
(1944) 08 AHC CK 0029

In the Allahabad High Court

Case No : Section 115 Application No. 108 of 1944

Maqbul Bahadur and Another

APPELLANT

Vs

Th. Pratap Bhan Prakash Singh and Others

RESPONDENT

Date of Decision : 28-08-1944

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 6, 115

Citation : (1944) 08 AHC CK 0029

Hon'ble Judges : Thomas, C.J;Misra, J

Bench : Division Bench

Advocate : Naziruddin, for the Appellant; M. Wasim, Azizuddin and Mahendra Deo Verma for Opposite party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Thomas, C.J. and Misra, J.—These revision applications are against the orders of the learned Civil Judge, Sitapur, dismissing two applications for permission to sue as paupers.

2. The suits were in respect of Taluqa Nabinagar Katesar, which, since the death of Thakurain Pirthipal Kuar in 1932, is in possession of Thakur Pratap Bhan Singh, opposite-party No. 1. The present applications were presented against Thakur Pratap Bhan Singh and certain other persons, who had taken certain transfers from the late Thakurain.

3. Maqbul Bahadur and Mumtaz Bahadur, applicants, came on the allegation that they were descendants of one Jang Bahadur, who was a step brother of Sheo Bakhsh Singh, the husband of Thakurain Pirthipal Kuar. They claimed to succeed to the estate u/s 22, Clause 10 of Act I of 1869 as the nearest male agnates in preference to Thakur Pratap Bhan Singh, who was said to be only a daughter's son's son. Succession to the non-taluqdari properties was claimed by these two applicants under the ordinary law and under family custom.

4. The claim of the other applicant, Mst. Bishun Kuar was based on adoption of

her late husband, Muneshwar Bakhsh Singh, by Thakurain Guman Kuar, the mother of the late Taluqdar Sheo Baksh Singh, in 1883. It was averred that Thakurain Guman Kuar had made the adoption with the permission of her husband, Thakur Ratan Singh. Muneshwar Bakhsh Singh was said to have been alive at the death of the widow of Sheo Baksh Singh, and it was claimed that he succeeded to the taluqadari properties u/s 22, Clause 10 of the Oudh Estates Act as well as under the Hindu Law and family custom. As Muneshwar Bakhsh Singh died a few years after the succession had opened, the applicant in her capacity as an heir of her husband claimed to be entitled to possession of the inheritance.

5. The suits were for possession, and the requisite court-fee in each of them was Rs. 12,500. The applicants, however, alleged that they were paupers and were, therefore entitled to the benefits of Order 33, Code of Civil Procedure.

6. The learned Civil Judge dismissed the applications by two separate judgments on the ground firstly that the applicants owned sufficient means to pay the court-fee and secondly that they had no subsisting cause of action to institute the proposed suits. Maqbul Bahadur and Mumtaz Bahadur have come up in revision by Section 115 Application No. 108 of 1944, and Mst. Bishun Kuar has challenged the order against her by Section 115 Application No. 126 of 1944. Both applications are disposed of by this judgment.

7. So far as the pauper application of Maqbul Bahadur and Mumtaz Bahadur was concerned the finding of the Court below was that in addition to groves in two villages valued at Rs. 950 and considerable tenancy lands and guzara allowance, the annual income from which was no less than Rs. 1,677/5, they owned some proprietary rights in villages Kalyanpur, and Mallanpur, the transfer deed in respect of which had been taken by Mumtaz Bahadur in the name of his son with the deliberate object (Sic) suppressing the existence of that property in the present application. For the determination of the question whether the applicants had a cause of action, the lower Court allowed evidence to be adduced by the opposite-parties in rebuttal and it held that (a) Thakurain Pirthipal Kuar had perfected her title against Jagan Bahadur by adverse possession, (b) that the applicants were not entitled to succeed either under the Oudh Estates Act or under the personal law or custom on account of conversion of Jang Bahadur to Ismailic faith and (c) that Jang Bahadur was the illegitimate son of Thakur Ratan Singh and was, therefore, not a step brother of Sheo Bakhsh Singh. It was accordingly found that the applicants had no cause of action.

8. As to the claim of Mst. Bishun Kuar, the lower Court found that she did not comply with the requirements of Order 33, Rule 2, CPC inasmuch as she gave no list of movable properties at all, nor did she appear in Court to state that she was not possessed of any. Apart, however, from this, the learned Civil Judge held that Mst. Bishun Kuar owned and possessed properties which yielded a profit of Rs. 598/3 and the value thereof was no less than Rs. 18,000. She had, therefore, in his opinion sufficient means to pay the court-fee. With respect to her cause of action, the Court below was of opinion that Muneshwar Bakhsh Singh was not the

adopted brother of Sheo Bakhsh Singh, as the authority of Thakurain Guman Kuar to adopt came to an end on the death of Sheo Bakhsh Singh, the latter having left a widow who thereupon become entitled to succeed.

9. It was further found that the claim of Mst. Bishun Kuar could not succeed on the ground of custom, and that Thakurain Pirthipal Kuar in any event having perfected her title by adverse possession, the suit was barred by time. The learned Civil Judge, therefore, held that Mst. Bishun Kuar also had no cause of action for the institution of the suit.

10. The arguments of the learned Counsel for the applicants in both cases have been presented to us under two heads--(1) relating to pauperism and (2) relating to the cause of action.

11. The contention in the first case is that in determining the means of Maqbul Bahadur and Mumtaz Bahadur the lower Court should not have included in the assets the capitalised value of profits from tenancy lands and guzara allowance, as they were not legally transferable. In the second case, namely that of Mst. Bishun Kuar, it is contended that the lower Court should have calculated the value of the applicant's immovable properties on the basis of their income in 1349-1350 faslis. None of these arguments is, in our opinion entitled to prevail, because none of them involves any question of jurisdiction. The legislature has purposely withheld in certain cases the right of appeal, and where an appeal is barred, a defeated party cannot invoke the aid of this Court for setting aside the erroneous decision of fact or law. Section 115 CPC is definitive of the limits within which the revisional powers of a High Court can be exercised and, as observed by their Lordships of the Privy Council in *Balakrishna Udayar v. Vasudeva Aiyar* (1917) 44 I.A. 261,

"the section applies to jurisdiction alone the irregular exercise or non exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved."

12. The power to decide the matter carries with it the power to decide rightly as well as wrongly. It is sufficient to refer in support of this view to the well known observations of Lord Hobhouse to this effect in *Malkarjun Bin Shidramappa Pasare v. Narhari Bin Shivappa* (1900) 27 I.A. 216. The revisional powers of the High Court u/s 115, CPC were considered by the Judicial Committee in *Rajah Amir Hassan Khan v. Sheo Bakhsh Singh* (1884) 11 I.A. 937, and the conclusion which their Lordships there reached was as follows:--

"the question then is, did the Judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided it rightly or wrongly they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity."

13. Where, therefore, the Court exercises its jurisdiction in the prescribed way, but its decision is based upon erroneous conclusions of fact or law, it cannot be said to have acted illegally or with material irregularity in the exercise of its jurisdiction. It only decides wrongly but does not necessarily exercise its jurisdiction wrongly. Judged by this test, we can find nothing in the findings of the learned Civil Judge which would entitle us to interfere with the orders under our revisional powers. We, therefore, decline to reconsider the question of the applicants pauperism. Before, however, taking leave of this part of the case we must observe that the deliberate adoption of tactics by Maqbul Bahadur and Mumtaz Bahadur to screen away properties in order to evade the payment of court-fees exhibits a conduct which we cannot but disapprove in the strongest possible terms.

14. The second line of argument adopted by the learned Counsel for the applicants relates to the finding upon the question of cause of action. As both the pauper applications can be completely disposed of on the ground that the applicants are not paupers within the meaning of Order 33, Rule 1, Code of Civil Procedure, we think it is unnecessary to give our decision on this part of the case. We notice, however, that in arriving at its decision the learned lower Court has allowed the opposite-parties to produce evidence in order to controvert some of the applicants' allegations on merits. This we think, is unwarranted. Under Order 33 Rule 6, CPC the only evidence that the Court could admit on record was on the question of pauperism. As regards the other grounds upon which a pauper application is liable to be thrown out under Rule 7, the allegations in the application and the statement of the applicant can alone be gone into for the purposes of Order 33, vide--Lala Durga Prasad v. Babu Gur Dularey (1939) 14 Luck. 116, Parameswar Singh Vs. New Theatres Ltd., , Manikka N. Perumal Iyer v. Srinivasa Ayyangar AIR 1941 Mad. 398, Subramaniam Pillai and Another Vs. Kavundappa Goundan and Others, and Lachhmi v. Ram Bahadur AIR 1925 All. 275 (2) .

15. The learned Counsel for the applicants desire that their clients should be granted two months' time for making good the court-fee. We are not inclined to accede to this request. At the time of the presentation of the revisions in this Court the applicants were informed that in the event of their revisions being dismissed, they should be prepared to pay the fee immediately. We are told that the applicants have not been able to arrange for sufficient funds. In our opinion there is no satisfactory reason to grant any more time.

16. We, therefore, dismiss these applications with costs.