

(2004) 12 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 5798 of 2003

Punjab and Sind Bank

APPELLANT

Vs

Jai Jagdambay Rice Mill and Others

RESPONDENT

Date of Decision : 03-12-2004

Acts Referred:

Citation : (2005) 3 BC 578 : (2005) 139 PLR 545 : (2005) 1 RCR(Civil) 405

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : A.P. Kaur, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed u/s 115 of the Code of Civil Procedure, 1908 (for brevity "the Code") prays for quashing order dated 8.8.2003 passed by the Civil Judge (Jr. Division), Chandigarh dismissing the application of the plaintiff-petitioner for amendment of the decree dated 30.10.1998 passed by the then Sub Judge 1st Class, Chandigarh. In the application the prayer made is for amendment of the judgment and decree dated 30.10.1998 by changing the simple money decree into a decree under Order 34 of the Code.

2. Brief facts of the case are that the plaintiff-petitioner had filed a suit for recovery of Rs. 2,35,740.40P. with future interest @ 18 per cent per annum with quarterly rest by sale of mortgaged property. As the loan was advanced at Jallandar, an objection with regard to the jurisdiction of the Courts at Chandigarh was raised which has been decided in favour of the plaintiff-petitioner on the ground that the mortgaged property is situated at Chandigarh. The Civil Judge passed a simple money decree vide its judgment and decree dated 30.10.1998. Thereafter, an application was filed being Misc. No. 6 of 10.6.1999 for changing the nature of the decree from simple money decree to the one under Order 34 of the Code. The learned Civil Judge dismissed the application on the ground that there was nothing on the record to show nor the tenor of the

judgment passed by the Civil Judge reflects any such intention that he intended to pass a decree under Order 34 of the Code instead of passing a simple money decree. It has further been held that a simple money decree instead of decree for sale of mortgaged property cannot be termed as an accidental slip. Even otherwise, the period for filing the appeal has expired by the time the application for amendment u/s 151 and 152 of the Code was filed.

3. Ms. A.P.Kaur, learned counsel for the plaintiff-petitioner has argued that the suit was tried at Chandigarh for the simple reason that the mortgaged property was situated at Chandigarh and an objection with regard to the jurisdiction of the Courts at Chandigarh was taken and decided in favour of the plaintiff-respondent on the ground that the mortgaged property has been taken into consideration. The learned counsel has urged that suit was required to be decreed under Order 34 of the Code. According to the learned counsel such an error is an accidental slip within the meaning of Section 152 of the Code and was liable to be rectified by the Civil Judge in exercise of its jurisdiction, In support of her submission, the learned counsel has placed reliance on a judgment of the Kerala High Court in the case of Syamala v. Catholic Syron Bank 2002(1) I.S.J. 189,"

4. After hearing the learned counsel at a considerable length, I find that no legal infirmity could be found with the order passed by the learned Civil Judge. There is a world of difference between the simple money decree and a decree passed under Order 34 of the Code. Such a mistake cannot be considered as an accidental slip. Moreover, the tenor of the impugned judgment does not show that there was any intention of the Court to pass a decree under Order 34 of the Code. Merely because the mortgaged property is situated at Chandigarh does not necessarily mean that an decree under Order 34 of the Code was liable to be passed. It is not unknown that even in cases where relief of passing a decree under Order XXXIV of the code has been claimed, the Courts have been passing simple money decrees. By no stretch of imagination a correction can be carried to change the nature of the decree from simple money decree to the one passed under Order XXXIV of the Code.

5. The judgment of the Kerala High Court in Syamala's case (supra) on which reliance has been placed by the learned counsel does not rescue the plaintiff-petitioner nor it advance its case. In that case the Court has specifically gathered the intention of the Munsif which passed the decree that his intention was to pass a decree under Order XXXIV of the Code. The aforementioned observations have been made in paragraph 9 of the judgment which read as under:-

"9. The judgment of the court below which was sought to be corrected has to be examined in the light of the aforesaid pleadings of the parties. It is seen that there was no consideration with regard to the validity or otherwise of the equitable mortgage for the obvious reason that there was no clear denial of the alleged charge in the written statement. The only issue raised in the matter was whether the plaintiff was entitled to get a decree as prayed for. The words "as

prayed for" have necessarily to include the prayer for a charged decree. In para 7 of the judgment reference was made by the learned munsiff to the argument advanced by counsel for the defendants that the deposit of title deeds by the defendants had to be duly registered and that in the absence of registration it cannot be accepted in evidence. There is not finding based thereon that the plaintiff was not entitled to get a charge on the schedule property though it is mentioned that the memo of deposit was not produced by the bank. It was also found by the learned munsiff in the same para that the fact that the defendants deposited the title deeds at the time of borrowing the amount from the plaintiff's bank would not be a reason to come to a conclusion that the memo of deposit of title deed produced along with the suit is to be registered. In view of the aforesaid findings of the Court it was imperative that a decree charged on the plaint schedule property should have been allowed, failure to do so obviously is unintentional and result of oversight. It can very well be corrected in exercise of the power u/s 152 of the Civil Procedure Code."

There is no merit in the petition and the same is thus liable to be dismissed.

For the reasons recorded above, this petition fails and the same is hereby dismissed.