
(1964) 09 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 132 of 1964

Kartar Singh

APPELLANT

Vs

Shrimati Nachhattar Kaur and Another

RESPONDENT

Date of Decision : 25-09-1964

Acts Referred:

Citation : (1964) 09 P&H CK 0011

Hon'ble Judges : Dua, J

Bench : Single Bench

Advocate : Y.P. Gandhi, for the Appellant; R.P. Bali for Mr. M.R. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Dua, J.—This revision is directed against an order of a learned Subordinate Judge, Ludhiana declining to amend the decree which is the subject-matter of an appeal in this Court (R. F. A. No. 8 of 1964). The amendment was apparently sought on the ground that the costs awarded against the petitioner in the revision (appellant in the Regular First Appeal) were excessive and contrary to law. It may be stated that a ground to this effect has also been taken in the Regular First Appeal. See ground No. 9.

2. The learned Subordinate Judge has disposed of the petition in a very brief order saying that the application does not lie. Apparently, the learned Judge is of the view that an appeal having already been preferred in this Court, there was no question of his amending the decree on a point which was not prima facie a clerical or arithmetical error or an accidental mistake.

3. Shri Gandhi has very strenuously argued that the learned Subordinate Judge has not said that he was declining to interfere on account of the pendency of the appeal in this Court where this grievance can be redressed. He has cited L. Janakirama Iyer and Others Vs. P.M. Nilakanta Iyer and Others, and Shyamal Bihari Mishra and Others Vs. Girish Narain Missir and Another, , for the

proposition that even though an appeal is pending in this Court, the Court below has ample jurisdiction to amend the decree, if a proper case is made out. He has also brought to my notice a decision of the Madras High Court in (Yanati) Rami Reddi and Another Vs. Tanati Chenchu Polamma, , for the proposition that in a case where a plaintiff-pauper has succeeded in part and failed in part, then the court-fee which is to be paid by the unsuccessful defendant must be proportionate to the success of the plaintiff and the defendant cannot be made to pay the whole of the court-fee initially payable on the amount claimed in the suit. According to the counsel, this proposition is so well-settled that if a Court goes wrong in this respect then the resultant decree must be considered to be containing an arithmetical, clerical or accidental mistake or error.

4. For the respondents, my attention has been drawn to one decision of the Calcutta High Court in Roshini Kumar Pal v. Kusum Kamini Pal 105 I.C. 725, and another of Oudh Chief Court in S. Mujawir Husain v. Mt. Kishwar Jehan Begam AIR 1941 Oudh. 66 in support of the contention that the question of costs in such cases is discretionary with the trial Court and even if a plaintiff does not succeed completely, the Court can grant whole costs against the defendant, if the facts so justify.

5. In my view, it is wholly unnecessary to express any opinion on the merits of the pleas: suffice it to say that an appeal having been preferred to this Court in which the petitioner has taken a specific ground to the same effect, it was better and sounder exercise of discretion on the part of the Court below to withhold its hands and leave the parties to have this matter decided in this Court. Whether or not the Court below has jurisdiction to decide this question and amend the decree in the existing circumstances need not be determined on the view I have taken, for, assuming it has jurisdiction, the matter pertains to the sphere of discretion and the Court is not bound to accede to the petitioner's claim: nor does the fact that the Court below has not specifically based its opinion on the pendency of the appeal make any difference.

6. Mr. Gandhi has very strongly argued that in any event, this Court should stay realization of court-fee by the Collector which he is probably going to realise from his client. The short answer to this contention is that when the appeal was preferred in this Court, it was expressly stated in the order of admission that the amount of court-fee must be paid : in other words, a prayer for stay was expressly refused. That order has clearly become final and it docs not lie with the petitioner to try to have that order re-opened and reviewed through the back door or in a round-about method by first going to the trial Court by way of a prayer for amendment of the decree and then coming to this Court on revision. This appears to me to be almost an abuse of the process of the Court : and I am further inclined to think that it was perhaps for this reason that the Court below felt that the application did not lie.

7. The respondents have also urged that the petitioner is not paying the amount of maintenance as ordered by this Court while admitting his appeal I am not

concerned with this grievance in these proceedings at this stage. If the respondent has a grievance, it is open to her to claim redress in accordance with law.

8. For the foregoing reasons, this revision fails and is dismissed.