

(2012) 03 AHC CK 0159

Allahabad High Court

Case No: First Appeal No. 124 of 2011

Mahesh Chandra Sagar

APPELLANT

Vs

Amrit Kumari (Now
dead) and others

RESPONDENT

Date of Decision: March 29, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 18, 96

Hon'ble Judges: Sheo Kumar Singh, J and Ram Surat Ram (Maurya), J

Final Decision: Allowed

Judgement

Ram Surat Ram (Maurya), J.

Heard Sri H.R. Mishra, Senior Advocate, assisted by Sri S.K. Mishra, Advocate for the appellant and Sri Rajesh Rai for the respondent.

This appeal is listed in the Additional Cause List in the heading of "Admission". Respondents 2 and 3 have put in appearance and filed counter affidavit and an application for vacation of the interim order dated 7.4.2011. Since the suit was dismissed on the ground that the plaintiff appellant has not made necessary amendment/substituted the heirs of the defendant respondent 1, although substitution application has been allowed on 14.1.2011. As such, instead of deciding the stay vacation application, the appeal is decided finally with the consent of the parties.

This is plaintiff's appeal from the order dated 15.3.2011 by which the suit has been dismissed as abated on the ground of not bringing the legal heirs of the sole defendant on record in pursuance of the order dated 14.1.2011, allowing the substitution application.

The plaintiff filed suit no. 1185/2010 for permanent injunction restraining the defendant from interfering in his possession over the property in dispute. In this suit, the defendant appeared and filed written statement on 30.11.2010. In the meantime, the sole defendant

died on 16.12.2010. The plaintiff moved an application for substitution of the heirs of the defendant on 21.12.2010. The substitution application was allowed on 14.1.2011.

In compliance of the order dated 14.1.2011, the plaintiff was required to incorporate necessary amendment in the plaint bringing the legal heirs of the sole defendant on record. The limitation for incorporating necessary amendment is 14 days under Order VI Rule 18 CPC. It appears that due to ignorance, the counsel for the plaintiff appellant could not incorporate the necessary amendment within time. In the meantime, the plaintiff filed an application on 27.1.2011 for grant of time for making necessary amendment in the plaint incorporating/substituting the legal heirs of the defendant. The case was thereafter listed on 1.2.2011. On that day, the Presiding Officer was on leave and the case was adjourned and 28.2.2011 was fixed.

On 28.2.2011, there was a resolution of the Advocate's Association for strike. It appears that in the absence of counsel for the appellant, his application was allowed and two days and no more time was granted for incorporating necessary amendment and next date was fixed as 9.3.2011.

The counsel for the appellant states that due to Advocate's strike, the order dated 28.2.2011 granting two days time for incorporation of necessary amendment could not come to the knowledge of the counsel for the appellant as he could not attend the case, and as such, incorporation of necessary amendment could not be done. On 9.3.2011, the counsel for the plaintiff appellant again moved an application for extension of time, but the matter was heard and by the order dated 15.3.2011, the application was rejected and since the heirs of defendant were not brought on record, accordingly, the suit was dismissed as abated. Hence, the present appeal has been filed.

The counsel for the appellant submits that due to ignorance of the counsel, necessary amendment/incorporation could not be done in the plaint. On coming to know about this, the application for extension of time was filed on 27.1.2011 on which order was passed on 28.2.2011 in his absence, as due to Advocate's strike, the counsel for the plaintiff appellant could not attend the case and could not come to know about the order. Accordingly, another application for extension of time was filed on 9.3.2011, but it has been wrongly rejected. In the circumstances, the court ought to have further extended time for incorporating necessary amendment, but the trial court has mechanically rejected the application and dismissed the suit as abated.

Having heard counsel for the parties, we are satisfied that there was sufficient cause for not incorporating the amendment within time or within time extended by the court. As there was Advocate's strike on 28.2.2011, therefore, the order passed on 28.2.2011 could not come to the knowledge of the counsel for the plaintiff appellant. In view of this, although stop order was passed on 28.2.2011, but as the plaintiff had no notice of this order due to advocate's strike, as such, some reasonable time ought to have been granted further. The Trial Court illegally rejected the application moved on 6.3.2011 for

extension of time.

In the fact and circumstances of the case, the order dated 15.3.2011 passed by the trial court suffers from illegality and is liable to be set aside.

Accordingly, the appeal is allowed. Order dated 15.3.2011 is set aside. The case is remanded to the Trial Court for trial and decision on merit in accordance with law. The appellant is allowed three weeks time from today to incorporate necessary amendment in the plaint in compliance of the order dated 14.1.2011, allowing the substitution application before the Trial Court.

We also direct the appellant to pay Rs. 10,000/ as cost, to respondent 2 or respondent 3, before the Trial Court, within a period of one month. The receipt of such payment shall be filed and kept in record. In case, for any reason, it is not possible to pay the amount of cost to respondent 2 or respondent 3 within aforesaid period and obtain receipt from them, then a demand draft in the name of either of respondents 2 or 3 be filed before the Trial Court, within one week thereafter.