
(2010) 04 CHH CK 0035
In the Chhattisgarh High Court
Case No : First Appeal No. 158 of 2009

Rajeshwar Singh Goutam and Others	APPELLANT
Vs	
State of C.G. and Another	RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 4 Rule 1, Order 6 Rule 14, Order 6 Rule 15, Order 7 Rule 11, Order 7 Rule 9

Citation : (2011) 3 CGLJ 216

Hon'ble Judges : N.K. Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.K. Agarwal, J.—This is Plaintiffs first appeal u/s 96 of the CPC against the order dated 29-6-2009 passed by 3rd Additional District Judge (FTC), Raigarh in Civil Suit No. 33-A/2007 whereby and whereunder while rejecting the Plaintiffs application for permission to correct the mistakes regarding signature of Plaintiff No. 2 on the plaint, allowed the application filed by the Defendant No. 2/ Respondent No. 2 under Order 4 Rule 1 read with Section 151 of CPC and rejected the suit as not maintainable.

2. Brief facts of the case are as under:

3. The Plaintiffs instituted a suit claiming relief of declaration of title and permanent injunction against the Defendant. Both the Plaintiffs had put their signatures over the plaint. Plaintiff No. 2 Virendra Singh Goutam, in his evidence although deposed in detail in order to prove plaint allegations but deposed the plaint does not bear his signature.

4. The Plaintiffs have filed an application u/s 151 of CPC stating therein that by mistake, the Plaintiff No. 2 denied his signature over the plaint and Vakalatnama although he has signed over there and the mistake is bonafide and in view of the above, it would be in the interest of justice to permit the Plaintiff No. 2 to put his

signature over the plaint afresh filed in the case. The prayer was opposed by the Defendants. The Defendants also filed an application under Order 4 Rule 1 read with Section 151 of CPC and prayed for rejection of plaint.

5. Learned trial Court vide the impugned order rejected the application filed by the Plaintiffs, allowed the application filed by Respondent No. 2 and dismissed the suit.

6. Shri S.K. Tiwari, learned Counsel for the Appellants would contend that learned Court below has fallen in error in rejecting the Appellants' application. He would further contend that the Plaintiff No. 2 has deposed everything in his statement in order to prove the plaint allegations but due to bonafide mistake. He deposed, the plaint and Vakalatnama do not bear his signature, although the plaint and Vakalatnama contains his signature. In order to avoid mistake occurred if any, application was filed by the Appellants for permission of the Court for correction of the above mistake. The above mistake can be rectified at any stage of the suit and rejection of the plaint on that ground is not proper.

7. On the other hand, Shri Pankaj Agrawal, learned Counsel appearing for the Respondent No. 2 supported the order impugned and submitted that the learned trial Court has rightly passed the order impugned in the facts and circumstances of the case which deserves to be upheld.

8. I have heard learned Counsel for the parties and perused the order impugned and record of the trial Court.

9. Supreme Court in case of Salem Advocate Bar Association Vs. Union of India (UOI), , has observed in para 16 as under:

16. Our attention has been drawn to Order 7 Rule 11 to which Clauses (e) and (J) have been added which enable the court to reject the plaint where it is not filed in duplicate or where the Plaintiff fails to comply with the provisions of Rule 9 of Order 7. It appears to us that the said clauses being procedural would not require the automatic rejection of the plaint at the first instance. If there is any defect as contemplated by Rule 11 (e) or non-compliance as referred to in Rule 11(f), the court should ordinarily give an opportunity for rectifying the defects and in the event of the same not being done the court will have the liberty or the right to reject the plaint.

10. Single Bench of Gauhati High Court in case of Kailash Singh Vs. Hiralal Dey, held that Section 99 is very clear that no decree shall be reversed or substantially varied on the ground of non-joinder or mis-joinder of parties or causes of action or any error, defect or irregularity in any proceeding not affecting the merit of the case or jurisdiction of the Court, "any error, defect, or irregularity in any proceeding in the suit" occurring in Section 99 of CPC will also include signing and verification of the plaint as laid down in Rules 14 and 15 of Order 6, Code of Civil Procedure

11. In the light of judgment of Supreme Court referred hereinabove and in the

light of the ratio of judgment of High Court of Gauhati referred hereinabove to which I am in respectful agreement, it is clear that learned trial Court has fallen in error in rejecting the plaint on the ground that the Plaintiff No. 2, has deposed the plaint does not bear his signature. The trial Court failed to consider the fact that the Plaintiff has deposed everything in order to prove plaint allegations; immediately after completion of evidence, fresh Vakalatnama on his behalf was filed, application was also filed to correct the mistake if any. Indisputably, it is not a case of fraud or forgery committed by Plaintiff No. 1 or by any person. It is a case of mistake which appears to be bonafide.

12. While dealing with the provisions of Order 4 Rule 1 and Order 6 Rule 15, single bench of Allahabad High Court in case of Bal Mukund Persad Gupta and Others Vs. Mathura Prasad, has held that any irregularity or mistake committed in presentation of plaint or signature and verification of pleadings is merely a mistake, can be rectified subsequently.

13. Single Bench of High Court of Karnataka in case of Private Eye (P) Ltd. v. Hind High Vacuum Co. Pvt. Ltd. AIR 2003 Kar 95 while dealing with the provisions contained in Order 4 Rule 1, Order 7 Rule 4 of CPC has also taken the same view and held that procedural defect not going to the root of the matter should not be permitted to defeat a just cause. Dismissal on such mere technicality is not proper.

14. For the forgoing, in the considered opinion of this Court, the order impugned being not sustainable in law deserves to be and is hereby set aside. Plaintiffs application is allowed and Defendants application is rejected and the matter is remitted back to the trial Court to dispose of the suit in accordance with law on its own merit after permitting the Plaintiff No. 2 to put his signature over the plaint afresh.

15. No order as to costs.