
(2005) 03 GUJ CK 0084

In the Gujarat High Court

Case No : Special Civil Application No. 10841 of 2002

Kantaben Babulal Borad

APPELLANT

Vs

GSRTC

RESPONDENT

Date of Decision : 24-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, Order 6 Rule 17 , Order 6 Rule 18

Citation : (2005) 2 GLR 1386

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : P.C. Kavina, for Petitioner Nos. 1-5, for the Appellant; Yogesh S. Lakhani, for Respondent Nos. 1-2, for the Respondent

Final Decision : Allowed

Judgement

P.B. Majmudar, J.—Total ignorance of law is exhibited by the learned Assistant Judge, Rajkot in passing the order dated 30.09.2002 below exh.51 in Regular Civil Appeal No. 80 of 1997, which is impugned in this petition.

2. As the original appellant, one Babulal Nathalal, who preferred Regular Civil Appeal No. 80 of 1997, died during the pendency of the appeal, his legal heirs, the present petitioners herein, submitted an application before the learned Judge requesting the Court to allow them to be brought on record under Order 22 of Civil Procedure Code. The learned trial Judge allowed the said application and accordingly, the present petitioners were permitted to be brought on the record of the said appeal. However, it seems that the title of the appeal memo was not corrected accordingly, showing the names of the present petitioners who were brought on record by virtue of the earlier order passed by the appellate Judge. The petitioner thereafter gave an application at exh.51 requesting the court to permit them to amend the appeal memo, as according to the petitioner, the application for bringing heirs was granted by the District Court on 13.12.2000 by passing the order below exh.45 but corresponding amendment was not carried in

the appeal memo. It was, therefore, requested to extend the time to carry out the said amendment.

3. The learned Assistant Judge, Rajkot, by his impugned order dated 30th September 2002, rejected the said application at exh. 51. The learned Judge came to the conclusion that the application for bringing heirs was granted by the Court on 13.12.2000 and as per the provisions of Order 6 Rule 18, it was obligatory on the part of the petitioners to amend the said pleadings within 14 days from the date of the order. The appellate Court, accordingly, rejected the said application. The said order is impugned in this petition.

4. Learned advocate Mr. Kavina for the petitioners submitted that the original application of the present petitioners was in the nature of application under Order 22 Rule 3, and once the petitioners were permitted to be brought on record, so far as the duty of amending the title is concerned, it is merely a ministerial work and it was for the office of the District Court to amend the title accordingly. It is submitted by Mr. Kavina that as the original application of the petitioner was not under Order 6 Rule 17 of CPC, there was no question of amendment of the pleadings, as it is only the title which was required to be corrected by adding the names of heirs of original deceased appellant.

5. Mr. Dagli, who is appearing for the respondent-Corporation submitted that he is not in a position to support the order passed by the learned District Judge.

6. It is required to be noted that the present petitioners were permitted to be brought on record under the provisions of Order 22 Rule 3 of CPC and the learned appellate Judge has granted the application under exh 45. The said application, therefore, cannot be equated with an application under Order 6 Rule 17 of the CPC as there was no question of amendment of any pleadings, and in view of the order passed below exh. 45, the cause title of the appeal memo was required to be amended showing the names of the present petitioner as heirs of the original appellant. The learned appellate Judge, therefore, has committed a jurisdictional error in referring to Order 6 Rule 18 of CPC. Once the petitioners are allowed to be brought on record, the cause title is required to be amended by the office of the District Court. It is pointed out that no other corresponding amendment was required to be made in the appeal memo. Considering the aforesaid, learned Judge has committed an error by not granting the application. As only the name was required to be amended, it was the duty of the Registry of the District Court to correct the title showing the name of the present petitioners as heirs of the original deceased appellant. The impugned order, therefore, is unsustainable and is required to be set aside. The impugned order is accordingly set aside and the petition is accordingly allowed. Registry of the District Court is directed to amend the cause title of appeal pursuant to order passed below exh. 45 in Regular Civil Appeal No. 80 of 1997 within a period of two weeks from the date of receipt of the writ of the order of this Court.

7. Learned Judge shall thereafter take up the main appeal for hearing. At this

stage, learned advocate for Mr. Dagli submitted that large amount of tax and licence fee are required to be recovered from the appellant. However, since the said issue is not required to be adjudicated in this petition, it is not necessary to make any observation in this behalf. If the respondent has any right in this behalf, it would be open for the respondent to apply before the appellate Judge before whom the appeal is pending, and if any such application is preferred, the learned Judge may decide it in accordance with law.

8. Considering the fact that the appeal is pending since long, learned Judge is required to dispose of the matter within four months from the date of receipt of the writ of this court. It is high-time that the appeal is required to be disposed of within the aforesaid stipulated time.

9. This petition stands disposed of as allowed accordingly. Rule is made absolute accordingly. No order as to costs.