
(1983) 09 CAL CK 0019
In the Calcutta High Court
Case No : Suit No. 297 of 1982

Nishit Chandra Ghosh

APPELLANT

Vs

Bidhu Bhusan Ghosh and Others

RESPONDENT

Date of Decision : 16-09-1983

Acts Referred:

Constitution of India, 1950 — Article 134A

Citation : 88 CWN 167

Hon'ble Judges : Murari Mohan Dutt, J;Chandan Kumar Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is by the defendant in a suit for declaration and permanent injunction and is directed against the common judgment and order dated May 16, 1983 of Dipak Kumar Sen, J. whereby the learned Judge dismissed the application of the defendant for taking the plaint off the file and allowed the application of the plaintiff for the amendment of the plaint.

2. In paragraph 26 of the plaint, the suit was valued by the plaintiff at Rs.50,000/- for the purpose of jurisdiction and Court fee. It is not disputed that at the relevant time, a suit in the Original Side of this Court would lie only if the value of the subject-matter of the suit or of the reliefs claimed therein exceed Rs.50,000/-. As on the face of the plaint the suit was not maintainable and/or this Court had no jurisdiction to entertain and hear the suit, the defendant made an application, inter alia, praying for taking the plaint off the file. After the said application was filed by the defendant, the plaintiff also filed an application for amendment of the plaint praying that instead of the figure Rs.50,000/-, the figure Rs.50,100/- should be inserted in the body of the plaint as the value of the suit for purposes of jurisdiction and Court fee. It was alleged in the said application for amendment that "through typing mistake in paragraph 26 of the plaint the suit was valued at Rs.50,000/- instead of Rs.50,100/- and the said mistake was brought to the notice of the Hon"ble Court when an application was

made". By the impugned judgment and order, the learned Judge, as stated already, dismissed the said application of the defendant, but allowed the plaintiff's application for amendment of the plaint accepting the plaintiff's case of a typographical mistake in the statement of the value of the suit in paragraph 26 of the plaint, that is to say, Rs.50,000/- instead of Rs.50,100/-. Hence, this appeal by the defendant.

3. So far as this Court is concerned it has been uniformly held that if the suit is valued at a sum, which is less than or beyond the pecuniary jurisdiction of any Court, that Court cannot entertain the suit even for the purpose of amendment of the plaint for bringing the suit within such jurisdiction. In such a case, the only thing for the Court to do is to direct return of the plaint for presentation to proper court [See in (1) Ratan Chand Khanna Vs. Mahendra Kumar, ; (2) Vabakktha Gopalpillai Vasudeva Pillai Vs. National Small Industries Corporation Ltd., and (3) Mst. Zohra Khatoon Vs. Janab Mohammad Jane Alam and Others,].

4. The above principles of law will apply, where, on account of wrong valuation of the subject-matter of the suit or of the reliefs claimed therein, the suit is not entertainable by the Court for lack of pecuniary jurisdiction, and the plaintiff prays for correcting the valuation by the amendment of the plaint, where, however, the case of the plaintiff is that the valuation of the suit that was made by him was within the pecuniary jurisdiction of the Court, but through mistake, typographical or otherwise, there has been a misstatement in the plaint in regard to the value of the suit, the principles enumerated above will not apply and, if the Court is satisfied about such mistake, the Court will permit the plaintiff to correct the mistake by an amendment of the plaint. In our opinion, there is a good deal of difference between a wrong valuation of the suit less than or beyond the pecuniary jurisdiction the Court and a wrong statement in the plaint about the value of the suit through mistake of the nature of a typographical one. While in the former case, the Court will have no initial jurisdiction to entertain the suit, in the latter, the Court has such jurisdiction but for the mistaken statement, and it will entertain the suit for trial after allowing the plaintiff to correct the mistaken statement by an amendment of the plaint.

5. In the instant case, it has been alleged by the plaintiff that through typographical Mistake, the value of the suit has been stated in paragraph 26 of the plaint as Rs.50,000/- instead of Rs.50,100/-. The learned Judge has accepted the plaintiff's case of misstatement in the value of the suit through typographical mistake, and we do not find any reason to differ from him. The learned Judge was, therefore, justified in allowing the plaintiff to correct the mistake by the amendment of the plaint and in dismissing the defendant's application for taking the plaint off the file.

6. In the circumstances and, for the reasons aforesaid, the judgment and order of the learned Judge is affirmed and this appeal is dismissed with costs.

7. Mr. P. K. Das, learned Counsel appearing on behalf of the appellant, prays for a

certificate for appeal to the Supreme Court under Article 134A of the Constitution of India. In our opinion, the case does not involve any substantial question of law of general importance which needs to be decided by the Supreme Court. In the circumstances, the prayer for certificate is disallowed.

Further, the prayer for stay of the operation of this judgment is also disallowed.

Banerjee, J.

8. I agree.