
(1951) 05 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Letters Patent Appeal No. 8 of 1951

Tara Chand Rattan Chand and Another	APPELLANT
Vs	
Ved Prakash Keshori Lal and Another	RESPONDENT

Date of Decision : 24-05-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 1, Order 14 Rule 1(3), Order 18 Rule 2, 115

Citation : (1951) 05 P&H CK 0016

Hon'ble Judges : Teja Singh, C.J.;Passey, J

Bench : Division Bench

Advocate : Jagan Nath, for the Appellant; Dalip Chand, for the Respondent

Judgement

Teja Singh, C.J.—This is an appeal from the order of the learned Single Judge of this Court. The facts briefly stated are as follows:

2. Mst. Sarswati, widow of Kishori Lal, executed a document in favour of Ved Parkash in which it was alleged that Ved Parkash had been brought to his house by her husband with a view to adopting him, that Ved Parkash had been living with her husband as his adopted son and that since her husband had no time to perform the ceremonies of adoption, he had left instructions with her to perform those ceremonies and this she had done. The Plaintiffs brought this suit for cancellation of the alleged adoption of Ved Parkash. In the joint written statement put in by Ved Parkash and Mst Sarswati they took up a double position. In the first place they stated that Ved Parkash had been adopted by Kishori Lal during his lifetime and on the latter's death Ved Parkash succeeded to him as his adopted son. Secondly, they stated that according to the directions left by Kishori Lal, Mst. Sarswati had adopted Ved Parkash by performing ceremonies and this she had a right to do according to the custom prevalent among that class of Jains to which the parties belonged. In order to clarify the position regarding adoption, the Subordinate Judge took the statement of Ved Parkash under Order 10, Rule 1, C.P.C., and in that statement Ved Parkash took

up the definite position that he had been adopted by Kishori Lal and not by his wife. Unfortunately, the Subordinate Judge forgot to take the statement either of Mst. Sarswati or her counsel with the result that the position so far as she was concerned remained somewhat obscure. Taking into consideration Ved Parkash's statement, the Sub-Judge framed the following two issues:

1. Whether Ved Parkash Defendant was validly adopted by Kishori Lal. O.D.

2. Whether the suit is within time. O.P.

3. Later on Ved Parkash and counsel for both the defendants made an application alleging that certain questions of fact raised by them; had not been put in issue and prayed that the following two additional issues be added:

1. Did Mst. Sarswati adopt the Defendant according to the wishes of and the instructions given by Kishori Lal?

2. Whether the parties are governed by Jain Dharam and according to that a widow can adopt.

4. This application was rejected by the trial Sub-Judge. Ved Parkash made a revision petition to this Court against the order of the Sub-Judge, Girdhari Lal. Chopra J. accepted the revision application and ordered that issues as suggested by the defendants should be added to the issues already framed. At the same time he certified that the case was fit for appeal to the Division Bench. Hence the present appeal

5. The first point raised by Shri Jagan Nath counsel for the Appellants is that the refusal of a trial Sub-Judge to frame additional issues does not amount to a "case decided" within the meaning of Section 115, C.P.C. and accordingly no revision petition to this Court was maintainable. He quoted a number of authorities in which it was held that no revision lay from an interlocutory order. It is not necessary for me to deal with those cases, because the point was considered by me at considerable length in - "Gordhan Dass v. Ram saran Dass" 1 PLR 1 (A) in which I held that it is incorrect to say that no interlocutory order passed in the course of a case can be regarded as a "case decided" and that whether or not a particular interlocutory order is a "case decided" must depend upon the nature of the order and the circumstances of the case in which it was made.

6. After hearing learned Counsel and going through the rulings cited by him, I see no reason to change my previous view. In that case the question was whether the Court's order refusing to change the onus of an issue was open to revision and my answer to it was in the negative. In the present case, the position of the defendant's is that their case was in the alternative; one that Ved Parkash was adopted by Kishori Lal during his lifetime and second, that Mst. Saraswati performed the ceremonies of adoption after Kishori Lal's death and this amounted to adoption. The first point was put in issue while the second was ignored. Obviously the reason for this was that the statement that Ved Parkash

made in Court before the issues were framed was to the effect that he was adopted by Kishori Lal and not by Mst. Saraswati it is stressed by the Appellant's counsel that in view of this statement of Ved Parkash, there was no necessity to frame any issue regarding the adoption alleged to have been made by Mst. Sarswati. Had Ved Parkash been the only Defendant in the case or had Mst. Sarswati also made a statement similar to that of Ved Parkash, I would have accepted Shri Jagan Nath's contention and ruled out the plea that an additional issue relating to the alleged adoption by Mst. Sarswati should have been framed. But the difficulty is that no one made any statement on behalf of Mst. Sarswati and since the Plaintiff claims a declaration even against her, the points raised by her in her written statement ought to have been put in issue.

7. Order 14, Rule 1(3), C.P.C. lays down that each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. This is a mandatory provision and has to be followed in each case, and in my opinion if the Court refused to do so, its order on the point must be regarded as "case decided". The matter may be looked at from another point of view. Suppose one of the parties raises a material question of fact. By "material" I understand the question which is not only relevant to the case but has an important bearing upon it. The other side denies the question but the Court refuses to put it in issue. The result would be that the party who raised the question will not be allowed to adduce any evidence thereon and virtually so far as that question is concerned, his case would stand decided against him. It may be mentioned here that the term "case" mentioned in Section 115, C.P.C. does not mean the whole case and is not synonymous with "suit" or "cause". It includes the case of one party as distinct from that of the other party. In order to support this construction, I would refer to Rule 2 of Order 18, C.P.C, in which each party is given the right to state his case.

8. Then it was urged by Shri Jagan Nath that a High Court did not interfere in every revision petition and since the matter was discretionary and another remedy by way of an appeal was open to the Petitioner, the learned single Judge erred in accepting the present revision petition. In support of his contention, counsel referred us to a decision of the Lower Burma Chief Court - "V.V.M. Chetty Firm v. R.M.A.R. Arunachallum Chetty" AIR 1914 Low Bur 207 in which it was held that even if the High Court can deal in revision with an interlocutory order in a suit, the exercise of the power is in the discretion of the Court and the power should not be exercised unless it appears that substantial injury may be caused to the applicant if he is let to wait for the ultimate remedy in appeal from the decree. The learned Judge observed in that case that there was no precedent for interference in revision with an order declining to frame an additional issue in a suit. I may say with respect that the dictum is quite salutary and sound. I may also mention that in - "Gordhan Dass's case (A)" mentioned above it was held by me that the fact that lower Court has committed an error cannot by itself give the aggrieved party a right to maintain a revision petition. But we cannot lose sight of this fact that the learned Judge has exercised the discretion in favour of

the respondent and it cannot be doubted that the discretion was vested in him by law so it would not be right for us to set aside his order now, even though if we had heard the revision petition we would have taken a different view. Shri Jagan Nath did not deny that if the order of the trial Court amounted to a "case decided" its refusal to frame the necessary issues is tantamount to failure to exercise the jurisdiction vested in it by law. Accordingly, his objection regarding the maintainability of the revision petition is overruled.

9. As regards the issues suggested by the defendants which the learned Single Judge has ordered the trial Court to add to the previous issues, I think they are not correctly worded. From what has been said above, it will be seen that Mst. Sarswati never took up the position that she adopted Ved Parkash in the sense that she did everything that was required or was necessary in that respect. On the other hand, all that was stated in her written statement was that she performed the ceremonies of adoption according to her husband's wishes and in this manner made the adoption. As regards the contention that parties were governed by Jain Dharman, all that I wish to say is that there is no law known as Jain Dharman and all followers of Jain religion (Jain Dharam) are governed by Hindu Law. Probably what the defendants want to prove is that there is a special custom among that section of Jains to which they belong, which allows a widow to adopt a son to her deceased husband even though she was not authorised to do so by him. Accordingly, I would allow the appeal to the extent that instead of the two additional issues ordered to be framed by the learned Single Judge, I would direct that the issues framed should be worded as follows:

1. Did Mst. Sarswati perform the ceremonies of adoption after her husband's death and according to his wishes and thereby made Ved Parkash the adopted son of her deceased husband. If so, what is the effect of it? O.D.

2. Is there a special custom among that class of Jains to which the parties belong, by which a widow can adopt a son to her husband. If so, how does this custom affect the present case? O.D.

10. In view of the peculiar circumstances of the case I would leave the parties to bear their own costs in all the proceedings in this Court. The records of the case shall be sent back to the Court of trial Sub-Judge forthwith. The parties' counsel have been directed to cause their respective clients to appear in that Court on 11-6-1951.

Passey, J.

11. I agree.