

(2010) 08 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 606 of 2000

Shri Rup Lal

APPELLANT

Vs

Shri Balraj

RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, Order 33 Rule 15
Limitation Act, 1963 — Section 13
Penal Code, 1860 (IPC) — Section 104, 99

Citation : (2010) 3 ShimLC 14

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—This second appeal is by the Defendant against the concurrent findings arrived at by the learned Courts below whereby the suit filed by the Respondent for the recovery of Rs. 80,000/- as damages was decreed. The instant appeal was admitted on the following substantial questions of law:

1. Whether the suit of the Plaintiff was within limitation and could be decreed when the cause of action to file the suit arose on 18.7.1986, whereas application for suing as indigent person was dismissed on 9.6.1988, the Plaintiff's appeal was returned on 1.6.1990 for presentation to the High Court within 30 days which was not filed and the time spent in pursuing the case as indigent person could not be counted?
2. Whether on material on record it was established that the Defendant caused injury to the Plaintiff resulting in 15% disability entitling him to a damage of Rs. 80,000/- ?
3. Whether the Defendant was protected by Section 104 of the Indian Penal Code from preventing the Plaintiff from causing mischief, injury and tres-pass on the land?

4. Whether the findings of the Court below are based on misreading and misconstruction of oral and documentary evidence and proper principles have been allowed for awarding damages, particularly loss of prospects of marriage when the Plaintiff had in fact married on 5.12.1992 and the Court erred in not taking into consideration the said fact while awarding compensation?

2. Shorn of the unnecessary details, the facts can be stated thus. On 18.7.1986 at 6.30 p.m. the Plaintiff/respondent was going to defecate near Barmana down below the National Highway. The Defendant/appellant met him on the way and asked him as to where he was going. The Plaintiff/respondent told him that he was going to ease himself down the road. On this, the Defendant/appellant gave a "Drat" blow on his right leg causing fracture. The Plaintiff/respondent was taken to the hospital at Bilaspur where he was medically checked up. He had to remain hospitalized for about two months. His leg was plastered. He incurred expenses on medial treatment and had also to suffer the loss in his Dhabha-business and he was unable to do any manual work. A criminal case was also registered against the Defendant/appellant for the aforesaid offence in which he was convicted and sentenced on 6.4.1987. In appeal the case was remanded back to the learned trial Court and the learned trial Court vide judgment Ext.D.I dated 3.8.1989 acquitted him. The Plaintiff/respondent submitted that he suffered the earning to the tune of Rs. 1,500/- to 2,000/- per month. There was a shortening of the leg by 11/2 inches. He was unmarried youngman of 25 years. Thus he claimed the damages to the tune of Rs. 80,000/- for voluntarily and intentionally causing hurt to him under the above heads.

3. The Plaintiff/respondent had initially filed the suit as forma pauperis, but the permission was not granted to him by the learned trial Court to sue as an indigent person, as the application was not accompanied by the schedule which was a statutory requirement. Even in appeal he did not succeed but was directed to file the appeal in the High Court on or before 1.6.1990, but he did not do so and affixed the requisite Court-fees on 23.4.1991 on the extended period granted by the learned trial Court.

4. The Defendant/appellant resisted and contested the suit denying the occurrence as alleged. He further averred that the Plaintiff/respondent was trying to ease himself in front of so many women folk of the village. Thus in exercise of his right of private defence he had every right to stop him from committing the mischief of nuisance and criminal tres-pass. He also raised the preliminary objections regarding the maintainability of the suit and limitation.

5. In replication, the Plaintiff/respondent denied the preliminary objections and reasserted even paras of the plaint.

6. At the end of trial, the learned trial Court held that the suit filed by the Plaintiff/respondent was within limitation and maintainable. It was also held that after the rejection of application for leave to sue as indigent person by the trial Court and also appeal against it, the requisite Court-fees was levied by the

Plaintiff/respondent on 23.4.1991. Thus, in view of Section 13 of the Limitation Act the period spent in prosecuting the application for leave to file the suit as indigent person and also in appeal has to be excluded and Rule 15 of Order 33 of the CPC also negates the contentions raised by the Defendant/ Appellant. As such, the rejection of the application to file the suit as forma pauperis is no bar to affix the Court-fees and continue with the suit with retrospective date when the application under Order 33 Rule 1 of the CPC was filed. The Plaintiff/respondent was further entitled for the damages claimed. Consequently, the suit was decreed as prayed.

7. The learned District Judge affirmed the above findings. Hence, the present second appeal.

8. Shri K.D. Sood, Learned Counsel for the Appellant has vehemently argued that the cause of action in the instant case arose on 18.7.1986 whereas the application for suing as indigent person was dismissed on 9.6.1988 by the learned trial Court and the Plaintiff's appeal was ordered to be returned on 1.6.1990 with the direction for presenting it in the High Court within 30 days but it was not filed and the time spent to sue as indigent person could not have been counted from the date of filing the application under Order 33 Rule 1 of the CPC nor his said application was bona fide.

9. Contra, Shri Rajiv Jiwan, Learned Counsel appearing for the Respondent forcefully argued that there are concurrent findings of fact of the Courts below and no question of law muchless substantial question of law arises in this appeal. Therefore, the appeal merits dismissal.

10. I have given my thoughtful consideration to the rival contentions of the parties and have carefully examined the record.

11. The perusal of the records shows that the application was presented to sue as forma pauperis along with the suit, before learned trial Court on 9.6.1988. It contained deficient Court-fee. The application under Order 33 Rule 1 of the CPC was rejected for want of requisite schedule. Thereafter the Plaintiff/respondent preferred an appeal before the learned District Judge, which was returned on 1.6.1990 with the direction to present the same before the High Court within a period of 30 days. Zimni order dated 9.6.1988 of the learned trial Court shows that the Plaintiff was allowed to file the requisite Court-fees. The time was further extended from time to time and ultimately the deficiency in Court-fees was made good, as per the report made in the zimini order dated 19.2.1991.

12. The perusal of zimni order dated 23.4.1991 reveals the Court-fees was found to be correct and the suit was registered. The case was listed for the filing of the written statement which was ultimately filed on 9.10.1991.

13. Section 13 of the Limitation Act, 1963 provides for the exclusion of time in cases where leave to sue or appeal as a pauper is applied for. The aforesaid Section reads as under:

13. Exclusion of time in cases where leave to sue or appeal as a pauper is applied for--

In computing the period of limitation prescribed for any suit or appeal in any case where an application for leave to sue or appeal as a pauper has been made and rejected, the time during which the applicant has been prosecuting in good faith his application for such leave shall be excluded, and the Court may, on payment of the Court-fees prescribed for such suit or appeal, treat the suit or appeal as having the same force and effect as if the Court-fees had been paid in the first instance.

14. As a matter of fact, the application to sue in forma pauperis is formal, but a method has been prescribed by the CPC for institution of a suit by a pauper without payment of the fee prescribed by the Court Fees Act. If the claim of the applicant is not established, the application must fail. But there is nothing personal in such an application. The suit commences, the moment an application to sue in forma pauperis is presented. Section 13 of the Limitation Act, has been inserted only to make the position clear on account of conflict of decisions on the question whether a Court could allow payment of Court-fees with retrospective effect when the application to sue as a pauper is refused. In the present Section referred above, the Court rejecting the application for permission to sue as a pauper has power to direct the application to be registered as a plaint and allow time to the applicant-plaintiff to pay Court-fees in respect of the same. An application to sue as a pauper, if dismissed, it alone would not establish that the Plaintiff had not acted in good faith to deny the benefit of Section 13.

15. Further, Order 33 Rule 15 of the CPC puts an end to the controversy (i) by giving discretion to the Court to grant time to the applicant to pay the Court-fees, (ii) by treating the date of the application for indigent person as the deemed date of institution of the suit, if the requisite Court-fees and the costs referred to above are paid within the time granted by the Court. Therefore, non-filing of the appeal by the Plaintiff as directed by the first appellate Court within 30 days, is of no consequence for the reason that the main suit was pending before the learned trial Court, although the Court-fees affixed thereupon was deficient, but the Court had extended time and the Court-fees was allowed to be filed and the Court directed to register it a suit. Therefore, the time spent in pursuing the application as indigent person against the aforesaid background is to be excluded. As such, the suit of the Plaintiff was within limitation from 18.7.1986 when the cause of action to file the suit had arisen.

16. It is next argued by the Learned Counsel for the Appellant that there was no material on record to grant of damages to the tune of Rs. 80,000/- for 15% disability alleged to have been sustained by the Plaintiff as the Defendant/appellant had exercised his right of private defence. The conviction and sentence of the Appellant was set-aside, on remand the Appellant was acquitted by the learned trial Court.

17. This plea/defence was rejected by both the Courts below. In Rajgopal (Dead) by Lrs. Vs. Kishan Gopal and Another, the Apex Court held that the findings of fact recorded by the Courts below cannot be interfered by the High Court in the absence of any substantial question of law.

18. Even though I find that the statement of PW-2 Dr. S.N. Agnihotri with respect to the injuries caused to the Plaintiff, is enough to hold the gravity of the injuries sustained by the Plaintiff as no effective cross-examination was conducted to dislodge his version. He testified that there was cumulated fracture of the upper part of the tibia shaft of the right leg and the injury was oval shape hole to the skin and underneath bone of the right leg measuring 2.5 cm. x 1.5 cm. in size. But, the disability was also assessed by the Board of doctors and PW-6 Dr. Mohinder Singh was one of Members of the Board and he proved the disability certificate Ext. P-B issued by the Medical Board and the Board assessed the permanent disability to the extent of 15% because of shortening of the leg by 1-1/2 inches because of injuries caused to the Plaintiff.

19. Defendant/appellant as DW-1 has admitted to have given the DANDA blow to the Plaintiff, but according to him, it was in his defence as the Plaintiff wants to defecate in the land owned by him. To prove his version he did not examine any other witness.

20. Plaintiff as PW-3 has denied the plea raised by the Defendant/ Appellant. His version is substantiated by the eye-witnesses Subhash Chand PW-4 and Rakesh Chand PW-5. He further testified that his leg remained plastered for about three months. He also remained hospitalized. He was running a hotel/Dhaba and he used to earn about Rs. 6,000/- per month, but on account of fracture he could not attend his business and remained under depression and this disability has caused to limping while walking. 21. The learned Courts below have taken the entire facts into account and rightly dislodged the version of the Defendant that he exercised his right of private defence in view of Section 99 of the Penal Code. Even if it is assumed that the Defendant was acting in his right of private defence to protect his property from causing any mischief, even then the circumstances reveal that he exceeded the right of private defence, which do not exonerate him from the liability to pay the damages.

22. The Plaintiff/respondent was aged about 25 years unmarried youth. His future prospectus and earning got affected. His capacity to manual work also decreased. Though he got married later, but his leg had shortened by 1-1/2 inches which caused jumping while walking and developed a deformity and permanent disability. Thus, he suffered a personality defect apart from financial loss in business, pain and suffering and medical expenses.

23. Thus for the above reasons and keeping in view all the facts and circumstances of the case, I do not find that the learned Courts below have misappreciated the evidence and misapplied the law. Therefore, no interference is called for in the impugned judgments and decrees passed by the Courts below.

The substantial questions of law are accordingly answered.

24. No other point is urged or pressed.

25. The appeal is dismissed. The parties are left to bear their own costs.