
(2014) 10 CAL CK 0018
In the Calcutta High Court
Case No : C.O. No. 2169 of 2014

Balai Khanra

APPELLANT

Vs

Shyamal Giri

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Citation : (2015) 1 CHN 103

Hon'ble Judges : Sanjib Banerjee, J.

Bench : Single Bench

Advocate : Anil Kumar Rakshit, for the Appellant

Judgement

Sanjib Banerjee, J.?The effective opposite parties are not represented despite service. A legal question of some importance has arisen herein. The issue is as to whether merely because a defendant had not filed a written statement prior to his death or entered appearance to contest the suit, his heirs and legal representatives are subsequently precluded from defending the claim or the suit.

2. The petitioners herein applied for being added as parties to a suit relating to an immovable property. The application was contested by the plaintiffs on the ground that the predecessor-in-interest of the petitioners herein had not filed any written statement and, accordingly, the plaintiffs were granted the exemption under Order 22 Rule 4(4) of the Code.

3. The Trial Court observed that since the predecessor-in-interest of the petitioners herein had not taken any interest in the matter and the plaintiffs obtained an order of exemption under the appropriate provision, the petitioners were not entitled to be added as parties or to contest the suit.

4. The legal effect of Order 22 Rule 4(4) of the Code is not that the heirs or legal representatives of a deceased defendant are precluded from contesting a suit. The provision confers a benefit on a plaintiff to be absolved of his obligation to give notice or bring on record the heirs or legal representatives of a deceased defendant who has not contested the suit; but the corollary does not hold good

that even if the heirs or legal representatives of a deceased defendant subsequently show interest and seek to contest the claim, they have to be shooed away for all time to come by reason of the perceived default of their predecessor-in-interest.

5. Indeed, there can be circumstances which may be explained and the Court may be persuaded to accept that the original defendant may not have had occasion to contest the suit. It is possible that the original defendant may have been incapacitated and, therefore, unable to contest the suit during his lifetime.

6. It is also not inconceivable that a recalcitrant defendant may subsequently be permitted to contest the suit and even file his written statement beyond the period envisaged in Order 8 Rule 1 of the Code. In fact, under the special provision of Order 8 Rule 1 of the Code applicable in this State, a defendant, theoretically, has the chance to file his written statement months and years after the service of the summons on him. It must also not be lost sight of that even a defendant who has not filed a written statement has the right to cross-examine the plaintiffs witnesses without introducing new facts by way of suggestions in course of such cross-examination.

7. If it is possible for a defendant who has not filed the written statement within the time originally permitted to subsequently show good grounds and lodge the written statement at a later stage and if it is further remembered that in extraordinary circumstances the Court always retains the right to enlarge the time stipulated by statute, it would not stand to reason that the heirs of a deceased defendant are precluded from contesting the suit or applying for leave to file their written statement at a belated stage upon citing sufficient cause. Order 22 Rule 4(4) of the Code is a provision for the benefit of a plaintiff that the plaintiff need not chase the elusive heirs of disinterested deceased defendant. The provision gives no licence to use it as a shield to deny the heirs or legal representatives of a deceased defendant any say in the proceedings. To wit, a plaintiff cannot seek the exemption under Order 22 Rule 4 as a matter of course. The exemption may be granted to the plaintiff if the Court thinks it fit to do so. The provision is the protection accorded to a claimant to save the claimant the effort of trying to bring persons who may not be interested in the action; it can never be a weapon to prejudice the rights of any other.

8. Viewed from a different perspective, an application of the kind that was before the Trial Court and on which the order impugned was passed, may also have been regarded as an application for undoing the exemption granted to the plaintiffs under Order 22 Rule 4(4) of the Code. The position may be better brought out with the help of an example. And nothing but an absurd example can drive home the point. Say, a defendant is served the writ of summons and the moment after acknowledging the receipt thereof he is incapacitated and he expires after a protracted period of suffering. The plaintiff in the suit would be perfectly justified in citing the service of the summons on the defendant and his subsequent failure to file his written statement to seek exemption under the

relevant provision consequent upon the death of such defendant. But the heirs of the deceased defendant may not have been aware of the institution of the suit prior to the death of such defendant or may be none the wiser in such regard even after his death. If the heirs were subsequently to come to know of the suit, it cannot be said that they would be precluded from seeking the order of exemption under Order 22 Rule 4(4) of the Code to be set aside and such heirs being substituted in place of the deceased defendant. It needs be emphasized that the facts of the particular case are of paramount importance. But there is no rigid rule that once a plaintiff obtains an exemption to substitute the heirs or legal representatives of a disinterested deceased defendant under Order 22 Rule 4(4) of the Code, such heirs can no longer be taken on board. The object of the judicial exercise is to do justice on facts subject to the applicable laws, but never to build insurmountable walls on the concrete of technicalities where justice itself is trapped outside.

9. Order 22 Rule 4(4) of the Code cannot be stretched to the point where it becomes an engine of oppression and a statutory mandate against the fundamental canons of natural justice. A note of caution has also to be added: merely because the heirs or legal representatives of a disinterested original defendant walk into Court, it does not mean that they have to be permitted by the Court to contest the claim at a belated stage. The point which is of importance is that Order 22 Rule 4(4) of the Code is not a complete bar to the heirs or legal representatives of a disinterested original defendant being entitled to contest the claim. However, every matter has to be decided on its own facts.

10. Since it is evident from the order impugned that the Trial Court proceeded on the erroneous legal proposition that the heirs or legal representatives of a disinterested defendant had no right to contest the claim, the order impugned dated May 20, 2014 is set aside and the petitioners' application before the Trial Court is restored to the board of the Trial Court for being considered in accordance with law as expeditiously as the business of that Court would permit.

11. CO 2169 of 2014 is allowed as above without any order as to costs. Certified website copies of this order, if applied for, be urgently made available to the parties, subject to compliance with all requisite formalities.