

(1979) 02 PAT CK 0004
In the Patna High Court
Case No : Civil Revision No. 1879 of 1978

Hira Sharma

APPELLANT

Vs

Hakim Habibullah

RESPONDENT

Date of Decision : 20-02-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2(3), 115

Citation : AIR 1979 Patna 232

Hon'ble Judges : Hari Lal Agrawal, J

Bench : Single Bench

Advocate : Gorakh Nath Singh and S.P. Singh, for the Appellant; Sadaquat Hussain and Mahfooz Ahmad, for the Respondent

Final Decision : Dismissed

Judgement

Hari Lal Agrawal, J.—In this application in revision by the defendant a question arises as to whether the Subordinate Judge was right in granting leave to the plaintiff-opposite party under Order 2, Rule 2 (3) of the Civil P. C. (hereinafter referred to as "the Code") to institute another suit for the relief of possession of the suit properties, the present suit being merely for declaration of his title.

2. The plaintiff instituted the present suit only for a declaration of his title with respect to a house property on the basis of a sale deed executed by Sarjoo Sah, defendant No. 1. The sale deed was executed in his favour on 17-7-1976 for Rs. 20,000 leaving with him a sum of Rs. 7,000 out of the consideration for redeeming a mortgage bond of the house in favour of defendant No. 2. In these circumstances, he instituted the suit for a relief of declaration of his title only on the basis of the sale deed.

Defendant No. 2 in his written statement, inter alia, raised a plea that the suit was barred under the provisions of the Specific Relief Act. However when the suit became ready for hearing the plaintiff filed a petition for grant of leave to bring another suit subsequently in terms of Order 2, Rule 2 (3) of the Code as stated

earlier. The plaintiff stated in that petition that he was entitled to seek a further relief, namely, a decree for possession, the cause of action for the said relief being the same. This prayer has been granted by the court below.

3. On the facts stated above, two facts emerge which are undisputed, namely, that (i) the plaintiff was entitled to claim a further relief, namely, the relief for possession and (ii) that relief was founded on the same cause of action. Question arises as to whether on the facts of the present case, the learned Subordinate Judge committed any error of jurisdiction in granting the relief to the plaintiff under the provisions of Order 2, Rule 2 (3) of the Code.

4. The Scheme of Order 2, Rule 2 of the Code as would appear from its very beginning is that every suit should include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action unless of course, he chooses to relinquish any portion of the same in order to bring the suit within the jurisdiction of any Court, and omission to sue in respect of the whole of the claim, debars him to sue in respect of the said omitted or relinquished portion the defendant afterwards. Then comes Sub-rule (3) which empowers the court to grant leave to a person to sue for a further relief afterwards in respect of the same cause of action. The scheme of Order 2, Rule 2, therefore, is obvious that splitting of the claim is not permissible unless it is a case of a relinquishment, but in appropriate cases leave can be granted to reserve a right to institute a suit afterwards available to a person on the same cause of action. It need not be said that if the cause of action in the subsequent suit is different from that in the first suit, the provisions of Order 2, Rule 2 will not be attracted and the subsequent suit will not be barred. The bar will apply only if the cause of action is the same, and as already said earlier, it is not disputed that the cause of action for the relief of possession is the same.

5. Reliance in support of this application has been put on a single Judge decision of the Calcutta High Court in the case of Bimal Kumari Vs. Asoke Mitra and Another, . That was a suit on the original side of the Calcutta High Court for specific performance of an agreement for sale of a property situate outside the jurisdiction of that Court. There also leave under Order 2, Rule 2 (3) of the Code in respect of possession of the premises was sought for and the learned Judge on taking the view on reference to certain decisions that the cause of action for the relief for possession was same, refused the prayer on the observation that he was not prepared to hold that the discretion of the Court should be exercised in favour of the plaintiff in giving leave under Order 2, Rule 2 of the Code.

6. No other authority was cited at the Bar. It is no doubt true that the learned single Judge of the Calcutta High Court refused to exercise his discretion under Sub-rule (3) of Order 2, Rule 2 of the Code: in my opinion, that cannot be cited as a precedent that in such cases the Court has got no power to grant leave and for that matter, leave should not be granted. In my considered opinion, the whole purport of Sub-rule (3) is to empower a Court to grant leave to sue afterwards for a relief which might be available to a person at that very stage in the same

suit, the cause of action for the suit being the same. The discretion, therefore, has been conferred to the Court to be exercised in appropriate cases in this regard and once a Court in its wisdom grants such relief, (sic) (leave) simply because the subsequent suit would cause harassment to a defendant and will give rise to multiplicity of suits, in my opinion, cannot be a ground to interfere with that discretion in the revisional jurisdiction of this Court. The framers of the Code must be presumed to have thought well of all these consequences and still the power has been given to a court in this regard. It may well be, that a different view in the matter could have been taken and another officer in place of the present Subordinate Judge would have declined to exercise the discretion in favour of the plaintiff. In my opinion, that cannot be a ground to hold that the exercise of jurisdiction itself was without jurisdiction.

7. For the reasons, discussed above, I do not find any error of jurisdiction in this case and would accordingly dismiss the application. In the circumstances, however, I shall make no order for costs.