

Shazadi Begum Gano Mohd. Vs Vinod Kumar Rameshwardayal and another

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: Feb. 4, 1977

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 41 Rule 22, Order 41 Rule 33

Citation: (1977) JLJ 244

Hon'ble Judges: U.N. Bhachawat, J; C.M. Lodha, J

Bench: Division Bench

Advocate: K.N. Gupta, for the Appellant; H.G. Mishra and K.S. Agarwal, for the Respondent

Final Decision: Dismissed

Judgement

C.M. Lodha, J.

This is an appeal by one of the defendants against whom the suit has been dismissed by the trial Court. There are two

prayers contained in the appeal viz. (i) that the appellant should have been awarded costs of the suit by the lower Court and (2) that the adverse

finding given by the lower Court against the defendant appellant may be quashed.

2. A preliminary objection has been raised by Mr. H.G. Mishra on behalf of the plaintiff-respondent No. 1 that the appellant is not maintainable.

The objection is two fold. It is urged in the first instance, that appeal lies from the decree but not against an adverse finding. Then it is argued that

the appellant is not entitled to raise the objection regarding costs inasmuch as she has not paid court fee on the amount of costs claimed by her.

3. We might first take up the second branch of the preliminary objection regarding deficiency of court fee. Admittedly no court-fee has been paid

on the amount of costs claimed by the appellant in the memo of appeal. The appeal, therefore, so far as the prayer for award of costs is concerned

is liable to be rejected. No prayer for grant of time to make up the deficiency in the court-fee has been made before us. We may, however,

observe that even if such a prayer was made, we would not be inclined to grant it, inasmuch as the appeal would be time-barred, if the court-fee is

paid now.

4. This brings us to the first part of the preliminary objection. The plaintiff respondent No. 1 brought the present suit for recovery of Rs. 12,000 on

the basis of three Hundis alleged to have been executed by the defendant-respondent No. 2 Gani Mohammad and the present appellant, who is

wife of Gam Mohammad, was impleaded as a party on the ground that she was carrying on business jointly with Gani Mohammad. The trial Court

has found that The appellant was not carrying on any business jointly with Gani Mohammad and, therefore, she is not liable for the suit amount.

The suit against the appellant was, therefore, dismissed. However, while deciding the question of liability of the defendant Gani Mohammad, the

trial Court has made an observation, even though there was no issue on the point, that Gani Mohammad had fraudulently transferred his property in

favour of the appellant in order to defeat the plaintiff's suit. In our opinion, this finding was wholly unnecessary. As a matter of fact the question did

not arise in the case at all, and, therefore, this finding will not operate as res Judicata against the appellant, nor she would be estopped from

challenging it in any subsequent proceeding. It is clear that the appellant is not attacking the decree obviously because there is no decree against

her. In this view of the matter, we are clearly of the opinion that no appeal lies against this finding.

5. The appeal is, therefore, rejected but without any order as to costs.

6. The respondent Gani Mohammad has also filed a cross-objection against the decree by the trial Court. The cross-objection pertains to the rate

of interest awarded against Gani Mohammad. In our opinion, the cross-objection is not maintainable under Order 41, Rule 22, Civil Procedure

Code. In this connection reference may be made to Pannalal Vs. State Bombay and Others, wherein their Lordships have been pleased to lay

down that Order 41, Rule 22 permits, as a general rule, a respondent to prefer an objection directed only against the appellant and it is only in

exceptional cases such as where the relief sought against the appellant in such an objection is intermixed with the relief granted to the other

respondents, so that the relief against the appellant cannot be granted without the question being reopened between the objecting respondent and

other respondents that an objection under Order 41, Rule 22 can be directed against the other respondents. Such is not the situation in the present

case. No relief is sought against the appellant who has no interest in the cross-objection and, therefore, objection under Order 41, Rule 22 cannot

be directed against the other respondents. In this view of the matter, the cross-objection under Order 41, Rule 22 CPC by the respondent Gani

Mohammad is not maintainable.

7. Mr. K.S. Agarwal submitted, in the alternative, that relief may be granted to his client under Order 41, Rule 33, Civil Procedure Code. This

submission, in our opinion, is also devoid of substance. In *Pannalal v. State of Bombay* (supra), it was also observed that the wide wording of

Order 41, Rule 33 was intended to empower the appellate Court to make whatever order it thinks fit, not only as between the appellant and the

respondent but also as between a respondent and a respondent. It empowers the appellate Court not only to give or refuse to the appellant by

allowing or dismissing the appeal but also to give such other relief to any of the respondents as "the case may require".

8. In our opinion, no relief requires to be granted to the respondent Gani Mohammad in this appeal inasmuch as we have not interfered with the

decree of the trial Court in any way. The respondent Gani Mohammad could have filed an appeal from the decree of the trial Court, if he was

aggrieved by it or by any part of it.

9. Accordingly, we dismiss the cross-objection also, but make no order as to costs of the cross-objection.