
(2007) 09 AHC CK 0098
In the Allahabad High Court
Case No : Second Appeal No. 2179 of 1975

Halkoo and Ors.

APPELLANT

Vs

Tulai & Ors.

RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2007) 09 AHC CK 0098

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—Pursuant to the order dated 18th April, 2007, the case is listed today.

2. By the said order dated 18th April, 2007, service of notices on the defendantsappellants Nos. 1 to 5 to engage another Counsel consequent to the death of Sri Ashok Gupta, who had been appearing as the learned Counsel for the defendantsappellants, was deemed to be sufficient.

3. As regards the defendantappellant No. 6, the registered envelop wherein the said notice had been sent to the defendant appellant No. 6 (Smt. Bhuri), was returned back unserved with the endorsement that the addressee (Smt. Bhuri) had already died. In the circumstances, the said order dated 18th April, 2007 directed the office to submit report as to whether any Substitution Application had been filed on behalf of the heirs and legal representatives of the defendantappellant No. 6 for being substituted in place of the defendantappellant No. 6.

4. Pursuant to the said direction given in the order dated 18th April, 2007, the office has submitted its report dated 8th May, 2007. A perusal of the said report shows that no Substitution Application has been filed on behalf of the heirs and legal representatives of the defendantappellant No. 6 for being substituted in place of the defendantappellant No. 6.

5. In the circumstances, the Second Appeal at the instance of the defendantappellant No. 6 (Smt. Bhuri) stands abated.

6. As the Second Appeal is an old one being of the year 1975, the Court is proceeding to pass order on merits of the Second Appeal keeping in view of the fact of abatement of the Second Appeal at the instance of the defendantappellant No. 6 (Smt. Bhuri).

7. It appears that the plaintiffsrespondents filed a suit being Original Suit No. 427 of 1971 for permanent injunction against the defendantsappellants seeking to restrain the defendants appellants from interfering with the possession of the plaintiffsrespondents over the disputed house.

8. The trial Court by its judgment and order dated 18th March, 1974, decreed the said suit, and restrained the defendants appellants from interfering with the possession of the plaintiffsrespondents over the disputed house.

9. Against the said judgment and decree dated 18th March, 1974 passed by the trial Court, the defendantsappellants filed an appeal being Civil Appeal No. 71 of 1974.

10. By the judgment and order dated 9th September, 1975, the said Civil Appeal No. 71 of 1974 was dismissed.

11. Thereupon, the defendantsappellants filed the present Second Appeal which was admitted by the order dated 17th December, 1975.

12. As noted above, the Second Appeal at the instance of the defendantappellant No. 6 (Smt. Bhuri) has stood abated. The question arises as to whether the Second Appeal can now be proceeded with at the instance of the defendantsappellants Nos. 1 to 5 and be decided on merits.

13. As noted above, the trial Court by its judgment and decree dated 18th March, 1974 decreed the said suit filed by the plaintiffsrespondents and restrained the defendantsappellants from interfering with the possession of the plaintiffs respondents over the disputed house.

14. The said decree of the trial Court was confirmed by the Lower Appellate Court by its judgment and order dated 9th September, 1975.

15. The said decree was a composite decree of permanent injunction in favour of the plaintiffsrespondents and against the defendantsappellants in respect of the disputed house.

16. The said decree has become final in so far as the defendant appellant No. 6 (Smt. Bhuri) is concerned as the Second Appeal at her instance has abated.

17. In case, the Second Appeal is now proceeded with and heard on merits and is ultimately allowed and the decree passed by the Courts below for permanent injunction in respect of the disputed house is set aside, the same will lead to inconsistent decrees in the said suit in respect of the subjectmatter of the suit,

one in favour of the plaintiffsrespondents decreeing the said suit in respect of the disputed house, and the other in favour of the defendantsappellants Nos. 1 to 5 dismissing the said suit in respect of the said house.

18. This, in my view, is not permissible. Reference in this regard may be made to a decision of this Court in Second Appeal No. 164 of 1984, Ram Gopal & Ors. v. Bhuluwa & Ors., decided on 1022006, and the caselaw noticed therein.

19. In the light of the above discussion, I am of the opinion that in view of the abatement of the Second Appeal at the instance of Smt. Bhuri (defendantappellant No. 6), the Second Appeal cannot be proceeded with and is liable to be dismissed in entirety.

20. The Second Appeal is accordingly dismissed in entirety with costs.