
(1951) 09 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision Petition No. 580 of 1951

Bansi Lal

APPELLANT

Vs

Som Parkash and Others

RESPONDENT

Date of Decision : 11-09-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 115

Citation : AIR 1952 P&H 38

Hon'ble Judges : Kapur, J

Bench : Single Bench

Advocate : C.L. Aggarwala, for the Appellant; S.L. Puri, for the Respondent

Final Decision : Allowed

Judgement

Kapur, J.—This is an appeal brought against an appellate order of Mr. Mani Ram Senior Subordinate Judge dated 16-5-1951 allowing the appeal against an order of Mr. Kartar Singh Chadha Subordinate Judge and remanding the case for trial.

2. The facts of the case are that five alienations were made—one by the father Sulekh Chand on 14-11-1930 for a sum of Rs. 3,000/-, three others by the Official Receiver one on 28-2-1935 and two on 15-8-1946, and the 5th on 12-4-1932 in a Court sale in execution of a decree against the father.

3. On 18-11-1949 three sons of Sulehh Chand, a major and two minors, brought a suit for declaration and possession. The father was by that time, dead and the sons were entitled to possession if their allegations were correct, but they brought the suit for declaration and possession as consequential relief. The trial Court held that as the alienations by the Official Receiver were void "ad-valorem" court-fee was payable and as to the other two the suit had been properly valued u/s 7(iv)(c) of the Court-fees Act, the value being Rs. 5/-, although one of the sales was for Rs. 3,000/-and as to the other sale it is difficult to discover as to how much it was for. The plaintiffs also filed a petition for review against the order rejecting the plaint but this was dismissed on the ground that it did not lie

under Order 47, Rule 1, Civil Procedure Code.

4. The order rejecting the plaint was appealed against in the Court of the Senior Subordinate Judge, who held that the order in regard to the three sales made by the Official Receiver was correct as also the valuation put in regard to the other two sales, and therefore he allowed the appeal in regard to the two sales and ordered the suit to proceed in the trial Court.

5. One of the vendees, Bansi Lal, has come up in appeal to this Court. By way of preliminary objection Mr. Puri has submitted that no second appeal lies from an order allowing an appeal against an order under Order 7, Rule 11 of the Civil P. C. This point, however, is not necessary to be decided in this case because in any case a revision would lie, and if what is stated by Mr. Chiranjiva Lal Aggarwal is correct, then a good ground for revision will be made.

6. As I. have said, the suit was for setting aside the five sales made by or on behalf of the father. The sons have brought the suit and have valued the relief in regard to each of the valuation at Rs. 5/-. The plaintiffs were asked to make up the deficiency in court-fee which they did not do and the Court rejected the plaint. Mr. Puri submits that soon after the order of rejection was passed an amended plaint was put in with the correct court-fee in regard to the three alienations made by the Official Receiver, but the learned trial Court erroneously dismissed the petition for review. In my opinion In these circumstances the review petition did not lie and and it was rightly rejected.

7. But the real question which arises in this appeal is whether there can be a partial rejection of the plaint. Mr. Chiranjiva Lal Aggar-wala submits that a plaint can either be rejected as a whole or not at all, and he has relied on a statement of the law given in Mulla's CPC at page 612 where it is stated : "This rule (Order 7, Rule 11) does not justify the rejection of any particular portion of a plaint." In support of this statement the learned author has relied on "Raghubans Puri v. Jyotis Swa-rupa", 29 All 325, "Appa Rao v. Secretary of State 54 Mad 416 and "Maqsud Ahmad v. Mathra Datt & Co. AIR 1936 Lah 1021. In reply to this argument Mr. Puri has submitted that it is really five suits which had all been combined in one and therefore in this particular case the rejection of a part was nothing more than rejection of three plaints. But the suit was brought on one plaint and not five suits were brought. The law does not change merely because the plaintiff chooses in one suit to combine several causes of action against several defendants which the law allows him. It still remains one plaint and therefore rejection of the plaint must be as a whole and not as to a part. I am therefore of the opinion that the learned Senior Subordinate Judge was in error in upholding the rejection as to a part and setting asid_e the rejection in regard to the other part. This appeal which I am treating as a petition for revision must therefore be allowed and the rule made absolute, and I order accordingly.

8. The parties will bear their own costa throughout.