
(1983) 02 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8189 of 1980

Gulam Mohammad and Others

APPELLANT

Vs

1st Addl. District Judge and Others

RESPONDENT

Date of Decision : 21-02-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 12, Order 22 Rule 3, Order 22 Rule 4, Order 22 Rule 8

Citation : AIR 1984 All 12

Hon'ble Judges : V.K. Khanna, J

Bench : Single Bench

Advocate : Bhuneshwar Prasad, for the Appellant; Rajendra Kumar and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Khanna, J.—This writ petition has been filed against the order of I Additional District Judge. Varanasi, dated 19-9-1980 affirming the order of the II Civil Judge. Varanasi by which he allowed applications 51-C dated 27-2-1979 and 57-C moved by the plaintiffs for bringing legal representatives of deceased plaintiff No. 1 and some of the defendants on record in a proceeding for preparation of final decree.

2. The sole controversy in the present writ petition centres round the question as to whether the provisions of Order 22, Rule 12. C.P.C. as amended by this court, apply to the case in view of the provisions of Section 97 of the C.F.C. (Amendment) Act (Act No. 104 of 1976). The other question which arises for determination is as to whether, in case, the Allahabad amendment to Order 22. Rule 12. C.P.C. survives after U. P. Act No. 104 of 1976, the same will have application to the present case.

3. As far as the first argument raised by the learned counsel for the petitioners is concerned, in my opinion the same has no force in view of the decision of the Full Bench of this Court reported in 1979 All LJ 401 (Smt. Chandra Rani v.

Vikram Singh). The learned counsel for the petitioners conceded that in similar situation the Full Bench held that the provisions of Order 15. Rule 5. C.P.C. as added by State of Uttar Pradesh were not repugnant to the CPC as amended by Act No. 104 of 1976. If one sees the history of the proviso added to Order 22. Rule 12, C.P.C there is no escape from the conclusion that the proviso so added by the High Court to the aforesaid Order 22, Rule 12, C.P.C. was for the purposes of bringing it in conformity with the decisions by practically all the other High Courts in the country. The proviso is, therefore, in the nature of a clarification and thus by no stretch of imagination can be said to be in conflict with the main provisions of Order 22, Rule 12. C.P.C. There is thus no force in the contention raised by the learned counsel for the petitioners in so far as this argument is concerned.

4. The learned counsel for the petitioners in the alternative argued that the proviso added by this court to Order 22. Rule 12 C.P.C. will have no application to the preparation of the final decree in a partition suit. It has been contended that in view of the decision of the Privy Council in the case of AIR 1940 11 (Privy Council) the proceedings for the preparation of final decree are in continuation of the suit and thus the provisions of Order 22, would apply even at the stage of preparation of final decree. Reliance has also been placed on two decisions of this court (1) Anmol Singh and Others Vs. Hari Shankar Lal and Others , Mahabir Singh Vs. Narain Tewari and Others . Relying on these two Allahabad decisions the learned counsel for the petitioners has contended that even after the decision of proviso to Order 22, Rule 12. C.P.C. by this Court, the view was that in case substitution has not been made in respect of a deceased party even during the pendency of the preparation of final decree, all the provisions of Order 22. will have application and the suit shall abate. I am unable to accept the contention raised by the learned counsel for the petitioners. It has not been disputed that proviso to Order 22, Rule 12, C.P.C. as it stands now. was amended on 14th Feb. 1931. It is thus clear that at the time when this court was deciding the case of Anmol Singh and Others Vs. Hari Shankar Lal and Others the proviso, as exists now. had not been added by this Court. This will also be clear from the observations made in the body of the judgment which runs as follows :

".....It may further be pointed out that Rule 12 of that order expressly excludes the operation of Rule 4. from proceedings in execution of a decree or order and does not exclude its operation in the case of proceedings between the preliminary decree and the final decree. Had the Legislature intended to exclude such proceedings. The position would have been made clear in Rule 12." (Emphasis provided)

5. It however, appears that in the case of Mahabir Singh Vs. Narain Tewari and Others one of the questions which was referred to the Full Bench was as to whether there can ever be an abatement of a suit after the passing of a preliminary decree in view of recent amendment of Order 22. Rule 12, C.P.C. It is true that Acting Chief Justice Suleman affirmed the decision given by him in the

case of Anmol Singh and Others Vs. Hari Shankar Lal and Others . However, as far as the two other Judges are concerned one of them expressed no opinion on that question while Justice Banerji specifically said that the third question was really of no material importance now that this Court has amended Order 21, Rule 12, C.P.C. It may, however, be pertinent to note that in two latter decisions of this Court reported in Narain Das Vs. Bhagwati Prasad and Sewa Ram and Others Vs. Giyan Singh and Others, , Chief Justice Suleman himself has clarified the position. In the case of Sewa Ram (supra), it was said that :--

"The mere fact that the law was changed which would now not make a suit abate on the death of a defendant after the passing of a preliminary decree cannot have the effect of automatically reviving all suits which had abated previous to the amendment.(Emphasis provided)

6. Suleman C. J., in the case of Narain Das (supra) also made observations to the same effect :--

""Anmol Singh"s case was one in which the question was whether a mortgage suit could abate after a preliminary decree had been passed. The Bench came to the conclusion that in view of the previous rulings of this court as well as of other High Courts, which in their opinion had not been even indirectly overruled by the pronouncement of their Lordships of the Privy Council in the case of Lachmi Narain v. Balmakund (AIR 1924 PC 198) . it must be held that the suit continued till the final decree was passed and that Order 22 which in terms applied to a pending suit was equally applicable; See also Bhatu Ram Modi and Another Vs. Fogal Ram, , In order to avoid all such difficulties Order 22. Rule 12 has been amended by this court so as not to make Rules 3. 4 and 8 applicable to proceedings after the preliminary decree". (Emphasis provided).

7. From the latter decision of this court it is, therefore. clear that after the adding of the proviso by this Court on 14-2-1931 the provisions of Rules 3, 4 and 8 of Order 22, C.P.C. shall not apply at the stage of preparation of final decree and thus there could be no question of any abatement of the suit. In my opinion, the view taken by the court below is, therefore, in accordance with the provisions of law and cannot be said to suffer from any error of law apparent on the face of the record requiring interference under Article 226 of the Constitution of India.

8. For the reasons stated above, the present writ petition is dismissed. However, in the circumstances of the case, the parties shall bear their own costs.