
(2011) 11 AHC CK 0249

In the Allahabad High Court

Case No : Miscellaneous Single No. 700 of 2008

Syed Haseen Ashraf "Sajjada Nasheen"

APPELLANT

Vs

District Judge, Ambedkar Nagar and Others

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15(2), Order 7 Rule 11(d)

Citation : (2011) 11 AHC CK 0249

Hon'ble Judges : Abhinava Upadhyaya, J

Final Decision : Dismissed

Judgement

Abhinava Upadhyaya, J.

The present writ petition has been filed challenging the order of the revisional court dated 13.1.2006 dismissing Revision No. 79 of 2002.

It is submitted that a suit being Suit No. 340 of 1978 is alleged to have been filed by four plaintiffs, namely, Syed Zafaruddin Ashraf, Syed Musthaq Ashraf, Syed Aley Hasan and Syed Sibte Asghar Jilani against Syed Aftab Ashraf m Syed Anwar Ashraf, Syed Zille Hasain and Syed Salahuddin Ashraf. The said suit was filed restraining the respondents from claiming themselves to be Sajjada Nasheen of Dargah of Hazrat Makhdoom Shah, Ambedkarnagar.

Mr. Mohammad Arif Khan, learned Senior Advocate assisted by Sri Mohinuddin Khan, learned counsel appearing for the petitioners submits that the plaint itself was defective as in the verification clause various paragraphs of the plaint were not mentioned as is required under Order 6 Rule 15 (2) of the CPC.

According to Mr. Khan, learned Senior Advocate appearing for the petitioners, the other three plaintiffs, namely, Syed Ali Ashraf, Syed Husain Ashraf and Syed Hasan Ashraf have subsequently moved an application that they do not wish to contest the matter and they be deleted from the array of the parties of the plaint.

So far as plaintiff no.1 Syed Shah Zafaruddin Ashraf is concerned, he is stated to

have expired on 8.6.1989. Subsequently, his legal heir, namely, Syed Shah Fakhruddin Ashraf was substituted as his legal heir and after substitution it was realized that in the plaint in the verification clause the relevant paragraphs have not been mentioned and, therefore, to remove the aforesaid irregularities an application was moved on 2.11.2001.

The said application was objected to by the respondents stating that such an amendment after such a belated stage cannot be permitted and the application filed by the plaintiffs under Order 6 Rule 15(2) of the CPC deserved to be rejected.

The trial court after the consideration of the arguments made by the learned counsel for the parties finally vide order dated 24.1.2002 rejected the said application holding therein that the amendment that is being sought by the plaintiffs has already been made by way of replication in the pleadings and, therefore, no further amendment is necessary and the application is moved only to delay the proceedings further.

Against the aforesaid order dated 24.1.2002 the plaintiffs then filed Revision No. 79 of 2002. The revisional court also concurred with the finding of the trial court and rejected the revision holding that since the matter is of 1978 and on 8.8.2001 the evidence of the plaintiffs has also been closed therefore, the amendment at this belated stage is highly improper and rejected the same vide order dated 13.1.2006.

It is submitted that after rejection of the aforesaid revision the plaintiffs then moved an application on 7.3.2006 being Application No. 379Ga to the effect that due to non compliance of the provision under Order 6 Rule 15(2) of the CPC with regard to the verification of the pleadings, the plaint should be rejected.

The trial court while considering the application has held that there is no provision under the Code of Civil Procedure with regard to the effect of noncompliance of Order 6 Rule 15 (2)CPC. According to the trial court the aforesaid non compliance can be said to be a procedural error and for the said reason the plaint cannot be rejected.

The trial court further held that to remove the aforesaid procedural defect the plaintiffs have already moved an application seeking amendment in the plaint which now stands dismissed and consequences of the dismissal of the amendment will be looked into at the time of decision in the suit itself and rejected the application vide order dated 4.8.2006.

Aggrieved the plaintiffs thereafter moved revision being Revision No. 76 of 2007 and the same has also been rejected. The revisional court first of all concurred with the findings of the trial court and has held that by rejection of the amendment application, it cannot be said that the case has finally been decided and, therefore, dismissed the revision as not maintainable.

Against the aforesaid order of the revisional court dated 6.12.2007 the present

writ petition has been filed.

I have heard Sri Mohd. Arif Khan, learned Senior Advocate assisted by Mr. Mohd. Shadab Khan, learned counsel appearing for the petitioners and Mr. Syed Ahmad Jamal, learned counsel appearing for respondent no.3.

Mr. Mohd. Arif Khan, learned Senior Advocate has emphasized that once the pleadings have not been verified, under these circumstances, the said pleading cannot be relied upon and, therefore, there was no occasion to further proceed with the trial of the suit and the same ought to have been rejected when they moved the application for rejection of the plaint being Application dated 7.3.2006. He has further stated that the lacuna of non verification of pleadings was never removed by the original plaintiffs. However, when respondent no.3 was substituted upon the death of the original plaintiff at that belated stage in 2001 the said application has been moved for amendment in the plaint. The trial court has, however, rejected the amendment on the ground that at such belated stage the amendment is motivated only for the purposes of delaying the proceedings. Against that order revision was filed and the revisional court has also rejected the same and, therefore, the said order has become final as no further proceedings were initiated by filing of the writ petition etc.

According to Sri Khan, learned Senior Advocate once the pleadings cannot be relied upon as they are not verified then there was no question of continuing with the proceedings any further and the plaint ought to have been rejected. He further submits that the revisional court also erred in law in rejecting the revision.

On the other hand, learned counsel appearing for the respondent no.3 has submitted that nonverification of the pleadings were merely a procedural error which could have been corrected for which an amendment application was moved and the same has been rejected only on the ground that since the plaintiffs have already moved replication bringing on record the fact as has been sought to be amended by an amendment application, the amendment is not permissible and cannot be allowed.

From the aforesaid discussions and assertions by the learned counsel for the parties, in my view, the order rejecting the application purported to have been filed for rejection of plaint on the ground that the pleadings have not been verified by the plaintiffs, does not suffer from any legal error as the ground for rejection of plaint has been enumerated under Order 7 Rule 11 of the CPC which is quoted below:

"11.Rejection of plaint. The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court , fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule.9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

According to Sri Mohd. Arif Khan, non compliance of provision of Order 6 Rule 15 (2) CPC would fall within the category of Order 7 Rule 11(d) of the CPC and therefore, on this ground the plaint ought to have been rejected instead of proceedings with the matter further and deliberating upon the issue and continuing with the trial.

Order 7 Rule 11(d) of the CPC states that where the suit appears from the statement in the plaint to be barred by any law, the same has to be rejected.

In my opinion, non compliance of Order 6 Rule 15(2) of the CPC cannot be said to be a statement in the plaint as the trial court has rightly held that it is merely a procedural irregularity nonetheless since the plaintiffs" tried to rectify the procedural irregularity and that rectification having been denied by the trial court, the consequence of such order would be considered at the time of deciding of the suit itself.

Since the proceedings in the suit have reached almost towards the finality, the petitioners can always raise an objection with regard to the non compliance of the provision as enumerated under Order 6 Rule 15(2) of the CPC at the time of decision of the suit.

Sri Mohd. Arif Khan has then pointed out that other three plaintiffs, namely, Syed Mushtaq Ashraf, Syed Aley Hasan and Syed Sibte Asghar Jilani have also moved application for deleting their names from the array of the plaintiffs. In my view, it will not make any difference so far as plaintiff no.1 is concerned.

Under the aforesaid facts and circumstances, I do not see any error in the impugned orders of the trial court as well as revisional court which may merit any further consideration by this Court.

The writ petition is, accordingly, dismissed.

Parties to bear their own costs.