
(2013) 02 AHC CK 0144
In the Allahabad High Court
Case No : Writ - C No. 52170 of 1999

Subhash Chandra Sharma

APPELLANT

Vs

XIIIth Adj & Others

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2013) 02 AHC CK 0144

Hon'ble Judges : Satyendra Singh Chauhan, J

Final Decision : Allowed

Judgement

Satyendra Singh Chauhan, J.

Heard learned counsel for the petitioner and learned counsel for the opposite parties.

This petition has been filed for quashing the order dated 28.10.1999 passed by 13th Addl. District Judge, Ghaziabad.

The facts in short giving rise to the present petition are that a suit for specific performance was filed by the petitioner which was ultimately decreed. During pendency of the suit, two applications were filed by the defendant praying therein that the petitioner/plaintiff may be directed to produce the original receipt of fee deposited in the Ghaziabad Development Authority for permission of transfer of the land and in case the same is not produced, then the defendant may be permitted to place on record the photostat copy of the said receipt by way of secondary evidence and the defendant may be allowed to prove the same in accordance with law. The applications were considered by the trial court and thereafter the same were rejected by means of order dated 20.12.1997. After rejection of the said applications, the suit was finally decided and thereafter an appeal was filed. During pendency of the appeal, an application under Order 41 Rule 27 CPC was filed with the same prayer and the same was allowed by means of impugned order dated 28.10.1999. The said order has been subjected to

challenge in this writ petition.

Submission of learned counsel for the petitioner is that the particular issue, which had been decided by the trial court and was not subjected to challenge in any higher forum, has attained finality and therefore, the same cannot be reagitated nor the same could have been allowed by the appellate court. The appellate court has committed gross illegality in allowing the application moved under Order 41 Rule 27 CPC ignoring the order dated 20.12.1997.

Learned counsel for the opposite parties submits that there was no rider or embargo on the basis of order dated 20.12.1997 as the said order will not operate as resjudicata, therefore, the application moved by opposite party no.2 under Order 41 Rule 27 CPC has rightly been allowed by the appellate court and the same cannot be said to be an illegal exercise of power by the appellate court.

I have heard learned counsel for the parties and perused the record.

It is to be noted that two applications were moved before the trial court on 4.9.1997 wherein a prayer was made that the petitioner/plaintiff may be directed to produce the original receipt of fee deposited in the Ghaziabad Development Authority for permission of transfer of the land and the said application was rejected by means of order dated 20.12.1997. The said order was not subjected to challenge in any higher forum and the same has attained finality. After rejection of the said applications, the suit filed by the petitioner for specific performance was decreed against which an appeal has been filed and during pendency of appeal, an application under Order 41 Rule 27 CPC was moved by opposite party no.2. The said application has been allowed by the appellate court ignoring the fact that the application to the same effect had already been rejected by the trial court by means of the order dated 20.12.1997.

An issue, which had already been decided by the trial court and the said order was not subjected to challenge in any higher forum, whether the same can be subjected to further challenge and whether the same can be reagitated before the appellate court.

The order dated 20.12.1997 has attained finality and the issue in question has already been decided and therefore, in the opinion of the Court, power exercised by the appellate court while appreciating the same issue and in allowing the application is without authority of law and moreover, the principles of resjudicata will apply in the case in hand on account of the fact that the issue has already been decided by means of order dated 20.12.1997 and it has attained finality as the same was not challenged in any higher forum. The petitioner had objected to the said application but his objections were brushed aside by the appellate court on flimsy grounds and the said exercise of the appellate court appears to be without application of mind and is against the settled principles of law. The provisions of Order 41 Rule 27 cannot be extended to the extent of reopening the issue which has already attained finality during pendency of the suit.

The writ petition is accordingly allowed. The order dated 28.10.1999 is set aside and the appeal is directed to be decided within a period of six months from the date of presentation of a certified copy of this order.