
(1955) 05 AHC CK 0008

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 854 of 1953

Ghasitoo

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 03-05-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 3, Order 41 Rule 30, 107(2)

Citation : (1955) 25 AWR 354

Hon'ble Judges : Brij Mohan Lall, J

Bench : Single Bench

Advocate : B.L. Dikshit, for the Appellant;

Judgement

Brij Mohan Lall, J.—This is a petition by one Ghasitoo under Article 226 of the Constitution praying that this Court may quash an order passed by Sri S.N. Mitra, Judicial Member, Board of Revenue, U.P. Allahabad, on 30th July, 1953 and may stay the operation of the said order.

2. It appears that one Saroop Singh instituted a suit u/s 183 of the U.P. Tenancy Act (XVII of 1939) against the Petitioner and several others. That suit was decreed by the trial court. On an appeal to the Commissioner the decision of the trial court was reversed and the suit was dismissed. Saroop Singh then filed a Second Appeal in the Board of Revenue which came up for hearing before Sri S.N. Mitra, Judicial Member of the Board of Revenue. Sri Mitra agreed with the view taken by the Commissioner and was of the opinion that the appeal should be dismissed. But Sri Mitra was conscious of the fact that in dismissing the appeal he was taking a view, on the question of interpretation of Section 246 of the U.P. Tenancy Act, which was inconsistent with a previous decision of the Board of Revenue. He was, however, desirous to have that previous decision overruled and he consequently referred the case to his colleague, Sri Rauf, for concurrence. The last two paragraphs of his judgment, which have been numbered as 9 and 10, are as follows:

9. The appeal has no force and must be dismissed with cost and counsel's fee of Rs. 40.

10. As it is proposed to overrule one of the Members of the Board, this case is sent to my learned colleague for concurrence.

3. It may be mentioned at this stage that under Rule 170 of the Revenue Court Manual it is open to a learned Member of the Board to dismiss a second appeal himself without seeking the concurrence of any other colleague of his. If, however, it is desired to allow the appeal, he has to send the case to his colleague. If the colleague to whom the case has been referred agrees with the referring Member, the appeal is allowed. But if he differs, the appeal has to be dismissed. In the other words, it is not until both the Members agree that the decisions of the Commissioner can be upset.

4. Giving the aforesaid two paragraphs of the judgment their plain meaning, it is obvious that Sri Mitra had finally made up his mind about dismissing the appeal, and he did not need the concurrence of his colleague for the purpose of dismissing the appeal. He could do so by his own order and, as a matter of fact, he purported to do so. The only object in referring the case to his colleague was to overrule the previous decision of the Board.

5. When the case was placed before Sri Rauf he also remarked that it was totally unnecessary for Sri Mitra, who wanted to dismiss the appeal, to send the record to him. He too interpreted the order of reference as having been prompted by the desire to overrule the previous inconsistent decision of the Board. With that object in view he examined the question. But, instead of agreeing with Sri Mitra, he differed from him and agreed with the previous decision which Sri Mitra wanted to overrule. After recording his own decision he sent back the file to Sri Mitra. This difference of opinion between him and Sri Mitra was an additional reason for dismissing the appeal. Strangely enough, Sri Mitra, on receipt of the record, allowed the appeal, without giving any party an opportunity to be heard again. He passed a brief order as follows:

The second appeal is allowed, the order of lower appellate court set aside and that of trial court restored with cost and counsel's fee of Rs. 50. Issue order accordingly.

6. The Petitioner has now come up to this Court and he contends that Sri Mitra had no jurisdiction to reverse his previous judgment. It is argued that he had himself decided to dismiss the appeal and the difference of opinion between him and Sri Rauf was an additional reason for maintaining the order of dismissal. It is also urged that no court can change its previous decision and that, in any case, it cannot do so without notice to the party to whose prejudice the new order would operate. In this connection, reference may be made to Order 20, Rule 3, of the Code of Civil Procedure, which runs as follows:

The judgment shall be dated and signed by the Judge in open Court at the time

of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by Section 152 or on review.

7. This rule takes away from a court the power to alter its judgment after it has once been signed except u/s 152 or on review. Section 152 of the CPC empowers a court to rectify a clerical or arithmetical mistake arising from any accidental slip or omission. Surely this was not the power which Sri Mitra was exercising. Nor did he purport to act by way of review because there was no such application before him and he did not give an opportunity to any party to reargue the case before him. Sub-clause (a) of the proviso to Rule 4(2) of Order 47 of the CPC provides that no review can be granted without previous notice to the opposite party. It is, therefore, obvious that Order 20, Rule 3, Code of Civil Procedure, took away from Sri Mitra the jurisdiction to alter his order. It was held in the Full Bench case of Allah Kabul Almin v. Ganga Sahai 1947 A.W.R. (H.C.) 249 that Order 20, Rule 3, of the CPC applies to the appellate courts also. In delivering the judgment of the Full Bench Malik, C. J. remarked as follows:

I cannot, therefore, accept the contention of Learned Counsel that by reason of Order 49, Rule 2 of the Code of Civil Procedure, Order 20, Rule 3 was not applicable to judgments pronounced and signed by a Judge of this Court. There is nothing in the Letters Patent or in any other provision of law which would justify this Court in disregarding the provisions of Order 20, Rule 3 which, by reason of Section 121, have the same force as if enacted in the body of the Code.

8. Reference may also be made to the provisions of Order 41, Rule 30, CPC This rule runs as follows:

The Appellate Court, after bearing the parties or their pleaders and referring to any of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

9. It will be noticed that in this rule there is no prohibition against altering the judgment such as is to be found in Order 20, Rule 3, Code of Civil Procedure. But, at the same time, there is nothing in this rule to permit the appellate court to alter the judgment at its sweet will after pronouncing it. In the absence of any prohibition, the general provisions contained in Order 20, Rule 3, Code of Civil Procedure, will apply. Had there been any provision contrary to Order 20, Rule 3 in Order 41, Rule 30, the special provision would have overruled the general provisions contained in Order 20, Rule 3. But if there is nothing to the contrary, in other words, if there is nothing expressly permitting an appellate court to alter its judgment, the prohibition contained in Order 20, Rule 3, remains applicable. I am not prepared to interpret the provisions of Order 41, Rule 30 as permitting an appellate court to alter its judgment after pronouncing it.

10. Moreover, Section 107(2) of the CPC lays down that the appellate court shall exercise the same powers and perform as nearly as may be the same duties as

the court of first instance. This section is an additional reason for holding that the limitations of the power of an appellate court in the matter of altering its judgment after pronouncing it are the same as those laid down by Order 20, Rule 3, Code of Civil Procedure.

11. The position, therefore, is that Sri Mitra had no power to alter his judgment which he had pronounced on 19th May, 1953 and by which he had dismissed the appeal.

12. It was contended by the Learned Counsel for the opposite parties that Sri Mitra had really pronounced no judgment on 19th May, 1953 and that his was, in substance, an order of reference. I have quoted the relevant portion of the judgment above which unmistakably shows that, so far as he was concerned, he had finally disposed of the case. I cannot interpret his judgment as an order of reference.

13. His later judgment dated 30th July, 1953 by which he, in substance, overruled his previous decision and decreed the appeal, was without jurisdiction.

14. The result, therefore, is that Sri Mitra's judgment dated 30th July, 1953 is quashed. A writ of mandamus shall issue directing him not to enforce that judgment. But this will not prevent the opposite parties from moving an application for review and Sri Mitra from disposing of that application in accordance with law. The Petitioner shall get his costs from the opposite parties.