

(1968) 05 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 18 of 1967

Smt. Rani Bhagwan Kunwar

APPELLANT

Vs

State of UP and another

RESPONDENT

Date of Decision : 17-05-1968

Acts Referred:

Uttar Pradesh Vrihat Jot Kar Adhiniyam, 1963 — Section 12

Citation : (1968) 38 AWR 564

Hon'ble Judges : R.S. Pathak, J;M.H. Beg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.H. Beg, J.—The Petitioner prays for a writ of certiorari to quash an order of Board of Revenue, UP, opposite party No. 2, by which a revision application by the State, opposite party No. 1, filed u/s 12 of the Vrihat Jot Kar Adhiniyam, 1963 (hereinafter referred to as the Act) was allowed in the circumstances detailed below.

The proceedings which came up before the Board of Revenue under the Act had been commenced by a notice served u/s 7(2) of the Act upon Sri Chhattar Singh, the Manager and Mukhtiar-e-am of the Petitioner, calling upon the Petitioner to make a return on the ground that she Was liable to tax on the estimated annual value of the land held by her on 1-7-1964. The Petitioner's Manager and Mukhtiar-e-am signed and filed a return before the Assessing Authority at Etah. The Petitioner acted through her Mukhtiar-e-am throughout the assessment proceedings. No objection was taken to the return signed and filed by the Petitioner's Mukhtiar-e-am. The Petitioner's Mukhtiar-e-am also appealed against the order of the Assessing Authority. An objection was taken, for the first time, before the Additional Commissioner, Agra, functioning as the Appellate Authority u/s 11 of the Act, that the Petitioner's appeal was not in proper form as it had not been signed by the Petitioner in accordance with the directions given in VJK Form 7, prescribed by Rule 16 of the Vrihat Jot Kar Rules. Rule 16

lays down that an "Appeal u/s 11 to the Commissioner shall be filed in the case of--(a) an order u/s 8 in Form VJK..." Form VJK 7 contains merely the word "signed", followed by a dotted line below the place meant for grounds and statement of facts in the form. After that, the form of verification is given as follows:

I..., the Petitioner named in the above petition, do declare, what is stated therein including the Statement of Facts referred to in paragraph 6 is true to my best knowledge and belief.

Sd....

A line is drawn across the page below the verification clause. Then occurs the note giving certain directions reproduced here:

Note--(1) The superfluous words in paragraphs 4 and 7 should be deleted.

(2) The memorandum of appeal as well the verification should be signed--

(a) in the case of an individual by the individual himself/herself;

(b) in the case of any other association, society/Sarvodaya Mandal or company by the principal officer thereof; and

(c) in the case of a firm by a partner.

The note is not part of the form. It only gives instructions about the way in which the form should be filled up. In other words, these instructions are, prima facie, only directory and not mandatory.

2. The Appellate Authority held that Rule 16 of the Vrihat Jot Kar Rules could not override the provisions of Section 25 of the Act which reads as follows:

25. Appearance by authorised representative--

Any landholder, who is entitled or required to attend before any authority in connection with any proceeding under this Act, may attend either in person or through a duly authorised agent.

We may observe that the Appellate Authority was in error in applying Section 25 to the question of signature and verification upon the memorandum of appeal. Section 25 deals with representation at the hearing. It only shows that the Appellant may be heard through a duly authorised agent.

3. The Appellate Authority also pointed out that no objection had been taken to the Authority or competence of the Mukhtiar-e-am to sign or act on behalf of the Assessee before the Assessing Authority. It observed that there was nothing on record to show that Sri Chhattar Singh was not the duly appointed agent of the Assessee. The Appellate Authority, after overruling the preliminary objection, allowed the Assessee's appeal and sent back the case for reassessment by the Assessing authority in accordance with certain directions.

4. The State then went up in revision to the Board of Revenue which set aside the order of the Appellate Authority on the ground that the Appellate Authority had exceeded its jurisdiction in dispensing with the "vital provision" directing that the memorandum of appeal and the verification clause must be signed by the Assessee. The question raised before us now is whether the Appellate Authority was acting within its jurisdiction in condoning the irregularity, if any and treating the memorandum of appeal as having been filed by the Petitioner.

5. The Board of Revenue purported to follow its own previous Full Bench decision--Smt. Indrani Kunwar v. State(Revision Applications Nos. 54 and 55 of 1962-63 decided on 20-4-1965 : 1965 AWR (Rev) 53. The Full Bench decision of the Board related to a similar provision in the UP Large Land Holdings Tax Act and it was based upon the view taken by the Supreme Court of India in Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal, . The Full Bench of the Board of Revenue had noticed a decision of this Court in Smt. Kaneez Rabab Bibi v. State Civil Revision No. 5 of 1961, where it was held that appeals under the Agricultural income tax Act could be signed and verified either by Assessee or the Assessee's General Attorney, but it had distinguished this case on the ground that the provisions of the UP Large Land Holdings Tax Act were different. We, however, find that the Full Bench of the Board of Revenue had acted on the assumption that the view taken by the Supreme Court in Commissioner of Agricultural income tax, West Bengal v. Sri Keshab Chandra Mandal (supra), which is based upon the somewhat different provisions of the Bengal Agricultural income tax Act, 1954, was fully applicable to the case before the Board of Revenue under an Act of the Uttar Pradesh Legislature.

6. The Supreme Court decision which the Full Bench of the Board of Revenue had purported to follow was based on an interpretation of the provisions of the Bengal Agricultural income tax Act, 1954, which made it obligatory upon an Assessee to sign the form of the return of an individual Assessee. It held, upon an interpretation of the provisions of the particular Act before the Supreme Court, that the signature by an agent upon the return was excluded by the provisions of the Act itself. It was upon such an interpretation of the statute itself that the foot-note in Form 5 prescribed for the declaration was held to be mandatory. The language of the footnote in that case was as follows:--

The declaration shall be signed--

- (a) in the case of an individual by the individual himself;
- (b) in the case of a Hindu undivided family by the manager or Karta;
- (c) in the case of a company or the Ruler of an Indian State by the principal officer;
- (d) in the case of a firm by a partner;
- (e) in the case of any other association by a member of the association.

It is obvious that the direction was in the mandatory form in that footnote. The Supreme Court pointed out that there was also a note that the signatory should satisfy himself that the return is correct and complete in every respect before signing the verification. The Supreme Court observed there that the common law rule "qui facit per alium facit per se" (what can be done through another is done by oneself) could be and was excluded there by statutory provisions to be interpreted which made the personal signature of the Assessee indispensable on the return. It was also held there that an illiterate Assessee could not be said to have properly signed a valid return through his son because there was no physical contact with the person through whom the signature was affixed although, on this question of fact, Mahajan, J. had expressed a dissenting opinion.

7. The Petitioner's counsel cited before us a Division Bench decision of this Court, to which one of us was a party in *Bhawani Shanker v. State* Civil Misc. Reference No. 142 of 1964 made under the UP Agricultural income tax Act, 1948, decided on 19-1-1967 where it was held:

It is well settled that unless there is a specific provision of law requiring the signatures and verification of the Assessee himself the common law rule "qui facit per alium facit per se" will have to be followed. In other words, what man can do himself can equally well be done by his duly authorised agent.

In that case, however, a revision petition had not been signed by the Assessee. In the course of the judgment of this Court, it was pointed out with regard to appeals in income tax cases:

Under similar provisions of the income tax, Rule 22 in Form B, the position as to who is required to sign the memorandum of appeal, is placed beyond doubt by providing in the foot note that the form of appeal and the form of verification appended thereto shall be signed "in the case of an individual by the individual himself." Similarly, in the agricultural income tax or the rules, it would have been advisable to have appended a similar footnote to place the matter beyond doubt.

8. Another case brought to our notice was *Special Manager, Court of SPECIAL MANAGER, COURT OF WARDS, NARAIN DAS NARSINGHDAS Vs. COMMISSIONER OF Income Tax, U. P.*, where a Division Bench of this Court held, upon a reference u/s 66(1) of the Indian Income tax Act, that the instructions contained in the footnote appended to Form C(1) prescribed by Rule 21 of the Indian Income Tax Rules, 1922, was a mandatory provision of law. It was held there that an appeal and a verification clause signed by the agent of the Appellant and not by the Appellant personally was invalid. In that case also the Division Bench had relied upon Section 30(3) of the Income tax Act which provided:

"The appeal shall be in the prescribed form and shall be verified in the prescribed manner". It may be pointed out that there was no question before the Division Bench relating to the jurisdiction of the Appellate Authority to condone an irregularity or to remove a defect, but that question is before us. In fact, the

Division Bench dealt with the question of condonation of delay on the footing that there was jurisdiction to condone delay. Although it was held there that the ground for condonation of delay was insufficient and "obviously false".

9. In *Sheonath Singh Vs. Commissioner of Income Tax, West Bengal*, a question arose before a Bench of the Calcutta High Court, upon a reference u/s 66(1) of the Indian Income tax Act, whether the absence of the signature of the Appellant upon a memorandum of appeal signed by an authorised representative was a fatal illegality which made the memorandum of appeal totally ineffective. It was held that it was an irregularity which could be rectified by an amendment which took effect from the date on which the document was originally filed. Chakravarty, C.J. dealing with the view of the Tribunal, that a memorandum of appeal not properly signed is a wholly invalid document and of no effect, observed: "However rigid may be the principles applicable to appeals filed before the Tribunal, they cannot be more rigid than the principles applicable to plaints and memoranda of appeal filed before the civil courts. As to plaints, Order VI, Rule 14, of the CPC lays down that "every pleading shall be signed by the party and his pleader(if any)"; and as to memoranda of appeal, Order XLI, Rule 1, lays down that "every appeal shall be preferred in the form of a memorandum signed by the Appellant or his pleader". In the case of the plaint, it is to be signed by both the Plaintiff and his pleader, if he has a pleader, but in the case of a memorandum of appeal, it can be signed by either of them. The language of the Rules, however, is in both cases as mandatory as the language of Rule 22 of the Rules framed by the Central Board of Revenue and they too are contained in a statute. Yet, it has been the uniform view of all High Courts that the absence of or defect in the signature of the Plaintiff or the Appellant on the plaint or the memorandum of appeal, as the case may be, is not an illegality, but only an irregularity which does not in any case affect the jurisdiction of the Court to entertain the plaint or the memorandum. How far the courts have gone can be seen from the well-known decision of the Privy Council in the case of *Mohini Mohun Das v. Bungsi Buddan Saha Das* ILR (1890) Cal 580, where of the several co-Plaintiffs of a plaint only one of them had signed and verified it, but the Privy Council, nevertheless, held that the suit must be deemed to have been filed by the other Plaintiffs also in spite of the absence of any signature or verification by them, if only it was shown that the suit had been filed with their knowledge and authority. It has repeatedly been pointed out that what the courts have to look to in such cases is whether the real Plaintiff or the real Appellant had intended or caused the plaint or the memorandum to be placed before the Court and if such intention appears clearly from the proved circumstances of the case, then any defect or omission to comply with any of the procedural rules regarding signature or verification is to be treated as a mere procedural defect which can be set right at any time by permitting an amendment of the document, irrespective of the question of limitation."

10. In *Smt. Gouri Kumari Devi Vs. Commissioner of Income Tax, Ramaswami, C.J. and Kanhaiya Singh, J.*, of the Patna High Court, relied on the above

mentioned decision of the Calcutta High Court in Shivnath Singh's case (supra). They held that the failure of an Assessee to sign a memorandum of an appeal, preferred u/s 33 of the Indian Income tax Act of 1922, was not an illegality but only an irregularity which could be rectified by an amendment which took effect from the date on which the memorandum of appeal was originally filed. It was held that an application for rectification of the memorandum of appeal signed by an agent holding a power of attorney could not be dismissed even if presented after the period of limitation.

11. In Behari Lal Laxminarain Vs. Commissioner of Income Tax, U.P. and V.P., Lucknow, , a Division Bench of this Court also adopted the views taken by the Calcutta High Court in Shivnath Singh's case (supra) and the Patna High Court in Gauri Kumari Devi's case (supra). V. Bhargava, J., giving the opinion of the Bench, upon a reference u/s 66(1) of the Indian Incometax Act of 1922, held that the defects in a memorandum of an appeal to the Appellate Tribunal, u/s 33 of the Indian Income tax Act, could be removed after the expiry of the period of limitation for filing the appeal, so that the memorandum of an appeal would be deemed to be valid from the date on which it was filed. The Division Bench also attached importance to the fact that the Appellate Tribunal had, by admitting the appeal after removal of defects, accepted the memorandum of appeal as a proper one.

12. It seems to us that there is ample authority for the proposition that defects in pleadings either by an omission of a party to sign personally, as required by Order 6, Rule 14 Code of Civil Procedure, which is mandatory, or, to verify by a party or other person proved to be acquainted with the facts of the case, which is also mandatory, can be removed when the proper person comes forward before the Court and signs or verifies in accordance with law. This has been the consistent view of this Court, See: B.B. and Bombay Baroda and Central India Ry. Co. Ltd. Vs. Siyaji Mills Co., Ltd. ; Wali Mohammad Khan v. Ishaq Ali Khan AIR 1931 All. 507 : 54 ILR All. 57. In Raja Ram v. Katesar Nath ILR 18 All. 396, it was held that the proper course for an appellate court to adopt is not to dismiss a suit, but it could, if necessary, send a defective unsigned plaint for removal of the defect in it to the trial court. In Basdeo v. John Smith ILR 22 All. 55, it was held that an objection that such a defect in the plaint exists must be taken by the Defendant at the earliest opportunity and cannot be allowed to be raised for the first time in appeal. In other words, the irregularity was not fatal and could be waived by failure to object.

13. The result of the above mentioned review of authorities on the question is that no uniform rule relating to the effect of an omission of signature or verification by a party personally upon pleadings, including memoranda of appeal, can be applied to pleadings generally under every enactment even when there is a prescribed form making the signature by a party essential. It has been repeatedly held that it is unsafe to rely upon the provisions of one enactment to interpret provisions of another enactment. This is equally true of apparently

similar provisions under different enactments. It is the particular provision under consideration which has to be interpreted in the light of the terms of the statute under which it has been made. Support can only be derived from similar provisions of or under other statutes after arriving at a proper interpretation of the particular provision involved.

14. We also think that, in arriving at the correct interpretation of a procedural provision, too narrow a view of the jurisdiction of a judicial or quasi-judicial authority to condone an irregularity of procedure should not be adopted lest interests of justice suffer. If there is a broad principle which can be deduced from decisions relating to signature and verification of pleadings under various statutory provisions, it is that, omissions in this respect are mere errors of procedure which can be condoned by the appropriate authority if it is satisfied that the party entitled and required to sign and verify really intended to act. In other words, a memorandum of appeal would not, as a general rule, become invalid merely because it did not contain the required signature or verification. It will be invalid if it is shown to be an utterly unauthorised or spurious document. The mere omission to sign or verify it would not, on this principle, be enough to invalidate the document automatically unless we are compelled to adopt such a view by the language of the Act under which the particular provision relating to the signature and verification of pleadings is made.

15. The Act we are concerned with, taxes land holdings. The landholder need not be the person who either personally cultivates the land or otherwise holds or occupies it. Unlike details of the income of an individual, of which a return has to be made under the income tax Act, the landholder may not himself be in the best position to give the details of the annual value of the landholding. There is no provision in the Act which makes an incorrect statement made in a return filed under the Act a criminal offence. An incorrect statement in a return is not even visited by a penalty although there is a penalty u/s 20 of the Act for default in the payment of the tax. We are unable to discover any provision either in the Act or in the Rules made thereunder which would make the signature and verification by the Assessee himself upon a memorandum of appeal so vital a part of the appeal that the) memorandum itself must be held to be of no effect whatsoever where an authorised agent, holding a power of attorney, has done what the Appellant himself ought to have done.

16. Section 2 of the Powers of Attorney Act, 1882, specifically provides: "The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in name and with the signature and seal, of the donor thereof." This provision may be overridden by specific statutory provision in or under the Act regulating the filing of appeals. We, however, find no specific provision in the Act itself relating to the

signing of appeals. Section 11(3) of the Act provides: "Every appeal under this section shall be presented and verified in the prescribed manner." Here, signing is not mentioned specifically and the manner of presentation as well as verification are left to be provided for by rules. The rules do provide for it in the manner indicated above.

17. As a result of an examination of the provisions of the Act and the Rules framed thereunder we hold that the failure of the Petitioner to sign and verify the memorandum of appeal before the Appellate Authority was a mere procedural defect. The Appellate Authority, therefore, had the power to permit the defect to be removed by allowing the Petitioner to sign and verify the memorandum of appeal. If the Appellate Authority had condoned the irregularity without calling upon the Petitioner to remove the defect, the Board of Revenue could, at the most, send back the case for the removal of the defect. It could not, in exercise of its jurisdiction u/s 12 of the Act, dismiss the Petitioner's appeal outright for such a defect.

18. The jurisdiction of the Board to interfere and pass such order as it thinks fit, u/s 12 of the Act, comes into play only when one of the conditions precedent for the exercise of this power has been fulfilled. The discretion to pass such order as it thinks fit has to be judicially and reasonably exercised. As regards a failure to sign and verify a memorandum of appeal under the Act, the irregularity could not be said to be substantial when the party intending to appeal had knowledge of the appeal and had authorised an agent to file it and failed to sign and verify it due to a misapprehension. The most that could be said for interference u/s 12 of the Act in such a case was that the Appellate Authority did not exercise its jurisdiction to afford the Petitioner an opportunity to remove the defect in the memorandum of appeal upon the erroneous view that there was no defect in it at all. If the Board of Revenue thinks fit to interfere at all now u/s 12 of the Act on such a ground, the most that it can properly order is that the appeal may be re-heard after the Petitioner, who is apparently willing to remove the defect, has duly signed and verified the memorandum of appeal. In our opinion, the Board of Revenue exceeded its jurisdiction in ordering an outright rejection of the Petitioner's appeal on the erroneous assumption that the Petitioner's defective memorandum of appeal had no legal existence whatsoever as an appeal.

19. We, therefore, quash the order of the Board of Revenue, by means of a writ of certiorari. We direct that the Board of Revenue will now re-hear and decide the revision application, which must be deemed to be pending before it, in accordance with law. The parties will bear their own costs.