

(2016) 05 SHI CK 0142

High Court of Himachal Pradesh

Case No: CMPMO No. 51 of 2016.

Bimla Devi - Petitioner @HASH
State of H.P. and another

APPELLANT

Vs

RESPONDENT

Date of Decision: May 24, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 1

Citation: (2016) 3 HimLR 1845 : (2016) LatestHLJ(HP) 864

Hon'ble Judges: Rajiv Sharma, J.

Bench: Single Bench

Advocate: Mr. N.K. Thakur, Sr. Advocate, with Mr. Surender Sharma, Advocate, for the Petitioner; Mr. Parmod Thakur, Addl. AG, for the Respondent/State; Mr. Angrez Kapoor, vice Mr. Ashok Sharma, ASGI, for the Respondent No. 2/Union of India

Final Decision: Dismissed

Judgement

Rajiv Sharma, J. - This petition is directed against the order dated 15.10.2013, rendered by the learned Civil Judge (Sr. Divn.), Court No. 1, Amb, Distt. Una, H.P., in Civil Suit No. 22/1 of 2005.

2. Facts, necessary for the adjudication of this petition are that the petitioner has filed a suit for declaration that she is exclusive owner-in-possession of the land measuring 1-13-14 sq. mtrs., as detailed in the head note of the plaint. She derived her title by virtue of sale from its previous owner Madan Lal vide registered sale deed dated 7.6.2004 on paying sale consideration of Rs. 2,00,000/-. The mutation was sanctioned in her favour, however, the same was set aside on the averment that Madan Lal had procured the sale certificate in his favour in connivance with the then Naib Tehsildar, Ramesh Kumar. The petitioner moved an application under Order 6, Rule 17 CPC before the trial Court to amend the plaint to implead Madan Lal, vendor as party and also to challenge the cancellation of mutation already

sanctioned in her favour. The application was dismissed by the learned trial Court. Thereafter, the petitioner moved an application under Order 23, Rule 1 CPC for withdrawal of the suit with liberty to file a suit afresh as there was defect in the suit. The application was contested by the respondents. The application was dismissed by the learned trial Court on 15.10.2013. Hence, this petition.

3. The written statement in the present case was filed in the year 2005 before the learned trial Court. The application seeking withdrawal of suit No. 22/1 of 2005 has been instituted in the year 2012. The present application has been filed after a lapse of seven years after filing the written statement. It was necessary for the petitioner to plead that there was any formal defect. The petitioner should have disclosed all the material facts to the learned Advocate at the time of institution of the plaint. The suit is pending since 2005. It was necessary for the petitioner to plead and prove that the suit would have failed by reasons of some formal defect. No sufficient grounds have been made out by the petitioner/plaintiff to permit her to withdraw the suit.

4. The learned Single Judge in the case of **Duryodhan Jena v. Satyabadi Samal and others, reported in AIR 1986 Orissa 58**, has held that the term "sufficient grounds" have to be given a wide connotation and not a restrictive meaning. The matter has been left to a judicial discretion of the Court to consider whether the ground stated by the plaintiff should be accepted as sufficient to permit him to file a fresh suit after removing the defects in the suit pending before the Court. It has been held as follows:

"7. Before proceeding to consider the submissions of the learned counsel for both the parties on merit, it would be helpful to quote the provision of Order 23, Rule 1 (3), C.P.C., which runs as hereunder :

"x x x x x x x x x x

(3) Where the Court is satisfied-(a) That a suit must fail by reason of some formal defects, or

(b) That there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

x x x x x x x x x x"

It is agreed by the learned counsel for both the parties that the present case is not one which comes under Order 23, Rule 1 (3)(a), C.P.C. Hence, the question that arises for consideration is whether there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim. The interpretation of the words "sufficient grounds" has been the subject-matter of

several decisions by different High Courts. There has been considerable controversy as to whether these words should be interpreted ejusdem generis. So far as this Court is concerned, the view that has been consistently taken is that there is no justification for restricting the meaning of the expression "other sufficient grounds" only to formal defects and those analogous thereto.

In the case of **Atul Krushna Roy v. Raukishore Mohanty, AIR 1956 Orissa 77**, it is held:

"There is no justification for restricting the meaning of the expression "other sufficient grounds" in Order 23, Rule 1 (2)(b) only to formal defects or those analogous thereto. The words are wide enough to embrace other defects as well. There is no justification for importing into the language of Order 23, Rule 1 (2)(b) the construction put upon the expression "for other sufficient reasons" in Order 41, Rule 1 ." (quoted from the headnote) In the said case, it has been held that the failure of the plaintiff's counsel to incorporate a prayer for dissolution of the partnership in a suit for accounts is bound to result in the dismissal of the suit. This is certainly a defect and provides a sufficient ground for permitting the plaintiff to come to Court again with a properly drafted plaint. The Court did not follow the decision in **AIR 1951 All 845 (FB) (Abdul Ghafoor v. Abdul Rahman)** and **AIR 1940 Bom 121 (FB) (Ramrao Bhagwant Rao Inamdar v. Babu Appanna Samage)**, and distinguished an earlier decision of this Court in the case of **Babrak Khan v. A. Shakoore Muhammad, (1954) 20 Cut LT 643**.

This view has been followed in a subsequent decision of this Court in the case of **Brajamohan Sabato v. Sarojini Panigrahi, AIR 1975 Orissa 39** wherein S.K. Ray, J. (As he then was) followed the decision in the case of **Atul Krushna Roy, (AIR 1956 Orissa 77)**. It was held therein that the mistake committed by the plaintiff in not seeking the appropriate relief in the suit was "sufficient grounds" for granting permission to withdraw with liberty to file a fresh suit. The Court followed the decision in the case of Atul Krushna Roy and did not follow the decision of Bombay High Court in **AIR 1956 Bom 632, Tarachand Bapuchand v. Gaibihaji Ahmed Begwan** and **AIR 1966 Mad 346 : (1966) 1 Mad LJ 359, E. Nadipatha v. P. Venkataraju**.

In the case of **Lingaraj Mohaprabhu Bije. Bhubaneswar v. Smt. Arnapurana Dei, (1972) 1 Cut WR 643**, the same learned Judge took the view that a formal defect is a defect of form which is prescribed by rules of procedure. There is no justification for restricting the meaning of the expression "other sufficient grounds" to formal defect or those analogous thereto. The words are wide enough to embrace only to other defects as well. The expression "sufficient grounds" is not to be construed ejusdem generis but must embrace the grounds, which a judicial mind, can consider to be sufficient for the purpose of granting leave prayed for under this rule.

From the decision referred to above, it is clear that the term "on other grounds" has been given a wide connotation and attempt to give a restrictive meaning to it has been repelled. The matter has been left to a judicial discretion of the Court to consider whether the ground stated by the plaintiff should be accepted as sufficient to permit him to file a fresh suit after removing the defects in the suit pending before the Court."

5. In the instant case, it was necessary for the petitioner to specifically mention formal defects in the application. Merely stating that there are formal defects is not sufficient. The respondents cannot be vexed twice to defend the suit. Thus, there is neither any perversity nor illegality in the impugned order dated 15.10.2013 passed by the learned Civil Judge (Sr. Divn.), Court No. 1, Amb, Distt. Una, H.P.

6. Accordingly, the petition is dismissed, so also the pending application(s), if any. No costs.