(2002) 11 SC CK 0070

Supreme Court of India

Case No: C.A. No.-007162-007163 / 2002

Baldev Singh		APPELLANT
	Vs	
Surinder Mohan Sharma and Others		RESPONDENT

Date of Decision: Nov. 1, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 96
- Constitution of India, 1950 - Article 227

Citation: AIR 2003 SC 225 : (2003) 2 ALT 40 : (2002) 9 JT 235 : (2003) 1 LW 304 : (2003) 1 LW 23 : (2003) 1 PLJR 249 : (2003) 94 RD 195 : (2003) 1 SCC 34 : (2003) 1 UC 170 : (2003) 1 UJ 61 : (2003) 2 WLN 658

Hon'ble Judges: V. N. Khare, J; S. B. Sinha, J; Arijit Pasayat, J

Bench: Full Bench

Advocate: Hardev Singh and R.C. Srivastava, S.C. Paul, Reema Chopra, Gurmeet Singh, Rekha Pandey, Amar Vivek and Jasbir S. Malik, for S. K. Sabbarwal, Kawaljit Kochar, S. Mahajan, C.L. Bashal and D. Jha, for Kusum Chaudhary, Shamsher Singh and Chanchal Goel, for Rani Chhabra, for the Appellant;

Final Decision: Disposed Of

Judgement

S.B. Sinha, J.
Leave granted.

2. One Ajay Kumar, said to be a brother of a property dealer, instituted a suit for permanent injunction against the First Respondent herein in respect of a House No. HM-14, phase II, Mohali. The said suit was dismissed as withdrawn on 14th December, 1991. Allegeldy, in relation to the said property, the First Respondent entered into an agreement to sell dated 23rd June, 1990 with the father of the appellant (since deceased). He expired on 5th January, 1991. The First Respondent herein thereafter filed a suit for possession against the aforementioned Ajay Kumar treating him as his tenant and the

appellant as the sub-tenant. He also allegedly refused to honour the agreement to sell earlier executed by him in favour of father of the appellant. While deposing in the second suit, the appellant herein made the following statements in cross-examination:-

"My first wife is Sarbjit Kaur and my second wife is Paramjit Kaur -- whenever I have been posted at Chandigarh I have been staying with my wife Paramjit Kaur. She is in service in Director Cultural Affairs, Punjab, Sector-38, Chandigarh as Librarian. I have two children from Paramjit Kaur."

3. Relying on or on the basis thereof, the First Respondent herein made complaints to the employers of the appellant and his wife Paramjit Kaur on the ground that they have contracted a second marriage during the life time of the first wife of the appellant; whereupon departmental proceedings were intimated both against the appellant as also his wife, Paramjit Kaur.

4. A suit, however, was filed by the aforementioned Sarbjit Kaur in the Court of the Civil Judge (Junior Division), Ludhiana, marked as Civil Suit No. 696 of 1999, inter alia, on the ground that the appellant had divorced her in the year 1982 by reason of a memorandum of customary dissolution of marriage. The said suit was decreed declaring the said marriage to have been dissolved with effect from 27th January, 1982. Relevant portion of the said judgment and decree dated 21st July, 2000 reads as under:-

"Therefore in view of the decision of the Hon"ble High Court of Punjab and Haryana in case title as Smt. Sudarshan Kaur v. Major Manmohan Singh Dhatt in 1978 PLR 598 the case of the plaintiff is decreed and it is declared that marriage between the parties was solemnised on 26.10.1976 stands dissolved w.e.f. 27.1.1982 by virtue of a memorandum of customary dissolution by the parties and defendant is further restrained form interfering with personal affairs of the plaintiff, parties are left to bear their own cost. Decree sheet be prepared."

5. Questioning the said judgment and decree, the First Respondent herein filed an application before the High Court of Punjab and Harayana at Chandigarh purported to be under Article 227 of the Constitution of India, which was marked as Civil Revision No. 3918 of 2000, contending that as he was not a party in the said suit, he cannot prefer an appeal thereagainst. in the said revision application, the First Respondent as regards his locus standi to maintain the said application alleged:

"That the petitioner has the locus standi to maintain the present petition inasmuch as he been harassed and troubled a lot by Respondent No.3. who has illegally grabbed the house of the petitioner in connivance with one person Ajay Sharma -- Petitioner"s earlier tenant. The petitioner has not been paid any rent for the house for the last over 10 years. Respondent No.3 has forged and fabricated some documents in connivance with several persons including a stamp vendor of Ludhiana. Though the said matter is already a subject matter of the civil sit. But the fact remains that the entire life of the petitioner has

been ruined by Respondent No.3 petitioner''s wife is bed-ridden for last two years due to the shock arising from the illegal grabbing of house by Respondent No.3, and the total family life and mental peace of the petitioner has been shattered. Petitioner has been facing spate of malicious and motivated and ill found petitions at the behest of Respondent No.3 and even his Advocate has not been spared by him in launching malicious prosecution by Respondent No.3. Whosoever witness appeared to depose against Respondent No.3, almost of all of those witnesses were tormented, tortured intimidated and troubled by Respondent No.3, almost of all of those witnesses were tormented tortured intimidated and troubled by him and false cases were filed against them by Respondent No.3. So much so, Respondent No.3 spelt venom against the Ld. Presiding Judge, dealing with the case, due to which even the case was transferred from the said court and later contempt notices have already been issued to him by this Hon''ble Court. All these atrocities and illegalities committed by Respondent No.3, have compelled the petitioner to seek the indulgence of this Hon''ble Court in the matter of launching appropriate departmental proceedings against him by the respondents. Therefore, since the petitioner has a direct cause of action in the matter involving Respondent No.3, who has grabbed his house illegally, hence, petitioner is aggrieved of the illegal acts of Respondent No.3. Since the authorities were trying to act in accordance with the law in deciding representations moved by the petitioner and now these are being scuttled by him in (SIC) with the other non-official respondent, hence, the petitioner is filing the present petition in this Hon''ble Court requesting the Hon''ble Court to set aside the impugned judgment and decree as the same is illegal and arbitrary and an abuse of process of the court.''

6. A learned Single Judge of the High Court by reason of the impugned judgment disposed of the said application directing:-

"After hearing the counsel for the petitioner, the present revision stands disposed of with the observations that let the petitioner S.M. Sharma may file an appeal in the competent court of jurisdiction within 30 days from today challenging the judgment and decree dated 21st July, 2000, irrespective of the fact that he was not a party to the suit. Prima facie S.M. Sharma is aggrieved by the judgment and decree dated 21st July, 2000 because his case is that this decree has been obtained by Sarbjit Kaur, first wife of Baldev Singh, in order to circumvent the action which is likely to be taken by the department against Baldev Singh and his second wife Paramjit Kaur."

7. It is not in dispute that pursuant to or in furtherance of the said observations, Respondent No.1 preferred an appeal in the Court of the District Judge, Ludhiana. The parties thereafter filed review applications in the High Court. The review application filed by the appellant was also dismissed by order dated 15th January, 2001.

8. The only question which arises for consideration in these appeals against the aforementioned order is as to whether Respondent No.1 had any locus standi to question the said judgment and decree dated 21st July 2000 passed by the Civil Judge (Junior

Division), Ludhiana.

9. The statements made in his revision application, in our considered opinion, do not disclose any cause of action so as to confer on him "locus standi" to maintain the same.

10. There is no dispute that as against a decree, an appeal would be maintainable in terms of Section 96 of the Code of Civil Procedure. Such an appeal, however, would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree. As noticed hereinbefore, the dispute between the parties was in relation to a property. The First Respondent herein, save and except, inter alia, making complaints against the appellant and his wife to their respective employers purported to be relying on or on the basis of the statements made by the appellant herein during cross-examination in the aforementioned suit, had nothing to do with the status of Sarbjit Kaur and the appellant herein as spouses or otherwise.

11. "Locus" of a person to prefer an appeal in a matter of this nature is vital as the right of privacy of two spouses would be interfered thereby. The court cannot enlarge the scope of "locus" in a case of this nature where the parties are fighting litigations. Allegations made by the First Respondent in his revision application does not disclose any cause of action for maintaining in the said application nor does it state as to how and in what manner he would be prejudiced if the impugned judgment is allowed to stand. In the aforementioned premise bona fide of the First Respondent was also required to be determined by the High Court. Having regard to the facts and circumstances of the case, we are of the opinion that the application filed by the First Respondent before the High Court was not a bona fide one but was filed in furtherance of the pending disputes between the parties.

12. In the instant case, it is not necessary for us to determine the question as to whether the judgment in question is a judgment in personam or a judgment in rem. Herein, the status of the parties is not in question and such judgments ordinarily cannot be said to be judgments in rem. Even if the said judgment is a judgment in rem, the respondent herein could not have questioned the same as he cannot be said to be aggrieved thereby. In that view of the matter, the question as to whether in the instant case, the Civil Court, Ludhiana, had any jurisdiction to pass the decree in question, takes a back seat.

13. It is now a well-settled principle of law that an ex parte decree is as good as a contesting decree unless it is set aside. An ex parte decree can be set aside by the court passing it or by an appellate court only at the instance of a person aggrieved thereby.

14. It may be true that a decree obtained by fraud is a nullity. But the question as to whether a decree has been obtained by fraud or not is again a question which must be raised by a person who is interested in the subject matter thereof and not at the instance of a person who is a busy body. The appellant and the aforementioned Sarbjit Kaur have a right of privacy. Such a right of privacy extends not only to the matrimonial home but

also to the matter of dissolution of a marriage. A third party who has nothing to do with relationship of the appellant and the said Sarbjit Kaur cannot be permitted to intrude into their privacy by preferring an appeal only on one or more of the grounds, as stated by the First Respondent in his application before the High Court and as quoted supra. None of the said grounds, in our considered view, confers locus on the First Respondent to prefer an appeal against the decree passed by the learned Civil Judge.

15. The First Respondent in relation to his disputes with the appellant herein has been pursuing his remedies in appropriate proceedings. What would be the effect of the said judgment and decree in a departmental proceeding is required to be determined by the appropriate authorities. Only because a departmental proceeding was initiated against the appellant on the complaint of Respondent No.1 he, only thereby, cannot be said to have any locus to prefer an appeal as has been contended by Mr. Srivastava. A person aggrieved to file an appeal must be one whose right is affected by reason of the judgment and decree sought to be impugned. It is not the contention of Respondent No.1 that in the event the said judgment and decree is allowed to stand the same will cause any personal injury to him or shall affect this interest otherwise. Dissolution of marriage of the appellant and his first wife would also have no repercussion on the property in suit. As noticed hereinbefore, the effect of the aforementioned statements made by the appellant in the second suit shall have to be considered by the courts and the departments concerned on their own merits.

16. We are, therefore, of the opinion that Respondent No.1 herein cannot be said to have any locus standi to prefer an appeal against the judgment and decree passed by the learned Civil Judge, Ludhiana. As a logical corollary of the said finding, it must necessarily be held that the learned Single Judge of the High Curt was not correct in disposing the civil revision petition by making an observation which affected the interest of the appellant and that too without giving an opportunity of hearing to him.

17. It is not correct to contend that the appellant herein has no locus standi to prefer these appeals as an order adverse to his interest has been passed by the High Court. It is also not correct to contend that the appellant can raise this contentions in appeal insofar as he cannot be permitted to fight out a matter which, in our opinion, is not maintainable at the instance of Respondent No.1.

18. Admittedly several other proceedings are pending between the parties, but it is not necessary to refer thereto having regard\\ to the short question involved in the matter.

19. For the reasons mentioned hereinabove, the impugned orders cannot be sustained such are set aside. The appeals are disposed of accordingly. In the facts and circumstances of the case, the appellant herein is also entitled to costs quantified at Rs. 5,000/-.