

(2023) 08 DEL CK 0328

Delhi High Court

Case No: Civil Miscellaneous (Main) No. 1255 Of 2023, Civil Miscellaneous Application No. 40098 Of 2023

Ajit Kumar

APPELLANT

Vs

Monk Trading Pvt Ltd & Ors.

RESPONDENT

Date of Decision: Aug. 7, 2023

Acts Referred:

- Constitution of India, 1950 - Article 227
- Code of Civil Procedure, 1908 - Section 151, 152, Order 22 Rule 4, Order 9 Rule 13

Hon'ble Judges: Manmeet Pritam Singh Arora, J

Bench: Single Bench

Advocate: Praveen Suri, Mukesh Gupta, Ayush Gupta

Final Decision: Dismissed

Judgement

Manmeet Pritam Singh Arora, J

CM APPL. 40097/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1255/2023 & CM APPL. 40098/2023

1. This petition filed under Article 227 of Constitution of India impugns the order dated 05.11.2022 passed by the ADJ-06, Central District, Tis Hazari Courts, Delhi ('Trial Court') in Misc. DJ No. 606/2022, titled as 'Monk Trading Pvt. Ltd. v. Rajbir & Ors.', whereby the Trial Court allowed the application filed by Respondent No. 1 for carrying out rectification in the judgement and decree dated 09.05.2022.

1.1. The Petitioner herein is the son of late Shri Rajbir Singh, who was the original defendant in the civil suit. In addition to the Petitioner herein, Respondent Nos. 2 to 5 are also the legal heirs of late Shri. Rajbir Singh. The Respondent Nos. 2 and 3

were already arrayed as parties to the civil suit in their individual capacity as Defendant Nos. 2 and 3.

2. Upon death of late Shri Rajbir Singh i.e., the original defendant No. 1, an application under Order XXII Rule 4 of Code of Civil Procedure, 1908 ('CPC'), was filed and vide order dated 01.11.2021, the Petitioner herein was impleaded as a party to the suit along with his other brothers and sisters. The relevant extract of the order dated 01.11.2021 reads as under:

"Record reveals that an application under Order 22 Rule 4 is pending for adjudication. It is stated in the application that defendant no.1 has expired, therefore, he wants to implead the LR's of the defendant no. 1 in the instant matter. It is stated by the Ld. Counsel for Manish that he does not have any objection qua the said application. Moreover, other LR's Sh. Ajit Singh and Smt. Meenakshi has been served in the present matter, however, none has appeared on behalf of them. Ld. Counsel for D-2 and D-3 does not have any objection qua the said application.

Hence, the present application under Order 22 Rule 4 of CPC read with Section 151 CPC stands allowed. The following LRs of the deceased defendant no.1 are impleaded as a party in the instant matter: -

(1) Sh. Manoj Kumar (son) (already D-2)

(2) Sh. Satbir Singh (son) (already D-3)

(3) Sh. Manish Singh (son)

(4) Sh. Ajit Kumar (son)

(5) Smt. Meenakshi (daughter)

Sh. Manoj Kumar and Sh. Satbir Singh has already been impleaded as defendant no.2 and defendant no.3 at the filing of the present suit.

Amended memo of parties be filed on the next date of hearing. Be listed for final arguments on date already fixed i.e., 14.12.2021."

(Emphasis Supplied)

3. The suit was decreed on 09.05.2022 and a decree of possession was passed against the Defendants and in favour of the Respondent No.1 herein (i.e., the plaintiff).

4. The Respondent No.1 herein thereafter filed an application dated 30.09.2022 under Section 151 of CPC for carrying out rectification in the judgement and decree-sheet dated 09.05.2022. The said application was allowed vide impugned order dated 05.11.2022 without issuance of any notice to the defendants including the legal heirs of late Shri Rajbir Singh; as the corrections sought were clerical in nature.

5. The learned counsel for the Petitioner states that vide the impugned order dated 05.11.2022, the Trial Court permitted two corrections i.e.,

(i) the decree-sheet dated 09.05.2022 recorded in the name of late Shri Rajbir Singh was corrected to duly reflect the name of five (5) legal heirs of late Shri Rajbir Singh;

(ii) the decree-sheet originally recorded that the 'cost of appeal' has been awarded to the Respondent No. 1; however, it was amended to record that it is the 'cost of the suit' which has been awarded.

5.1. He states that he is not aggrieved by the aforesaid corrections carried out in the decree. He states that however, the Petitioner is aggrieved with the impugned order dated 05.11.2022 only to the extent that it records "the other LRs namely Shri Ajeet Kumar and Ms. Meenakshi did not appear despite service".

5.2. He states that it is the stand of the Petitioner, Applicant herein, that he was not served with notice in the application under Order XXII Rule 4 of CPC. He states that the Petitioner has filed an application under Order IX Rule 13 of CPC before the Trial Court and he apprehends that the said observation in the order dated 05.11.2022 will prejudice the Petitioner during the adjudication of this application.

5.3. He further states that though the application filed by the Respondent No.1, has a nomenclature of 'Application under Section 151 of CPC for making necessary rectification in the judgment and decree sheet dated 09.05.2022', the amendments, if any, in a judgement and decree can only be made within the scope of Section 152 of CPC.

6. Mr. Mukesh Gupta, Advocate has entered appearance on behalf of Respondent No. 1.

6.1. He states that late Shri Rajbir Singh was survived by four (4) sons and one (1) daughter. He states that two sons i.e., Respondent Nos. 2 and 3 were already arrayed as defendants in their individual capacity in the suit. He states that the third son i.e., Respondent No. 4 herein duly appeared before the Trial Court on 01.11.2021 and agreed to his impleadment.

6.2. He states that late Shri Rajbir Singh's daughter i.e., Respondent No. 5, Ms. Meenakshi, as well duly appeared before the Trial Court on 09.05.2022. 6.3. He states that though the Petitioner herein was duly served, he elected not to appear in the matter and in this regard, he relies upon the order dated 01.11.2021, which records that the Petitioner herein has been duly served.

6.4. He states that Respondent No. 1 instituted the suit for recovery of possession in the year 2008, which culminated in the decree dated 09.05.2022. He states that the matter has been duly contested by late Shri Rajbir Singh and his legal heirs.

6.5. He states that, in fact, the judgement dated 05.09.2022 was carried in a regular first appeal, which was also dismissed.

6.6. He states that the corrections carried out by the Trial Court vide order dated 05.11.2022 clearly fall within the ambit of Section 152 CPC and in this regard, he relies upon the judgement of this Court in *Rajesh Arora vs. Union of India*, 2006 (206) ELT 1139.

6.7. He states that though the application reads that it has been filed under Section 151 of CPC, however, in effect the exercise of jurisdiction, which the Trial Court was requested to exercise was under Section 152 of CPC. He states that the proceedings now initiated by the Petitioner herein are only intended to defeat the rights of the Respondent No. 1 under his decree.

7. This Court has considered the submissions of the parties and perused the record.

8. The relevant extract of the impugned order dated 05.11.2022 reads as under: -

“An application has been filed under Section 151 CPC to make the necessary rectification in the judgment and decree dated 09.05.2022.

It is submitted that in the judgment as well as in the decree sheet, the names of the legal representatives of the deceased defendant namely 'Rajbir Singh' have not been shown. Inversely, the deceased defendant Rajbir Singh has been shown as the Defendant No.1 in the said judgment and decree. It is further submitted that in the said decree sheet, the 'costs of appeal' has been shown due to the typographical mistake, whereas the 'costs of the suit' should have been shown.

Since, the rectification of errors, while drawing up the decree has been sought, therefore, no notice was issued to the opposite side as it is for the court to see whether grounds are made out to rectify the decree or not? Perusal of the order sheet dated 01.11.2021 shows that the application under Order 22 Rule 4 CPC of the defendant No.1 was allowed, and the LRs of the defendant No.1 were impleaded in the suit. The plaintiff was directed to file the amended memo of parties. The amended memo of parties was filed and the same was taken on the record vide order dated 30.04.2022. The amended memo of parties is on record.

It could thus be seen that the defendant no.1 died during the proceedings and his legal representatives were taken on the record. The amended memo of parties was filed. Therefore, the judgment and the decree sheet should contain the names of all the defendants. Further, the record reveals that at the time when the application was allowed, the LRs namely Satbir Singh and Manoj were already contesting the suit. The other LRs namely Ajeet Kumar and Meenakshi did not appear despite service. The order sheet reflects that the counsel for the LR namely Manish submitted that he did not have any objection qua the said application. Since, the names of the LRs have already been taken on the record, therefore, their names should have been mentioned

in the judgment and the decree. This error needs to be rectified so that the judgment and decree can be executed and no technical objections may come in the way of execution. It could thus be seen that the decree was passed in a suit, therefore, it is a typographical mistake that 'costs of appeal' has been mentioned instead of 'costs of suit'. Therefore, both the errors need to be rectified and are thus rectified. Let the fresh decree sheet be drawn in terms of this order and the memo of parties mentioned in the first page of the judgment be read in terms of the memo of parties written in the decree sheet. This order shall be the part of the judgment and decree dated 09.05.2022.

With these observations, the application stands disposed of.”

(Emphasis Supplied)

9. From a perusal of the aforesaid, it is evident that the Trial Court vide impugned order has permitted correction of the decree to duly reflect the names of the legal representatives of late Shri Rajbir Singh. The order dated 01.11.2021 by which the legal representatives were brought on record is not disputed by the Petitioner. The final judgement dated 09.05.2022 at paragraph 5(e) duly recorded the fact that the defendant No. 1 had expired and his legal heirs were impleaded on 01.11.2021.

10. Therefore, in the opinion of this Court, the correction carried out by the Trial Court with respect to recording the names of the LRs of the defendant in the decree sheet was merely clerical within the meaning of Section 152 of CPC.

11. Further, the observations recorded by the Trial Court in the order dated 05.11.2022 that Mr. Ajit Kumar and Ms. Meenakshi did not appear despite service is borne out by the order dated 01.11.2021; and therefore, in the impugned order, the Trial Court has merely referred to the contents of the order dated 01.11.2021. Thus, no error can be assigned on this account to the Trial Court.

12. Learned counsel for the Petitioner has not impugned the correction of the typographical mistake of 'cost of appeal' instead of 'cost of suit'. He also does not dispute the recording of the names of late Shri Rajbir Singh's legal heirs in the decree sheet.

13. This Court, therefore, finds no error in the in the operative portion of the order dated 05.11.2022. In this view of the matter, this Court finds no infirmity in the order dated 05.11.2022 passed by the Trial Court.

14. The application of the Petitioner filed under Order IX Rule 13 CPC would have to be decided on its own merits by the Trial Court after examining its record.

15. Accordingly, the present petition is dismissed. Pending applications, if any, also stands disposed of.