
(2012) 10 AHC CK 0155
In the Allahabad High Court
Case No : Second Appeal No. 111 of 1991

Hari Ram

APPELLANT

Vs

Bittu

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2012) 10 AHC CK 0155

Hon'ble Judges : Saeed-Uz-Zaman Siddiqi, J

Final Decision : Dismissed

Judgement

SaeedUzZaman Siddiqi, J.—Heard learned counsel for the respondents as none appeared on behalf of the appellant.

2. A perusal of the ordersheet shows that the appellant in this case is applying all the crookedness available to a mischievous litigant and thereby making the entire judicial system to ridicule.

3. The chronology of the case is that the second appeal was filed on 07.03.1991 and it was admitted on the same date, vide order as reproduced below:

"As substantial questions of law is involved in this second appeal, the appeal is admitted. Issue notice to the respondent."

4. Thereafter, notices were issued and served, the case was listed for hearing on numerous dates on which it was adjourned due to nonappearance of the appellant's counsel.

5. Ultimately on 21.07.2003, appellant continued to apply on the same practice and the appeal was passed by passing the following order:

"Case called out, none turns up to press this appeal on behalf of appellants. However, Sri A.S.Chaudhary, learned Counsel for the respondent is present.

Even otherwise on merits I find that there are two concurrent findings of fact

recorded by the two courts below and there is nothing on record to show that the findings recorded by the two courts below are in any way perverse, illegal or against the evidence on record. In fact no substantial question of law is involved in this appeal. I find no reason to disagree with the findings recorded by the two courts below.

The appeal is accordingly dismissed."

6. Again, a review petition was moved, bearing review petition No. 228 of 2003, which was allowed and the appeal was again listed for hearing, vide order dated 20.04.2005. The mischievous appellant against made mockery of the judicial system and he disappeared. The learned Judge of this Court (Hon'ble Rakesh Sharma,J) heard the appeal, on merits, and relied upon the law laid down by the Hon'ble Apex Court in Dr. Buddhi Kota Subbarao vs. K. Parasaran & Ors. [AIR 1996 SC 2687], Nirankar Nath Wahi vs. Fifth Additional District Judge, Moradabad [AIR 1984 SC 1268], R Vishwanathan & Ors. vs. Abdul Wazid [AIR 1963 SC 1], Bashir Ahmed vs. Mehmood Hussain Shah [AIR 1995 SC 1857], Salem Advocate Bar Association (II) vs. Union of India [AIR 2005 SC 3353], Shibanand Mukherjee vs. Gopal Chandra De [(2005) 11 SCC 557], Syed Naseem Ahmed vs. Mohd. Abudul Hakeem [2005 12 SCC 302]. Ultimately, the appeal was dismissed. The appellant again moved application, for recall of the judgment passed by this Court, which was again dismissed on 17.10.2008. Again the appellant moved application for restoration bearing C.M. Application No. 108212 of 2008, by which the second appeal was restored to its original number. This order was passed on 23.01.2009.

7. Since then, the other party is running from pillar to post and is yet to see the light of the day. After 23.01.2009, the appellant did not appear as learned counsel for the respondent was heard at length.

8. I have perused the records of the file and scrutinized the judgments passed by the two Courts below. It appears that this court has committed a gravest error in admitting the second appeal on 07.03.1991, which has provided the appellant an instrument to degrade the majesty of law and justice as well the reputation of this court.

9. A simple dispute is for cancellation of saled deed on the ground that the plaintiff/appellant has executed the saled deed on the pretext of executing power of attorney. The registered document can only be cancelled by leading cogent evidence. Both the learned courts below, learned Trial Court as well as learned First Appellate Court have discussed the evidence, in detail, and have not committed any error, while discussing the evidence lead by the parties. No other legal point is involved in this case. The first appeal was rightly decided as dismissed. In either case, it is apparently clear that the appellant has misused the majesty of this Court and has proved himself to be a person to make the judicial system to ridicule.

10. It is needless for this Court to enter into much detail, as order dated

5.9.2008 passed by this Court (Hon"ble Rakesh Sharma, J.) has dealt with the behaviour of the appellant, as well as the facts and circumstances of the case, in detail. This order shall be treated to be a supplement of that order. However, it is to be mentioned here that the appellant has played fraud with this Court repeatedly, in a contumacious manner, by extending undertakings insuring this Court to get the appeal disposed of, but skipped over. The pendency of this appeal is a fraud on the point of law and "Fraud avoids all judicial acts, ecclesiastical or temporal." Even today the name of the learned counsel for the appellant is printed as respondents" counsel, which may likely to be taken a ground for recall of this order in another attempt to impress upon the society that civil law remedies are endless and unable to borne results, as desired by the society, at large.

11. In T. Arivandandam v. T.V. Satyapal and another, reported in AIR 1977 SC 2421, the Hon"ble Supreme Court has held:

"The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes decree with judicial seals brutum fulmen. the long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive."

12. In Rajappa Hanamantha Ranoji v. Mahadev Channabasappa & ors, reported in 2000 SCFBR 321, the Hon"ble Supreme Court has held as under:

"It is distressing to note that many unscrupulous litigants, in order to circumvent orders of the courts adopt dubious ways and take recourse to ingenious methods including filing of fraudulent litigation to defeat the orders of the courts. Such tendency deserves to be taken serious note of and curbed by passing appropriate orders and issuing necessary directions including imposing or exemplary costs."

13. In Ravinder Kaur v. Ashok Kumar & anr., reported in 2003 AIR SCW 7158, the Hon"ble Supreme Court has held as under:

"Courts of law should be careful enough to see through such diabolical plans of the judgmentdebtors to deny the decreeholders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law"s delay and bringing bad name to the judicial system."

14. The appeal is accordingly dismissed with Rs. 1,00,000/ as cost which shall be recovered as arrears of land revenue. The appellant shall pay to the respondent or deposit the amount before the learned Trial Court within thirty days from today failing which, the learned Trial Court shall get it executed.