

(2011) 01 DEL CK 0134

In the Delhi High Court

Case No : Regular Second Appeal No. 2 of 2011

Shri Sanatan Dharam Sabha

APPELLANT

Vs

Sh. Chander bhan (Since Deceased) through L.Rs.

RESPONDENT

Date of Decision : 10-01-2011

Acts Referred:

Citation : (2011) 1 AD 721 : (2011) 179 DLT 372 : (2011) 2 ILR Delhi 175

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Sanjay Aggarwal, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.

CM No. 275/2011 Exemption is allowed subject to just exceptions.

RSA No. 2/2011 1.

1. This second appeal has impugned the judgment and decree dated 16.9.2010 which had endorsed the findings of the Civil Judge dated 27.4.2006 whereby the suit of the plaintiff seeking possession and perpetual injunction qua the suit property had been dismissed.

2. Present suit had been filed on 15.3.1983 . The plaintiff was a society i.e. Sanatan Dharam Shabha, New Delhi, Laxmi Narain Tempa (Birla Mandir). Suit had been filed through its secretary M.L. Anand. Averment in the plaint was that M.L. Anand was duly authorized vide resolution dated 14.11.1982 to file the present suit. On 07.1.2006, a preliminary issue had been framed by the trial court it reads as follows:

Whether the suit of the plaintiff has been duly instituted and by a duly authorized person? OPP

3. An application under Order 6 Rule 17 of the CPC (hereinafter referred to as

"the CPC") had been preferred by the plaintiff on 15.1.2004 seeking a amendment in the plaint to the effect that in fact no resolution dated 14.11.1982 authorizing M.L. Anand to file the present suit was on record; the amendment sought was that the resolution is dated 20.10.1982. In the amendment application, it has been averred that this fact that there was no such resolution dated 14.11.1982 had come to light only recently; application seeking amendment has thus been filed. Trial judge had recorded that the suit had been filed in the year 1983; issues were framed on 03.9.2001. plaintiff had taken numerous opportunities for the purpose of leading plaintiff evidence as also for filing the present application i.e. the application under Order 6 Rule 17 of the Code. The application was thereafter filed only on 15.01.2004 i.e. after a lapse of almost 21 years for which there was no explanation. Application for amendment had been dismissed. The court had recorded that since there was no resolution authorizing M.L. Anand to file the present suit, his suit was not maintainable; it was dismissed.

4. This finding of the trial court was affirmed by the first appellate court. The finding in the impugned judgment is recorded as under:

9. In the memorandum of appeal the terminology society/trust has been used for the Appellant reflecting that it is not sure about its constitution. Despite a specific objection having been taken by the Respondent in written statement dated 27.5.83 Appellant chose not to file the registration certificate. It needs to be appreciated that there are separate authorities for registration of a trust under Act No. 2 of 1882 and a society under Act No. 21 of 1860. In order to remove the ambiguity, the Appellant was required to submit a certificate of registration. As appearing in the letter heard on which the resolution dated 16.07.07 in favour of Sh. Vinod Kr Mishra, signatory of appeal, has been engrossed I would take the Appellant to be a registered society.

10. As has been put by the Appellant that only minor correction in the date of resolution in favour of Sh. Madan Lal Anand was to be affected by way of amendment, let us examine whether there is anything more than what meets the eye.

11. The amendment application was filed by Appellant when the suit was already pending in the trial court for more than 20 years. By then the plaintiff had availed not less than 10 opportunity for leading evidence over about 21/2 years. Absolutely no reasons for the delay in detecting so called "typographical error" have been disclosed. There is nothing to discern the action taken by it against the defaulting official. Having filed a copy of resolution with plaint on 15.05.83 in compliance of Order 7 Rule 14 CPC, plaintiff was conscious of the fact that original thereof has to be retained in its custody for being produced in court during evidence, in case of need. Apparently the elementary exercise of matching the original with copy to be produced in the court was not performed. The plaintiff neglected to carryout this exercise even when a specific objection about the quality of resolution dated 14.11.82 was taken by the Defendant in his

written statement.

12. While perusing the copy of resolution dated 14.11.82 filed with the plaint, it transpires that it is a typed copy attested by Sh. Madan Lal And as Secretary of plaintiff himself. It must have been prepared from the original and no particulars has been put forth as to had prepared the copy and how only the date mentioned at the top got wrong.

13. It has been represented that the resolution had in fact been passed on 20.10.82 in the meeting of plaintiff in favour of Sh. Anand. A comparison of the two resolutions however, reveals the folly. The resolution dated 20.10.82 pertains to Shri Sanatan Dharma Sabha Lakshmi Narain Temple Trust and has been attested by its Secretary. The name of plaintiff on the other hand is Shri Sanatan Dharma Sabha, New Delhi. Apparently the projected resolution does not belong to the plaintiff. While the resolution dated 14.11.82 was passed by the working committee of plaintiff, the one dated 20.10.82 was passed in the general meeting of temple trust. The contents of resolution on being minutely perused have also been found to be materially different. It would therefore be exaggerated to contend that resolution of 14.11.82 and 20.10.82 are same except qua their dates. There is nothing to perceive that temple trust and the plaintiff are identical bodies. Reliance of Appellant on the ratio of United Bank of India Vs. Naresh Kumar and others, does not help it out in the facts of the case in view of the above reasons.

14. In para 16 of the plaint the date of accrual of cause of action had been specified to be 13.11.82 and 15.11.82 and that the same was continued. Through the amendment these dates are not sought to be altered. The mentioned of resolution dated 20.10.82 for initiating legal action against the Defendant for a cause of action which had accrued more than three weeks thereafter was unmatched. It would have rendered the plaint diabolical. Had the plaintiff really aggrieved with the conduct of Defendant prior to the date of passing of resolution in favour of its Secretary, it would have revealed the actual date of accrual of cause of action instead of leaving it to be a make believe story.

15. Since the amendment amounted to withdrawal of admission which remained on record for more than 20 years and would have render the plaint incongruous and diabolical to the prejudice of Defendant, it could not have been allowed. The consequent observations of Id.trial court on preliminary issue were only corollary.

16. The impugned order and the decree passed by Ld.trial court thus are upheld for the additional reasons given above. The appeal is dismissed.

5. There is no perversity in this finding. It has come on record that the suit was filed in the year 1983; a specific objection had been taken in the written statement which was filed on 27.5.1983 that the suit has not been filed through a duly authorized person. Amendment application was filed after more than two decades. Resolution dated 20.10.1982 on which the plaintiff had sought to rely related to Shri Sanatan Dharam Sabha, Laxmi Narain Temple Trust whereas the

plaintiff is one Shri Sanatan Dharam Sabha, New Delhi; even the said resolution dated 20.10.1982 did not pertain to the plaintiff.

6. The substantial questions of law had been formulated in the body of the appeal. It has been urged that the provisions of Order 29 Rule 1 of the Code had not been adhered to; technicalities should not come in the way of justice. This argument is without any force. Order 29 Rule 1 of the Code refers to verification of pleadings on behalf of a corporation by its secretary or by director or other principal officer of the corporation who is able to depose to the facts of the case. In the plaint there is a categorical averment that the plaintiff is relying upon the resolution dated 14.11.1982 which in the subsequent statement made by the plaintiff was stated to be non-existent. This provision does not come to the aid of the Appellant.

7. No substantial question of law having arisen the appeal is dismissed in limine.