

(2010) 08 AHC CK 0386
In the Allahabad High Court

Giriraj Dharan Rastogi and Another

APPELLANT

Vs

Prem Kumar Rawat and Others

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 6A(2), Order 20 Rule 7, Order 20 Rule 8, Order 41 Rule 1, Order 41 Rule 1(2)
Limitation Act, 1963 — Article 136, 12, 12(2)

Citation : (2010) 08 AHC CK 0386

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Anil Kumar, J.—Admit.

2. Issue notice to the respondents to show cause as to why the appeal should not be admitted.

3. Sri P.S. Mehra, learned Counsel for the appellants for the purpose of interim relief submits that the house of the appellants is situated over the corner plot which is surrounded in all the three directions by roads and towards the eastern side of the house of the appellants, there is house of Sri Sadhu Lal. The title deed submitted by the appellants in support of their written statement also shows that towards the western side of the suit property there is Rasta and house of Sri Sadhu Lal is situated towards the Eastern side, while there is Rasta towards North and South of the appellants house and the appellants have not encroached any "public Rasta".

4. Prima facie, submission made by the learned Counsel for the appellants appears to be correct, as such till the next date of listing, parties are directed to maintain status-quo as exists today.

5. List in the week commencing 20.09.2010.

6. Heard Sri P.S. Mehra, learned Counsel for the appellants and perused the record.

7. Present second appeal has been filed by the appellants challenging the the judgment and decree dated 31.03.2010 passed by the Additional Judge, Court No. 7, Lucknow In Regular Civil Appeal No. 192 of 2008 (Giriraj Dharan Rastogi and Anr. v. Prem Kumar Rawat and Ors.) for permanent and mandatory injunction directing the appellants to demolish the construction shown in the site plan, filed by the plaintiffs.

8. At the time of passing of the present appeal, the Stamp Reporter submitted a report which is as under:

In time up to 19.07.2010 beyond time by 22 days as on 10.08.2010.

9. The said report has been submitted by the Stamp Reporter taking into consideration the time spent in preparation of the judgment which is under challenge by the appellate court which is under challenge in the present case.

10. When the instant second appeal come up for hearing before the Court, Sri P.S. Mehra, learned Counsel for the appellants has raised an objection that the report given by the Registry/Stamp Reporter that the same is beyond of 22 days on 10.08.2010 is incorrect as the same is submitted by the Stamp Reporter without taking into consideration the time which has been spent in taking the decree passed by the appellate court.

11. Accordingly, a report has been called by the Stamp Reporter, the same has been submitted by him on 19.08.2010 inter alia stated as under:

In compliance of Hon"ble Court"s order dated 17.08.2010, it is most respectfully submitted that by amendment of the C.P.C. w.e.f. 01.07.2002, words of the decree has been substituted by the words "the memorandum shall be accompanied by the copy of the judgment", hence the filing of the copy of the decree with the memorandum of appeal as alleged by the learned Counsel is not mandatory.

Rule 6(A)(2) of Order XX of the C.P.C. provides as follows: "An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the court shall for the purposes of Rule 1 of Order XLI be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose.

Rule 7 of Order XX of the C.P.C. says as under:

The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

The provisions of Rule 6(A)(2) and Rule 7 of Order XX also clearly shows that

filing of an appeal against any judgment or order in the High Court does not require the copy of the decree. Hence, the period of preparation of decree cannot be excluded at the time of computing the limitation period.

In Para 9 of the judgment of Hon"ble Supreme Court dated 14.09.1999 in Civil Appeal No. 5065 of 1999(Supreme Court Cases 315), the following observations have been made:

...9. Rule 6A enjoins that the last last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment. It has fixed the outer time limit of 15 days from the date of the pronouncement of it within which the decree must be drawn up. In the event of the decree not so drawn up, Clause (a) Sub-clause (2) of Rule 6-A enables a party to make an appeal under Rule 1 of Order 41 C.P.C. without filing a copy the decree appealed against and and for the purpose the last paragraph of the judgment shall be treated as a decree.

In view of the above the limitation period is computed from the date of judgment and excluding the period of preparation of the certified copy of judgment, as there is no requirement of filing the copy of decree at the time of filing the appeal in the Hon"ble High Court.

12. Sri P.S. Mehra, learned Counsel for the appellants has submitted an objection to the report dated 09.08.2010 submitted by the Section Officer, Stamp Reporting Section.

13. By means of objection dated 17.08.2010 in Paragraph 5 of the said objection inter alia stated as under:

That the learned Stamp Reporter has also not properly considered the amendment of Allahabad High Court in provision of Order XLI Rule 1(2) CPC which provides that the Court may, for the sufficient reason except of Memorandum of Appeal without a copy of decree appealed from if the counsel for the appellant certifies that the copy has been applied for and has yet not been issued, subject to the copy being filed subsequently within the time granted by the court. In the instant case the certified copy of the decree has already been filed by the appellant alongwith the second appeal itself as such the limitation is to be calculated from the date of certified copy of decree made available to the appellants. Thus, the second appeal preferred by the appellants is well within prescribed period of limitation and accordingly the report submitted by the learned Stamp Reporter needs to be corrected.

14. I have heard learned Counsel for the appellants and gone through the report submitted by the Stamp Reporter, Registry Section of this Court and the objections submitted by Sri P.S. Mehra, learned Counsel for the appellants.

15. High Court amendment provides the procedure i.e. Rules of Order 41 and Order 41A shall apply so far as may be to appeals from appellate decrees. Every memorandum of appeal from appellate decree shall be accompanied by a copy of

the decree appealed from the unless the court sees fit to dispense with either or all of them i.e. copy of the judgment on which the such decree is founded, copy of the judgment of the court of first instance and a copy of finding of the civil court or revisional court as the case may be, where an issue was remitted to such court for decision. Under the rules of the court i.e. Chapter-IX Rule 8 documents shall accompany memorandum of appeal or revision application above mentioned i.e. copy of the decree or formal order against which appeal from application is directed and copy of the judgment upon which such decree or formal order is founded and further the copy of the judgment of the court of first instance where the appeal or the application is directed against an appellate or revisional decree or order.

16. Section 12 of the Limitation Act which deals with the computation of limitation, provides exclusion of time for the legal proceedings. In *Imperial Bucket Co. v. Smt. Bhagwati Basak* reported in 1954 cal 520, it has been observed that an appellant will have the benefit of Section 12 in a cases where he has annexed to the memorandum of appeal, a certified copy of the judgment appealed from, even though by the Statute under which the appeal is filed, no certified copy of the order appealed from is required. It is decided by the judicial committee of the Privy Council as far back as in the year 1928 that the provisions of Section 12(2) of the Limitation Act would apply even though a copy of the judgment was not required to be filed alongwith the memorandum of appeal.

17. It was held in case of *Jiji Bhoy N. Surty v. J.S. Chettiyar Firm* reported in AIR 1928 PC 103, that the time requisite for obtaining copies of the judgment and decree has to be excluded far from the computation.

18. In the case *Kolikipudi Atchamma and Others Vs. Kolikipudi Ketu and Another*, wherein it has been held that the period of limitation in preferring an appeal has to be computed on the basis of the copies of the judgment and decree produced alongwith the memorandum of appeal.

19. Hon'ble the Apex Court in the case of *Udayan Chinubhai v. C. Bali* reported in AIR 1977 SC 2319 observed that it is not possible to conceive how a person obtained a copy of the decree if that decree, in view of the recital in the judgment pronounced, cannot be preferred without some further action by a party. The judgment which is unconditioned by the requirement of any action by a party stand on a different footing and in that even the date of a party judgment will necessarily be date of decree.

20. In such a case, a party cannot take advantage of any ministerial act in preferring the decree prior to his application for a copy, where a decree is not drawn up immediately or soon after the judgment is pronounced, 2 types of case may arise.

21. A litigant feeling aggrieved by the decision may apply for certified copy of the judgment and decree before the decree is drawn up or he may apply for the

decree after it is drawn up. In the former case, when the litigant has done all that he could and has made a prior application for obtaining necessary copies, the time requisite for obtaining copies necessarily include not only the time taken for the actual supply of the certified copy of the decree but also for the drawing up of the decree itself.

22. In the case of Lala Balmukund (Dead) through Lrs. Vs. Lajwanti and Others, it has been observed that "time requisite" as used in Section 12(2) means all the time counted from the date of pronouncement of the judgment, (the same being under Order 20 Rule 7 C.P.C., the date of the decree) it would be properly required for getting a copy of the decree including the time which must ex-necessitate elapse in the circumstances of the particular case before decree is drawn up and signed. The appellant is entitled to the exclusion of the entire period between the date of pronouncement of the judgment and the date of signing of the decree.

23. Same view was reiterated in the case of Udayan Chinubhai v. R.C. Bali reported in AIR 1977 SC 2319. In the present case the reliance placed by the Stamp Reporter upon the judgment reported in 1999 Supreme Court 3421 wherein it has been propounded that the period of limitation for execution of the decree under Article 136 of the Limitation Act will be from the date of the decree found not from the date when the decree is actually drawn up and signed by the judge.

24. As already stated above, even if the filing of the decree and the judgment of the trial court is not required under Statute even then certified copy of the judgment stands applied for the preparation of the appeal, time spent in obtaining the certified copies of the judgment and decree has to be excluded and if counted on that score, the appeal filed by the appellant is within time.

25. Further, Order 41 Rule 1 as amended provides that the memorandum of appeal shall be accompanied by a copy of the judgment, hence the contention of the Stamp Reporter that the period spent in obtaining certified copy of the judgment has to be excluded only is not correct as without filing the copy of the decree, appealed from as well as judgment of the trial court, the appeal would not be competent, hence the period spent in obtaining the certified copy of the judgment and decree has to be excluded as without those documents i.e. the judgment of the trial court and the decree the appeal will not be said to be in proper form.

26. For the foregoing reasons, the objections submitted by the Stamp Reporter, of the Reporting Section of this Court dated 09.08.2010 at the time of passing of appeal that the appeal is barred by limitation by 22 days as on 10.08.2010 being contrary to the provisions as provided under Order XLI Rule 1(2) of CPC is overruled and set aside and the appeal is treated as within time taking into account the time spent by the appellants in taking the decree.

27. The Registrar of this Court is directed to place the order before the Registry

for necessary compliance.