

(2009) 11 DEL CK 0204

In the Delhi High Court

Case No : I.A. No. 9474 of 2008 in C.S. (OS) 700 of 2008

Shri Rohit Shekhar

APPELLANT

Vs

Shri Narayan Dutt Tiwari and Another

RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 20
Limitation Act, 1963 — Article 120

Citation : (2009) 11 DEL CK 0204

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Meenakshi Arora and Mohit D. Ram, for the Appellant; Rajeev Nayar Pradeep K. Bakshi, Sanjeev Chanda and Mohit Bakshi and Kamini Jaiswal, for D-2, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this order, I shall dispose of an application under Order 7 Rule 11 of CPC for rejection of plaint. Defendant No. 1 has sought rejection of the plaintiff on the ground that this Court had no territorial jurisdiction to entertain the plaint. The rejection of plaint is also sought on the ground of limitation.

2. plaintiff in this case has sought a declaration that he was a naturally born son of defendant No. 1 through defendant No. 2, who is not the wife of defendant No. 1. It is plaintiff's own case that he was living with defendant No. 2, his mother. However, defendant No. 1 who allegedly sired him had not been recognizing him to be his son from the year 1995 onward, when plaintiff was aged around 16 years (plaintiff is now around 30 years of age and was aged around 29 years when he filed the present suit). It is also submitted by plaintiff that defendant No. 1 had been giving threatening calls to defendant No. 2, his mother and in the year 2001 when plaintiff tried to meet defendant No. 1 in Delhi, defendant No. 1 got him insulted. Between 2002 and 2005 plaintiff and his mother had attended

some of the functions of defendant No. 1. However, on 7th December 2005, plaintiff approached defendant No. 1 with his maternal grandmother at the airport in Delhi to seek an appointment with him but defendant No. 1 avoided him and thereafter many attempts have been made by plaintiff to contact defendant No. 1 but he refused to meet.

3. It is submitted by counsel for defendant that in view of the averments made by the plaintiff in the plaint, this plaint was barred by limitation and also that this Court had no territorial jurisdiction. Admittedly, the residential address of defendant No. 1 is of Andhra Pradesh. Defendant No. 2 is the mother of plaintiff and there is no denial that she is supporting the case of plaintiff. No relief has been sought qua her except that she and defendant No. 1 should make a publication in the newspaper that plaintiff was their son. It is submitted that no such relief can be granted by the Court and Court cannot compel a person to make a publication in the newspaper of any fact. Thus, this relief was deliberately added in the plaint and defendant No. 2 was deliberately made a party to the plaint just to create jurisdiction of this Court when this Court has no jurisdiction. Defendant No. 1 was living in Hyderabad being the Governor of Andhra Pradesh in the Governor House and if at all there was territorial jurisdiction of any Court it was the Court at Andhra Pradesh since suit was practically against defendant No. 1 personally.

4. In response to this application of defendant No. 1, it is submitted by plaintiff that the permanent address of defendant No. 1 was C-1/9, Tilak Lane, New Delhi and the present address of defendant No. 1 was merely a temporary address since he was Governor of Andhra Pradesh therefore, the suit has been rightly filed in Delhi.

5. I consider that this argument of plaintiff must fail. A suit can be filed in a Court having appropriate jurisdiction. Where the relief sought is against a defendant personally, Section 20 of CPC provides that the suit shall be instituted in Court within the local limits of whose jurisdiction the defendant, or each of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain. It is an undisputed fact that defendant No. 1 was residing and carrying on business in Hyderabad. A suit against him could have been filed only at Andhra Pradesh in the Court at Hyderabad. The question arises whether by making defendant No. 2 as a party, the plaintiff can create jurisdiction of the Court which this Court does not have. In the present case, defendant No. 2 is the mother of plaintiff. She, as per plaintiff has at no point of time disputed the status of plaintiff either as her son or as a son born out of her union with defendant No. 1. In the written statement filed by her she has supported the case of plaintiff in toto. She could have at the most been either a co-plaintiff or a witness to the plaintiff's case, as and when the Court had to record evidence. A witness needs not be made a defendant and so she could not have been made a defendant. She being the mother of plaintiff supported the case of plaintiff and is

equally interested in the declaration sought by the plaintiff as is reflected from her written statement. Making her as a defendant in the suit seems to have been done only for the purpose of creating jurisdiction of this Court as she lives in Delhi. I consider that no person can be given liberty to create jurisdiction of a Court by making another person, who is totally an unnecessary party, as defendant. If this is allowed, the Courts can be used as a tool of harassment and a person from one corner of this country can be sued 2000 km away just because an unnecessary party is made defendant in the suit by plaintiff, to create jurisdiction. This cannot be the intent and purpose of Section 20 CPC where it is specifically provided that a suit can be filed, if there are more than one defendants, where any of the defendants personally works for gain. The choice of Court can be done by the plaintiff in case where an actual or meaningful relief is against all the defendants who live at different places and who are necessary party to the suit. The choice cannot be made by plaintiff by making somebody as a Performa party or making witness as defendant. Where a defendant could equally be arrayed as a plaintiff but is deliberately arrayed as a defendant, would only show that both were in league with each other. On the basis of residence of such a defendant, a Court cannot exercise territorial jurisdiction to entertain a suit. I, therefore, consider that this Court has no territorial jurisdiction to entertain the instant suit.

6. According to plaintiff his paternity was denied by defendant No. 1 in the year 1995 when he was aged around 16 years. The plaintiff attained majority in the year 1997. He could have sought declaration from the Court within three years from his attaining the age of majority. He did not approach the Court within that period. Merely attending functions of defendant No. 1 by the plaintiff did not amount to acknowledgment and existence of relationship of son and father between defendant No. 1 i.e. host and plaintiff, a guest. In any event, it is not the case of plaintiff that defendant No. 1 acknowledged him publicly as his son at any point of time. Nor it is the case of plaintiff that in 1995, defendant No. 1 who had earlier acknowledged him as his son told him that he was not his son. The contention of plaintiff is that in 1995 defendant No. 1 refused to meet defendant No. 2, and instructed that she should not be allowed to enter the house and thereafter he refused to do anything with defendant No. 2 or plaintiff and, therefore, defendant No. 2 decided to stay away from defendant No. 1. Similar allegations have been made by plaintiff about year 2001 when it is stated that in 2001 he again tried to meet defendant No. 1 and defendant No. 1 did not meet him and he was manhandled by the guards of defendant No. 1. The other contention of plaintiff is that after defendant No. 1 became Chief Minister of Uttaranchal, he met plaintiff for some time and thereafter again absolutely refused to see him for a number of years and lastly in 2005 when plaintiff went to see him at the airport on 7th December 2005 defendant No. 1 avoided to meet the plaintiff.

7. Mere refusal by a person of meeting with another person gives rise to no cause of action. A person can refuse to meet his own brother, father, son, or

wife. There is no law by which a person can be compelled to keep relationship with his father, mother, brother, sister or other relatives etc. Mutual relations are developed by mutual trust of the relatives and not by legal injunctions. The Court cannot compel a person to meet other person only because he is related to him. Mere non-meeting of defendant No. 1 with plaintiff thus would not give rise to a cause of action for filing a suit.

8. On 7th November 2007 plaintiff got served a notice on defendant No. 1 claiming himself to his son. Merely serving of a notice does not extend the period of period of limitation. This notice was not responded by defendant No. 1. The cause of action in this case according to plaintiff's own admissions in the plaint arose in 1995 and plaintiff attained the age of majority in 1997, therefore, the cause of action for filing a suit was available with the plaintiff in 1997 itself.

9. Counsel for plaintiff argued that limitation would not run against plaintiff and every denial gives rise to a fresh period of limitation. He relied on 1950 Indlaw all 211 [Allahabad High Court] Bhoop singh v. Tarif Singh wherein the Allahabad High Court held as under:

As regards the question of limitation, on which the Courts below differed, the lower appellate Court took an obviously wrong view. The latter Court applied Article 120, Limitation Act, which is an article applying to cases not provided for by any other article of the Act. It pointed out that the defendant having for a number of years been denying the parentage of the plaintiff, limitation had long since commenced to run against the latter, and that the present suit was, therefore, time barred. The trial Court, on the other hand, had held that each denial of the plaintiff's status was a fresh encroachment on the latter's right, giving rise to a fresh case of Action in his favour. I entirely agree with this view. A man may have reveled in slanderous attacks on another for a time, but her acquires no license by their mere frequency or the long period of their duration to resume his role, after a certain period, with impunity. It would be fallacious to imagine any artificial barrier to the power of the Court to grant redress on any ground of deficiency of the offence first committed. The person traduced would on each repetition of the libel have a right to challenge it and claim relief. I need say nothing more on the point. (para 23)

10. In the case before Allahabad High Court the plaintiff had sought a declaration that he was a legitimate son of legally wedded wife of Mokam since Mokam had denied his legitimacy specifically. In the case in hand, it is not alleged by plaintiff that at any point of time he was acknowledged as a son by defendant No. 1 before anybody and defendant No. 1 later denied this relationship. What has been alleged is that whenever plaintiff went to meet defendant No. 1, defendant No. 1 did not allow him to meet. I, therefore, consider that a mere refusal to meet a person does not tantamount to acknowledgment or denial of relationship and would not give rise to a fresh cause of action. The suit is barred by limitation and is hereby dismissed on this ground.

11. In view of my foregoing discussion, the application under Order 7 Rule 11 CPC filed by defendant No. 1 for rejection of plaint is hereby allowed and the present suit is not maintainable and is liable to be dismissed. The suit is hereby dismissed. Parties are left to bear their own costs.