplusage. In fact, when the trial Judge accepted the abandonment of claim with regard to those properties and allowed the plaintiff to delete those portions of the plaint that related to the abandoned claim, nothing was left to be rejected under Order 7, Rule 11, Civil Procedure Code.

6. It is to be noted that no permission of the Court is required for a plaintiff to

abandon a part of his claim under sub-rule (1) of Rule 1 of Order 23 of the Code of Civil Procedure. Under that sub-rule, the Court had, therefore, no option in the matter of exercise of that right by the plaintiff. So far as this Court is concerned, it has consistently taken the view that the plaintiff can always abandon a part of his claim at his sweetwill to bring the suit within the Court fee already paid. It was so held by the Division Bench consisting of Teja Singh and Khosla. J J., in *Gaida Mal v. Madan Lal* AIR 1948 E.P. 30. The rule in *Maqsd Ahmed's* case AIR 1936 Lah 1021 and *Bansi Lal Vs. Som Parkash and Others*, is not applicable, because upon a proper construction of the impugned order as a whole, it is clear that the plaint has not, in reality, been rejected wholly or in part. Only the plaintiff has been allowed to delete by amendment those portions of the plaint which related to the abandoned claim.

7. Mr. Ram Rang further contended that the trial Court had wrongly allowed the plaintiff to amend the plaint for adding the plea that the plaintiff's father, the vendor, was a profligate, etc. because in order to succeed in such a suit the plaintiff has to plead and prove further that the debts, for which the alienation was made were connected with the immoral pursuits of the borrower.

8. It is not necessary for me to express any opinion with regard to this contention. Suffice it to say here that the amendment of the plaint did not change the character of the suit. The facts introduced had already been pleaded in the replication filed by the plaintiff, and by amendment he only elaborated the grounds of challenge stated in the original plaint. No valuable right had accrued to the defendants by lapse of time. No prejudice was, therefore, caused to the defendants by the order of the Court allowing the amendment.

9. For the foregoing reasons, the revision petition fails and is dismissed. Costs to abide the result of the suit. Let the records be returned forthwith to the trial Court for further proceedings.

10. Petition dismissed.