

(2019) 01 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 231 Of 2018

Tara Dassi

APPELLANT

Vs

Pyar Chand And Others

RESPONDENT

Date of Decision : 08-01-2019

Acts Referred:

Code of Civil Procedure, 1908 — Section 99, Order 41, Rule 25

Citation : (2019) 01 SHI CK 0015

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : I.D. Bali, Virender Bali, Neeraj Gupta

Final Decision : Allowed

Judgement

Sureshwar Thakur, J

1. During the pendency of the instant appeal before this Court, appeal whereof stands directed, by the plaintiff, against the concurrently recorded verdicts, of, dismissal, made upon, her suit for rendition, of , a declaratory decree, (i) an application bearing CMP No.10486 of 2018, stands instituted before this Court, wherethrough, a prayer is made for deleting, from, the array of performa respondents, the name of Thalu Ram. However, his death certificate, appended with the application, is borne in Annexure A-1, and, it makes disclosures qua his demise, rather occurring during the pendency of the Civil Suit before the learned trial Court.

2. Also, during the pendency of the instant appeal before this Court, another, application bearing CMP No.10487 of 2018, stands instituted before this Court, wherethrough, a relief is canvassed, for, deleting the names, of, Pyar Chand son of Jagat Ram, and, of Pune Ram son of Jagat Ram, from, the array of performa respondents, (i) given theirs, on, demise of their predecessor-in-interest one, Dhali Devi, being ordered to be substituted in her place, as co-defendants No. 1 and 2, (ii) hence, reiteratedly therethrough it is averred, that, their reflection in

the array of performa respondents also respectively as respondents No.5(iv), and, 5(v) rather being wholly unnecessary, in, the memo, of, parties, as, occurring in the verdict rendered by the learned First Appellate Court.

3. The learned counsel, appearing for the respondents in CMP No. 10486 of 2018, contends, that, upon the demise of one Thalu Ram, during, the pendency of the civil suit, before, the learned trial Court, uncontrovertedly his estate, being represented by co-respondents, namely Pyar Chand, Pune Ram, Smt. Kesaru, Shri Moti Ram, Smt. Painu Devi, (i) hence, he contends, that, this Court would proceed, to, make a limited remand, vis-a-vis, the learned trial Court, for, making an apposite order of deletion, (ii) and, this Court within the ambit, of provisions of Order 41, Rule 25, of, the CPC, retaining the instant RSA, upon, it docket. Provisions of Order 41, Rule 25 of the CPC read as under:-

"25. Where Appellate Court may frame issues and refer them for trial to court whose decree appealed from.- Where the court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and, refer the issue for trial to the court from whose decree and appeal is preferred and in such case shall direct such court to take the additional evidence required; and such court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor [within such time as may be fixed by the Appellate Court or extended by it from time to time]."

Naturally, he contends that the afore vice, staining, the impugned verdict, and, sparked by the concurrent verdicts, rendered by the learned trial Court, and, by the learned First Appellate Court, being rendered against the afore deceased litigant, (i) rather, not constraining this Court, to, accept the extant RSA, and, to concomitantly, set aside the impugned judgment(s) and decrees,(ii) nor this Court thereafter hence relegating, the, entire lis, to the learned trial Court, (iii) and, obviously his afore submission, is rested, upon, the provisions borne in Section 99 of the CPC, provisions whereof stand extracted hereinafter:-

"99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction. No decree shall be reversed substantially varied, nor shall any case be remanded in appeal on account of any misjoinder [or non-joinder] of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court."

A mandate stands encompassed, in the afore Section 99, of the CPC, (I) qua no decree being amenable for reversal or variation nor any lis being remanded, by, the Id. First Appellate, (ii) for, misjoinder, and, non joinder of parties, (iii) or causes of action (iv) or for any error or defect or irregularity in any proceedings in the suit, not affecting, the merits of the case or the jurisdiction of the court.

4. However, for reasons to be assigned hereinafter, both the afore submissions

are rejected, and, rather this Court, records, a firm conclusion, that, the afore vices being unrectifiable nor CMP No. 10486 of 2018, being maintainable before this Court, (i) and, rather it being preferable only before the learned trial Court, wherebefore, the death of deceased Thalu Ram occurred, (ii) besides the concurrently recorded verdicts by both the learned courts below, being evidently ingrained with a vice, of, nullity, given theirs being rendered, against, the afore deceased litigant, hence warranting, theirs being quashed, and, set aside.

5. The provisions borne in Order 41, Rule 25 of the CPC are restricted in their sway, vis-a-vis, the statutory para meters, as, borne therewithin, (a) and, also are strictly tramelled for, apt application(s), vis-a-vis, omission(s) to frame or try any issue, or to try any question of fact, importantly, by the learned trial Court, (b) whereupon, for ensuring an apt verdict being pronounced, upon, the merits of the lis, thereupon, the Appellate Court, being empowered to, after framing any essential issue, hence direct the remandee court, to render findings, upon the apposite issue(s), (c) AND the apt order, of, remand also embodying therein, a, mandate, upon, the remandee court, to, within a mandated time frame, make its apt verdict, and, obviously hence, the Appellate Court retains, the file of the apt lis, on, its docket. However, the afore parameters, are, restricted in sway, and, clout, reiteratedly, vis-a-vis, emergencies, and, eruptions of the afore eventuality(ies), (I) rather making unfoldments in the lis, upon, its travelling upto the Appellate Court, and, conspicuously the lis, is, enjoined to be uningrained, with, any vice of nullity, arising from, it being rendered, against, the deceased litigant, (ii) and, when statutory expostulations are borne in the CPC, rather for curing the afore defects, by hence recourings, being made, to, the apt statutory mechanism, prescribed, in the CPC, and, when they yet remain unavailed by the litigant concerned, (iii) thereupon, any vitiatory imperfections, borne in the memo of parties, of, the verdicts pronounced by the courts below, and, engendered by existence therein, of, name(s), of, any deceased litigant, hence fall grossly outside the domain, of, the afore parameters, borne in Order 41, Rule 25 of the CPC, rendering hence the recourse(s) thereto, in, the instant case, rather being wholly impermissible.

6. Furthermore, the submission, as, rested by the learned counsel for the respondent herein, upon, the mandate of Section 99 of the CPC, also arise from, his severe mis-contemplation(s), of, the innate nuance thereof, (i) given the coinage "purported error or defect or irregularity, in, the proceedings, drawn in the suit, not, affecting the merits of the case or jurisdiction of the Court", necessarily carrying the signification, of, "drawing of proceedings" in the apposite suit, being indispensable, (ii) and, obviously thereafter, the, emergencies therein, of, error or defect(s) or irregularity(ies), in the afore drawn proceedings, not, affecting the merits, of the case, and, jurisdiction of the court, hence surging forth, (iii) AND thereupon rather the Appellate Court, being disempowered, to, modify or reverse, the, decree, and, also it being rendered dis-empowered, to, order for remand, of, the lis, vis-a-vis, the remandee court. Consequently, when no proceedings purportedly erroneous or defective or ingrained with any

purported irregularity, being ever drawn, (iv) and, significantly appertaining to the demise of the afore litigant, nor rather, with, the statutorily contemplated mechanism(s) qua therewith hence remained evidently unrecoursed, (v) thereupon, no assistance, can be derived therefrom, by the counsel for the respondents, rather for want, of, apt statutory recouring(s), by the counsel, for the litigant concerned, at, the stage contemporaneous, to, the occurrence of the demise, of, the afore litigant(s), (vi) thereupon, the verdicts concurrently pronounced by both the learned courts below, against, the afore deceased litigant, hence, are, rendered nonest, and, void, and, warrant theirs being quashed and set aside.

6. Consequently, the appeal is allowed, and, both the afore CMPs are dismissed being not maintainable before this Court, (a) and, also the impugned verdicts pronounced, upon, Civil Suit No. 55/2010, and, upon Civil Appeal No. 12 of 2017, are quashed and set aside. The records of the learned trial Court be remitted, vis-a-vis, latter, (b) and, records of the learned First Appellate Court be remitted to it, with a direction to the learned trial Court, to, upon an application being preferred therebefore, by the litigant concerned, for, deleting the name of Thalu Ram, from, the array of the defendants, borne in, the memo of parties drawn, in, its verdict, hence make, a decision thereon, (c) obviously without determining the factum of abatement, given, his estate being uncontrovertedly sufficiently represented, by his legal heirs, (d) and, after the learned trial Court, hence meteing its decision, upon, the afore application, and, it hence also making, an order, for, deletion of the name of Pyar Chand, and Pune Ram, from, the array of performa defendants, given, theirs being already arrayed as defendants No.1 and 2, (d) AND, it shall, also within, two months, thereafter, and, without its going into the merits of the case, make a verdict upon, the afore civil suit. The parties are directed to appear before the learned trial Court, on 28th February, 2019. All pending applications also stand disposed of.