
(1958) 10 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 187 of 1954

Kewal Kishore

APPELLANT

Vs

Hamad Ahmad Khan and Others

RESPONDENT

Date of Decision : 10-10-1958

Acts Referred:

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

Citation : AIR 1959 P&H 181

Hon'ble Judges : K.L. Gosain, J; Harbans Singh, J

Bench : Division Bench

Advocate : F.C. Mital and S.C. Mital, for the Appellant; N.L. Salooja, K.L. Kapur, D.K. Mahajan, Roop Chand and R. Sachar, for the Respondent

Judgement

1. The facts giving rise to this appeal are as under: The property in dispute belonged to one Kahn Chand who sold the same on 3rd August, 1932 to one Nawab Saadat Ullah Khan. The alienee made several transfers of different parcels of land in favour of defendants Nos. 2 to 17. The present suit was brought by Kewal Kishore who alleged that he had been adopted by Kahn Chand, that he had become a member of the joint Hindu family with Kahn Chand by reason of the said adoption, that the property in dispute was the joint Hindu family property and that the sale made by his adoptive father was without consideration and legal necessity and was not binding on him. The suit was contested by the various defendants who controverted the pleas of the plaintiff and raised three preliminary objections, namely (1) that the plaint did not disclose a cause of action, (2) that the plaint was not properly valued and stamped for purposes of court-Fee and jurisdiction, and (3) that the land in dispute had not been properly described in the heading of the plaint.

2. The learned trial Court framed three preliminary issues on the aforesaid objections and recorded findings on all the three issues against the plaintiffs. The plaint was rejected on the basis of the finding on issue No. 1 and in the concluding portion of its judgment the learned trial Court said as follows :--

"In view of my finding on issue No. 1, it is not necessary to get the plaint amended for purposes of issues Nos. 2 and 3. The plaint, as it stands, does not disclose a cause of action and is therefore rejected under Order 7 Rule 1, Civil Procedure Code, with costs to the contesting defendants."

The main basis on which issue No. 1 was decided against the plaintiff was that the plaintiff had not expressly stated in the plaint that he had ever been adopted by Kahn Chand as his son and that he had not stated that the said adoption took place before the sale in dispute. Feeling aggrieved against the decision of the Trial Court the plaintiff has come up to this Court in first appeal.

3. There is no doubt that the plaintiff did not expressly state in the body of the plaint that he had been adopted by Kahn Chand but in the plaint he mentioned Kahn Chand as his father at several places. He also alleged that he and his father Kahn Chand formed a joint Hindu family and that the property in suit was the property of the said family.

He did not mention in the plaint the date on which he was adopted, but the plaintiff's counsel urges that the very fact that he contested the alienation showed that he had been adopted earlier than the alienation. The plaintiff has filed an amended plaint in this Court and has prayed that he may be allowed to amend the plaint and to raise these two pleas in express words.

After hearing the learned counsel for the parties we do not see any reason why amendment should not be permitted. The plaintiff did state in the heading of the plaint that he was the adopted son of Kahn Ghana. The only objection of the defendants was that the fact of adoption had not been expressly mentioned in the body of the plaint.

As observed above, Kahn Chand has been described as being the father of the plaintiff in several paragraphs of the plaint and a definite plea has been taken that he and Kahn Chand constitute a joint Hindu family. The defect pointed out by the defendants that the matter of adoption is not stated in so many words in the body of the plaint is only a technical one. We do not find any reason why we should not allow the plaint to be amended to cure that defect.

4. The date of adoption is not given in the original plaint, but it is now alleged in the amended plaint to be 15th July, 1932. The point will have to be gone into by the trial Court if and when the defendants raise proper pleas with regard to the same. We feel that it is in the interest of justice that the plaint should be allowed to be amended in the form in which it has been put before us and we therefore allow the amendment to be made conditional on the plaintiff paying Rs. 200/- as costs to the contesting defendants.

5. The findings of the learned trial Court on issues Nos. 2 and 3 have also been assailed by Mr. Mital. On issue No. 2 the Court has found that the plaint is not properly stamped for purposes of court-fee and jurisdiction and on issue No. 3 it has found that the land in dispute is not properly described in the heading of the

plaint.

It is conceded by the learned counsel for the respondents that the land in dispute at the time of its alienation was only an agricultural land on which land revenue was permanently settled. According to the rules of this Court, the plaint for purposes of court-fee in such a case is to be valued at ten times the revenue and for purposes of jurisdiction it has to be valued at thirty times the land revenue and the plaint is so valued.

The valuation of the plaint has, however, been found to be insufficient for purposes of court-fee and jurisdiction on the basis that on a part of the land some buildings have been erected by the defendants after the impugned alienations had been made in their favour and that the valuation of the buildings has not been taken into consideration in the matter of valuation of the plaint. The plaintiff in this suit, however, does not claim possession of any building and his suit is limited to the possession of the land as it was at the time of the original sale.

The court-fee payable in such a suit cannot be dependent upon the defence which may be raised and we are unable to understand how the existence of improvements can compel the plaintiff to pay court-fee on something which he does not claim and which the defendants are entitled to remove or regarding which they may or may not in equity be entitled to claim any compensation.

If the defendants have erected buildings on the land, the transaction regarding which was liable to be impugned by the plaintiff or is successfully impugned by him, they cannot by this reason alone compel the plaintiff to pay court-fee on the cost of buildings which have been erected by them. Findings of the learned trial Court on issue No. 2 are therefore clearly erroneous.

6. The plaintiff mentioned in the plaint the numbers of khataunis and khewats of the land in dispute but did not mention the khasra numbers of the same. We are told that the area of the land being extensive there are as many as 252 khasra numbers which are properly mentioned in the jamabandi attached with the plaint and now included in the printed paper book at pages 39 to 149. In the circumstances of the case, we do not see how this defect is fatal to the suit and why the suit cannot proceed when the detailed jamabandi is already on the record and was filed along with the plaint.

7. In view of what has been said above, we remand the case to the learned trial Court with the direction that if the plaintiff pays Rs. 200/- as costs above mentioned, he will be allowed to put in the amended plaint and his suit will then be tried on merits. If, however, the plaintiff does not pay the aforesaid amount of costs, the order of the trial Court reflecting the plaint for want of cause of action will stand. The costs in this court will abide the final event.