
(1980) 01 AHC CK 0021
In the Allahabad High Court
Case No : Civil Revision No. 454 of 1978

Kundan Lal	Vs	APPELLANT
Surendra Nath and Others		RESPONDENT

Date of Decision : 14-01-1980

Acts Referred:

Civil Procedure Code Amendment Act, 1976 — Section 97
Civil Procedure Code, 1908 (CPC) — Order 33 Rule 2, Order 33 Rule 3, Order 33 Rule 5

Citation : AIR 1980 All 205

Hon'ble Judges : Satish Chandra, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—A suit for partition was decreed. The defendants desired to file an appeal. They filed an application for permission to file the appeal as an indigent person under Order 44, C. P. C. It appears that the application for permission was not properly verified. The plaintiff-applicant raised an objection that the Court had no jurisdiction to permit the defendants to rectify the defect. The Court overruled this objection and allowed the defendants to verify the application. He then fixed a date for enquiry into pauperism of the defendants. Aggrieved by this order the plaintiff has come to this Court in revision. Learned counsel submits that the amendment introduced by the Allahabad High Court to Rule 5 of Order 33, C. P. C., is no longer applicable and may be deemed to have been repealed by Section 97 of Central Amending Act of 1976.

2. Order 33, Rule 2, C. P. C. provides that an application for permission to sue as an indigent person, shall be signed and verified in the manner prescribed for the signing and verification, of pleadings. Rule 5 of Order 33, C. P. C. says that the Court shall reject an application for permission to sue as an indigent person where it is not framed and presented in the manner prescribed by Rules 2 and 3. Since the application had not been verified it was liable to be rejected under Clause (a) to Rule 5.

3. The Allahabad High Court on 15-4-1933 added the following explanation at the end of Rule 5 :--

"(2) Add in Clause (a) between the figure "3" and the word "or" the following: "and the applicant, on being required by the Court to make any amendment within a time to be fixed by the Court, fails to do so."

Thus the Court is obliged to afford the applicant an opportunity to rectify the defects before the application could be rejected under Clause (a) of Rule 5, namely, where it is not framed and presented in the manner prescribed by Rules 2 and 3.

4. Rule 3 of Order 33, C. P. C. where it lays down the manner of presentation as well as Clause (a) of Rule 5 of Order 33, C. P. C. were not amended by the Amending Act 104 of 1976 at all. There cannot be any question of any inconsistency between the amendments made by the Allahabad High Court and the amendments sought to be introduced by the aforesaid Amending Act. It is obvious that there was no inconsistency between the provisions of the Civil P. C., as they stood prior to their amendment by the Amending Act of 1976, and the amendments introduced by the Allahabad High Court in Order 33. The amendments introduced by the 1976 Amending Act are not relevant to the amendments introduced by the Allahabad High Court to Rule 5, Order 33, C. P. C.

5. Section 97 of the Amending Act No. 104 of 1976 provides:--

"Repeal and savings: (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except in so far as such amendment or provision is consistent with the provisions of the Principal Act as amended by this Act, stand repealed."

There being no inconsistency between the Principal Act and the amendment introduced by the Allahabad High Court prior to the Amending Act and since no provision has been inserted by the Amending Act to bring about any inconsistency thereafter, it is evident that Section 97 was not applicable to aforesaid amendment introduced by the Allahabad High Court to Rule 5 of Order 33, C. P. C. Hence the Court had jurisdiction to permit the defendant to verify the application. The order passed by the learned District Judge was within his powers and valid.

6. The revision fails and is accordingly dismissed with costs.