

(2001) 05 CHH CK 0006
In the Chhattisgarh High Court
Case No : First Appeal No. 56 of 2001

Bhupendra Singh Babara and another	APPELLANT
Vs	
Municipal Council Ambikapur and another	RESPONDENT

Date of Decision : 03-05-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 1 Rule 8(1), Order 23 Rule 1(3), Order 23 Rule 3(2), 35A(2)

Citation : AIR 2002 Chh 7 : (2001) 1 CGLJ 469 : (2001) 3 MPHT 80

Hon'ble Judges : R.S. Garg, J

Bench : Division Bench

Advocate : Shri H.B. Agrawal, for the Appellant; Shri Prashant Mishra and Shri Manindra Shrivastava, for the Respondent

Judgement

R.S. Garg, J.—The plaintiffs/appellants along with the suit made an application under Order 1 Rule 8 of the CPC and also made a prayer that their suit be treated to be a representative suit or in the alternative their suit be treated to be instituted u/s 91 of the Code of Civil Procedure. The respondents/defendants contested the applications and inter-alia pleaded that the suit was filed with ulterior motive, the plaintiffs have no civil right in their favour and in a case like present a suit in the representative capacity could not be filed nor it could be deemed to be a suit u/s 91 of the Code of Civil Procedure. Though the matter was registered as civil suit but the questions were kept open. The learned trial Court heard the matter mainly on the question whether leave under Order 1 Rule 8 of the CPC could be granted or in the alternative the suit could be deemed to be one u/s 91 of the Code of Civil Procedure. After hearing, the learned counsel for the parties the Trial Court held that the suit, in fact, was not maintainable, it could not be treated to be one in the representative capacity and the leave to institute the suit in the public interest could not be granted. At the same time in Paragraph 30 of the judgment the Court below granted a decree in favour of the respondents. It directed the plaintiffs to pay Rs. 650/- per month for the period between June, 1992 to May, 1995, an amount with further addition of 15% from

June, 1995 to May, 1998 and with a further addition of 15% for the period between June, 1998 till the date of the final order and to pay further damages at the same rate. It also directed the plaintiffs to pay Rs. 5,000/- each as damages to the defendant No. 2. It also awarded compensatory cost/damages at Rs. 2,000/- in favour of the each of the defendant from each of the plaintiff. It is to be noted that while disposing of the application/suit the Court did not direct that a decree in terms of the said judgment be framed probably because the suit was not tried on merits but the application filed under Order 1 Rule 8 was dismissed. Being aggrieved by the said order dated 8-12-1999 the plaintiffs have come to this Court. The matter was originally registered as civil revision but was later on re-registered as first appeal.

2. Shri H.B. Agrawal, learned counsel for the appellants, submits that he is not challenging the finding recorded by the Trial Court regarding dismissal of his application filed under Order 1 Rule 8, CPC or refusal of the Trial Court to treat the suit in the public interest but the appellants are challenging the directions contained in Paragraph 30 of the judgment. According to him such directions are uncalled for.

3. Shri Prashant Mishra and Shri Manindra Shrivastava, learned counsel for the respondents have supported the order. According to them as each of the respondent had suffered losses because of this malicious and frivolous suit the Court below was absolutely justified in awarding the damages/compensation to them.

4. I have heard the parties at length and have perused the records.

5. It is not in dispute before me that in the present matter the written statement was not filed by the defendants. It is also not in dispute before me that the matter was lingering in the Court below for consideration of the different applications. It is also not in dispute before me that final orders on plaintiffs' application submitted under Order 1 Rule 8, CPC were not earlier passed and by the impugned order the said application was rejected. It is also not in dispute before me that application for grant of leave u/s 91 was not granted by the Court and in absence of the leave by the Court the suit could not be proceeded on merits.

6. Section 91 of the CPC provides as under :--"Section 91. Public nuisances.-- (1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,--

(a) by the Advocate General, or

(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right

of suit which may exist independently of its provisions."

7. Order 1 Rule 8 of the CPC provides as under:--"Rule 8. One person may sue or defend on behalf of all in same Interest,-- (1) Where there are numerous persons having the same interest in one suit,--

(a) one or more of such persons may, with the permission of the Court sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiffs expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of Order XXIII Rule 1, and no agreement, compromise or satisfaction shall be recorded in any such suit under Rule 3 of that Order, unless the Court has given, at the plaintiffs expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended as the case may be."

8. Section 91 of the CPC clearly provides that in the case of public nuisances or other wrongful act affecting or likely to affect the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case may be instituted with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act. Unless the leave is granted by the Court a suit instituted u/s 91 of the CPC cannot be treated to be a properly instituted suit. A Court before granting leave in case of public nuisance or other wrongful acts which affects considerable number of people or are likely to affect the public at large may grant the leave. Grant or refusal of such a leave has to depend upon the circumstances projected in the suit. If the

Court comes to the conclusion that the suit is motivated and/or is filed at the behest of some third party or has been instituted by some public spirited persons to cause loss or some injury to the defendants and otherwise there is no legal right in their favour either as the plaintiffs or as members of the public, then the Court can refuse to grant the leave. In the present case, by the impugned order the Court recorded a finding that the present matter did not relate to the public nuisance. It also recorded that present was a matter between the respondents where the respondent Municipality was leasing out certain properties in favour of the private respondent. It also found that relief prayed could not be granted. The result of refusal of the leave is that there is no suit before the Court. Though the proceedings were registered as civil suit but on refusal of the leave the suit would come to an end and the plaintiffs would not be entitled to any relief.

9. Order 1 Rule 8 provides that where there are numerous persons having the same interest in one suit, one or more or such persons may with the permission of the Court sue on behalf of or for the benefit of all persons so interested. Here in a suit which is ordinarily known as a representative suit the plaintiffs are required to make an application under Order 1 Rule 8, CPC. An application submitted under Order 1 Rule 8, CPC cannot be granted straight away but a notice of such application is to be published by the Court in the daily newspaper having circulation in the said locality at the expenses of the plaintiff. The people interested in the suit or opposing the suit may come and join the proceedings. If the permission is not granted by the Court then the Court is obliged to reject the application and dismiss the suit.

10. In either of the case, where u/s 91 of the CPC the leave is not granted or under Order 1 Rule 8, CPC where the permission is not accorded by the Court there is no suit before the Court for its trial. If there is no suit before the Court a written statement is not required to be filed in accordance with the provisions contained in Order 8 of the Code of Civil Procedure. It is only after the leave is granted or permission is accorded and the written statement is filed in the Court, the provisions contained in Order 14 of the CPC would come into play. In a case like that the Court would be required to cast issues and require the parties to lead evidence in support of their respective pleadings. If such issues are cast on the existing pleadings or on counter claim if any made by the defendants or about the special damages etc. or on the plea of the special damages etc. only then the Court can deliver a final judgment. In the final judgment in a suit like present the Court can grant the decree or dismiss the suit. While dismissing the suit the Court may award damages if claimed or may grant counter claim or may award special damages/ special cost to the defendants. In the present matter unfortunately even in the absence of the written statement and a full trial, while rejecting the applications submitted by the plaintiffs the Court has awarded the damages in favour of the defendants. It is not disputed before me that unless in a duly constituted written statement the damages were claimed, such damages could not be awarded. After going through the entire records of the Court below I am unable to hold that the directions contained in Paragraph 30 relating to

payment of rent and damages to the defendants 1 and 2 as contained in Paragraph 30 cannot be upheld. The directions as contained in Paragraph 30 (1) (2) (3) (4) and (5) deserve to and are accordingly set aside.

11. Learned counsel for the appellants submits that the directions as contained in Paragraph 30 (6) of the order passed by the Court below also deserve to be set aside because the Court had awarded Rs. 4,000/- as damages to each of the defendant and these directions run contrary to Section 35A,

12. Section 35A of the CPC reads as under :--

"Section 35A. Compensatory costs in respect of false or vexatious claims or defences.-- (1) If in any suit or other proceeding, (including an execution proceeding but excluding an appeal or a revision), any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court (if it so thinks fit), may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector, by the party by whom such claim or defence has been put forward, of costs by way of compensation.

(2) No Court shall make any such order for the payment of an amount exceeding (three thousand rupees) or exceeding the limits of its pecuniary jurisdiction, whichever amount is less: Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 [or under a corresponding law in force in (any part of India to which the said Act does not extend)], and not being a Court constituted (under such Act or Law), are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees: Provided further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.

13. According to sub-section (1) of Section 35A where the Court is of the opinion that the suit or other proceedings were false or vexatious to the knowledge of the party by whom it was put forward then the said Court after recording its reasons for holding such claim to be false or vexatious may make an order for

payment to the other side by the party by whom such claim was put forward, by way of compensation. It is not in dispute before me that the Court had the jurisdiction to award the compensation or compensatory cost.

14. Shri Agrawal, learned counsel for the appellants, placing his strong reliance on the language of sub-section (2) of Section 35A submits that the Court can make any such order for payment of an amount not exceeding three thousand rupees or exceeding the limits of the Court's pecuniary jurisdiction but only the lesser amount can be awarded. According to him, the pecuniary jurisdiction would depend upon the Court fee paid by the plaintiffs. According to him, if the pecuniary jurisdiction of a Court is considered in accordance with the powers conferred upon a Civil Court under the CPC then latter part would always become redundant and each Court would be entitled to award Rs. 3,000/-.

15. In the opinion of this Court the argument is misconceived. According to sub-section (2) of Section 35A the Court can award Rs. 3,000/- in maximum and this award of Rs. 3,000/- should not exceed the limits of the pecuniary jurisdiction of the said Court. The pecuniary jurisdiction of a Court is not decided on the strength of the valuation of the suit put forth by the plaintiff. The pecuniary jurisdiction of a Court is the jurisdiction under which the Court is entitled to hear and decide the suits on a particular valuation. The distribution memo issued under the Civil Courts Act has force of law and if under such distribution memo the pecuniary jurisdictions is given by the District Judge then a particular Court would have a particular pecuniary jurisdiction. Civil Judge or number of the Civil Judges may have different pecuniary jurisdiction as the Court of original jurisdiction. Similarly, an Additional District Judge or the Additional District Judges in view of the distribution memo may have the pecuniary jurisdiction to decide the cases of particular valuations. In a case where the suit is instituted before the Additional District Judge who has jurisdiction in the matters of Rs. 50,000/- and above it cannot be said that simply because the plaintiffs had valued their suit for the purposes of Court fees for Rs. 600/- only, the said Court would not have any jurisdiction beyond Rs. 600/-. It is to be seen that in the present suit the plaintiffs had valued the suit for the purposes of pecuniary jurisdiction at Rs. 2 lacs but for the purposes of Court fee they valued the suit for Rs. 600/- and paid Court fee of Rs. 60/- only. In the present suit it cannot now be said by the plaintiffs that the jurisdiction of the said Court was not Rs. 2 lacs because the plaintiffs themselves valued the suit for pecuniary jurisdiction at Rs. 2 lacs, even otherwise on a proper interpretation of law I am unable to hold that the pecuniary jurisdiction of a Court would depend upon the Court fee paid by the plaintiffs.

16. The directions as contained in sub-paragraph (6) of Paragraph 30 of the impugned judgment deserve to be modified so that the same fall within the ambit of Section 35A. It is hereby directed that each of the plaintiff shall pay Rs. 1,500/- to each of (he defendant meaning thereby that the plaintiffs jointly shall be liable to pay Rs. 3,000/- to each of the defendant as special damages. The

cost of the suit and the cost of this appeal shall be borne by the parties as incurred.

17. It is, however, clarified that if the defendants feel that because of the vexatious and frivolous suit they had suffered unnecessary damages or were put to loss then they shall be free to bring an action against the plaintiffs in accordance with law.