
(2008) 09 AHC CK 0216
In the Allahabad High Court

Raj Nath Pandey	Vs	APPELLANT
Jwala Prasad and Others		RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 12, 2, 9, 96
Constitution of India, 1950 — Article 227

Citation : (2008) 4 AWC 3666 : (2008) 105 RD 472

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—I have heard Sri M.D. Singh "Shekhar", senior advocate assisted by Sri D.K. Tripathi, learned Counsel for the plaintiff/appellant and Sri Sankatha Rai, senior advocate assisted by Sri V.K. Rai for the respondents. Both parties agree for the final disposal of the appeal at this very stage of admission as only a legal point bereft of factual dispute is required to be considered.

2. The dispute is in connection with Arazi No. 73 (old), new number 150 area 0.112 situate In Mauja Chaurikhas, Tehsil Asnaon, district Sant Ravidas Nagar, Bhadohi.

3. It is said that Bhagwan Singh and Kuber Singh donated the aforesaid Araji sometime in the year 1906-07 to the plaintiffs grandfather Rameshwar Pandey. The area was brought under consolidation vide notification dated 11.7.1964. During the consolidation proceedings the objections relating to the aforesaid land came to be decided by the Consolidation Officer vide order dated 29.12.1966. Against this order an appeal was preferred by one Adhya Prasad and another before the Settlement Officer, Consolidation. The appeal was allowed and the order of the Consolidation Officer dated 29.12.1966 was set aside. Against this order the plaintiffs father preferred a revision u/s 48 of the Consolidation of Holdings Act. The revision was dismissed by the Deputy Director of Consolidation, Varanasi Camp, Varanasi on 11.12.1975. Then he preferred a Writ

Petition No. 722 of 1976. The writ petition was dismissed on 21.8.2006 and both the orders of Deputy Director of Consolidation dated 11.12.75 and that of the Settlement Officer, Consolidation dated 15.6.68 were confirmed. The plaintiff's father thereupon preferred SLP No. 21210 of 2006 but the same was also dismissed. Thus, when plaintiff's father have lost the battle right up to the Supreme Court, the plaintiff Rajnath Pandey instituted the present Original Suit No. 185/07, Rajnath Pandey v. Jawala Prasad and 16 Ors. with his father as proforma defendant No. 18 praying for the following reliefs:

1. That the plaintiff is claiming rights in the suit property through his father Sharda Prasad who had contested the previous proceedings right up to the Supreme Court. The aforesaid prayers made in the plaint, in short, are to the effect that it be declared that all the judgments and orders which have been passed in an unlawful manner by any court of law whether of Consolidation or by the other courts in respect of the aforesaid Arazi No. 73 (old) new number 150 area 0.112 situate in Mauja Chauri Khas, Tehsil Asnaon, district Sant Ravidas Nagar Bhadohi, are not binding upon the plaintiff and are invalid which have no effect upon the rights of the plaintiff in the aforesaid property and further that the defendants be restrained permanently from interfering in rights over the same. The second relief is dependant upon the first one and cannot be allowed independently. The basic ground for such relief being that the previous judgments and orders are illegal and have been passed in the absence of the plaintiff.

2. On the said suit being instituted the defendants instead of submitting written statement moved an application 28-Ga raising a preliminary objection that such a suit is not maintainable under law and is an abuse of the process and, therefore, it be dismissed. The application was allowed vide order dated 28.2.2008 passed by Civil Judge (Junior Division) and the suit was dismissed as not maintainable as the civil court was not possessed of the jurisdiction to grant the relief claimed in the suit. Against the said judgment and order the plaintiff preferred an appeal u/s 96 of the Code of Civil Procedure. The appeal was accompanied by a decree prepared by the trial court in the suit. The appellate

3. That the plaintiff is claiming rights in the suit property through his father Sharda Prasad who had contested the previous proceedings right up to the Supreme Court. The aforesaid prayers made in the plaint, in short, are to the effect that it be declared that all the judgments and orders which have been passed in an unlawful manner by any court of law whether of Consolidation or by the other courts in respect of the aforesaid Arazi No. 73 (old) new number 150 area 0.112 situate in Mauja Chauri Khas, Tehsil Asnaon, district Sant Ravidas Nagar Bhadohi, are not binding upon the plaintiff and are invalid which have no effect upon the rights of the plaintiff in the aforesaid property and further that the defendants be restrained permanently from interfering in rights over the same. The second relief is dependant upon the first one and cannot be allowed independently. The basic ground for such relief being that the previous judgments and orders are illegal and have been passed in the absence of the plaintiff.

4. On the said suit being instituted the defendants instead of submitting written statement moved an application 28-Ga raising a preliminary objection that such a suit is not maintainable under law and is an abuse of the process and, therefore, it be dismissed. The application was allowed vide order dated 28.2.2008 passed by Civil Judge (Junior Division) and the suit was dismissed as not maintainable as the civil court was not possessed of the jurisdiction to grant the relief claimed in the suit. Against the said judgment and order the plaintiff preferred an appeal u/s 96 of the Code of Civil Procedure. The appeal was accompanied by a decree prepared by the trial court in the suit. The appellate

5. That the plaintiff is claiming rights in the suit property through his father Sharda Prasad who had contested the previous proceedings right up to the Supreme Court. The aforesaid prayers made in the plaint, in short, are to the effect that it be declared that all the judgments and orders which have been passed in an unlawful manner by any court of law whether of Consolidation or by the other courts in respect of the aforesaid Arazi No. 73 (old) new number 150 area 0.112 situate in Mauja Chauri Khas, Tehsil Asnaon, district Sant Ravidas Nagar Bhadohi, are not binding upon the plaintiff and are invalid which have no effect upon the rights of the plaintiff in the aforesaid property and further that the defendants be restrained permanently from interfering in rights over the same. The second relief is dependant upon the first one and cannot be allowed independently. The basic ground for such relief being that the previous judgments and orders are illegal and have been passed in the absence of the plaintiff.

6. On the said suit being instituted the defendants instead of submitting written statement moved an application 28-Ga raising a preliminary objection that such a suit is not maintainable under law and is an abuse of the process and, therefore, it be dismissed. The application was allowed vide order dated 28.2.2008 passed by Civil Judge (Junior Division) and the suit was dismissed as not maintainable as the civil court was not possessed of the jurisdiction to grant the relief claimed in the suit. Against the said judgment and order the plaintiff preferred an appeal u/s 96 of the Code of Civil Procedure. The appeal was accompanied by a decree prepared by the trial court in the suit. The appellate

court dismissed the appeal holding the suit for the relief claimed in the plaint as not maintainable. It was further held that the trial court committed no error of law in holding that it had no Jurisdiction to declare the decisions of the superior authorities to be illegal and invalid. However, while dismissing the appeal the lower appellate court further held that the order dismissing the suit is not a decree u/s 2(2) of the Code of Civil Procedure, and therefore, the appeal is not even maintainable.

6. It is against aforesaid Judgment and order of the court below that the plaintiff has come up in this second appeal.

7. Sri M.D. Singh Sekhar, senior advocate has argued only one point, i.e., the lower appellate court went wrong in holding that the judgment and order of the trial court under appeal is not a decree and, as such, the appeal is not maintainable. He has not raised any other point and has not argued on the merits of the suit or its dismissal.

8. A perusal of the judgment and order of the lower appellate court clearly reveals that apart from dismissing the appeal on a technical ground that it does not arise out of a decree, the lower appellate court on merits have come to a conclusion that the suit of the plaintiff was not maintainable as the judgment and orders of the High Court and Supreme Court confirming the decision of the Deputy Director of Consolidation and that of the Settlement Officer, Consolidation cannot be declared as illegal and invalid by a subordinate civil court and, as such, the lower appellate court had not committed any error of law in dismissing the suit as not maintainable. This aspect of the matter has not been assailed in appeal and at least no argument with regard to such a finding has been raised before me.

9. In view of above, the legal submission advanced that the appeal was maintainable as it was against a decree and the judgment and order of the trial court dismissing the suit amounted to a decree loses all significance and is merely an academic point. The lower appellate court has not dismissed the appeal of the plaintiff solely on the above point, but otherwise on merits also. The judgment and order on merit is not being assailed. Therefore, once the suit and the appeal of the plaintiff falls on merits, there is no point to take up an academic issue with regard to the maintainability of the appeal or the question as to whether the judgment and order passed by the trial court amounted to a decree or not. The Apex Court in Govt. of National Capital Territory, Delhi Vs. Inder Pal Singh Chadha and Others, has clearly observed that the High Court need not enter into or dwell upon the questions on which the opinion of the Court is not called upon and, as such, are unnecessary.

10. Besides the above, it is now an acknowledged principle that where the merits of the case have been considered the technicalities pales into oblivion and are of no significance.

11. Notwithstanding that the appeal has not been preferred and argued on

merits, a plain reading of the averments made in the plaint which are germane for either rejecting the plaint or dismissing the suit at the threshold, clearly demonstrates that the plaintiff has certainly abused the process of the Court by initiating the present proceedings by way of the suit being fully aware that all his rights which he has claimed through his father in the suit property has come to be settled before the concerned authorities and their orders have been confirmed by the High Court as well as Supreme Court with the dismissal of the writ petition and then the special leave petition.

12. A suit of the nature is in effect a second round of litigation which is not permissible under law being opposed to public policy and it is the duty of the courts to throttle such a litigation in its infancy. The Apex Court in *T. Arivandandam Vs. T.V. Satyapal and Another*, , has held that if the suit is manifestly vexatious and meritless but by clever drafting it creates an illusion of cause of action, the Court must nip it in the bud and an activist Judge is an answer to such irresponsible law suits. In the instant case, as already observed, the suit is not only an abuse of the process of the Court but is also manifestly vexatious and meritless in the sense that the subordinate civil court has no authority of law to sit over the Judgment and orders of the High Court or the Supreme Court and to declare that the same to be invalid. Secondly, for the reason that the cause of action in the suit has already come to an end and settled by the consolidation authorities which orders have already been affirmed by the High Court and the Supreme Court and, therefore, the institution of the suit by the son after the father has lost in the earlier round of litigation, amount to initiation of successive proceedings in respect of the same cause of action. Such second innings or second round of litigation for the same cause of action against the public policy and, as such, cannot be permitted. Father and the son cannot be allowed in law to agitate and then re-agitate the same cause of action. This has been specifically prohibited by Section 12 of the Code of Civil Procedure. It provides that a plaintiff shall not be entitled to institute a suit in respect of such cause of action which has already been decided. The fundamental aim and object of this provision is to avoid multiple or successive suits that may be founded on the same cause of action or may be related to the same subject-matter.

13. In somewhat a similar situation an issue, which had already been determined in the writ petition was sought to be raised in a suit. The matter arising from such a suit came to the High Court in a writ petition and the High Court in *Prem Shanker Tripathi v. First Additional District Judge, Allahabad and Ors.* 1986 AWC 925, held that institution of the suit amounts to an abuse of the process of law and is destructive of one of the basic principles of administration of justice based upon the hierarchy of courts prevalent in the country and, as such, is barred u/s 9 of the CPC on the ground of public policy.

14. In another case of similar kind, a Division Bench of this Court in *Gulab Chandra v. Munsif West Allahabad and Ors.* 1988 (1) AWC 537 in exercise of

powers under Article 227 of the Constitution of India quashed a plaint of a suit holding where the litigation is sham, illusory, collusive and inspired by nefarious and vexatious designs the Courts not only have jurisdiction but owe a duty to throttle such litigation at the threshold.

15. Thus under the facts and circumstances narrated above, the appeal fails and the question of law raised is left unanswered as even if it is decided in favour of the plaintiff he will not succeed in getting the relief claimed in the suit or the appeal.

16. Therefore, I dismiss the appeal and impose an exemplary cost of Rs. 5,000 upon the plaintiff/appellant which shall be deposited by him in the Registry of this Court within a month, failing which it shall be recovered as arrears of land revenue.