Sumtibai and Others Vs Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) Thru Smt. Mankanwar Chordia (Dead) and Others

Court: Supreme Court of India

Date of Decision: Oct. 4, 2007

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 1 Rule 10, Order 22 Rule 4(2)

Citation: AIR 2007 SC 3166 : (2007) AIRSCW 6125 : (2007) 6 ALT 20 : (2007) 4 AWC 4101 Supp : (2008) 1 CHN 65 Supp : (2008) 1 JCR 1 : (2007) 11 JT 479 : (2007) 6 MLJ 733 : (2007) 4 MPHT 33 : (2007) 2 OLR 811 : (2008) 104 RD 80 : (2007) 11 SCALE 596 : (2007) 10 SCC 8

Hon'ble Judges: Markandey Katju, J; A. K. Mathur, J

Bench: Division Bench

Advocate: B.D. Sharma, Narottam Vyas and Vikramjeet Sikand, for the Appellant; Sushil Kumar Jain, H.D. Thanvi and Piyush Jain, for the Respondent

Final Decision: Dismissed

Judgement

Markandey Katju, J.
This appeal has been filed against the impugned judgment and order dated 7.1.2000 in S.B. Civil Revision Petition

No. 835of 1997.

2. Heard learned Counsel for the parties and perused the record.

3. The Revision Petition was filed in the High Court against an order dated 6.8.1997 passed by the trial court whereby the application filed by the

revisionists under Order 22 Rule 4(2) CPC read with Order 1 Rule 10 CPC was rejected.

4. The appellants are the legal representatives of late Kapoor Chand. A suit was filed by the respondent herein against Kapoor Chand for specific

performance of a contract for sale. It was alleged that Kapoor Chand had entered into an agreement to sell the property in dispute to the plaintiff-

respondent, M/s. Paras Finance Co. In that agreement Kapoor Chand stated that the property in dispute was his self acquired property. During

the pendency of the suit Kapoor Chand died and his wife, sons etc. applied to be brought on record as legal representatives. After they were

impleaded they filed an application under Order 22 Rule 4(2) read with Order 1 Rule 10 CPC praying inter alia, that they should be permitted to

file additional written statement and also be allowed to take such pleas which are available to them. The trial court rejected this application against

which a revision was filed by the appellant which was also dismissed by the High Court. Hence this appeal by special leave.

5. We are of the opinion that a party has a right to take whatever plea he/she wants to take, and hence the view taken by the High Court does not

appear to be correct.

6. Learned counsel for the respondent submitted that in view of Order 22 Rule 4(2) a person who has been made a party can only take such pleas

which are appropriate to his character of legal representative of the deceased. Learned counsel also submitted that two of the applicants/legal

representatives of deceased Kapoor Chand, i.e. Narainlal and Devilal, had applied to the court under Order 1 Rule 10 to be impleaded, but their

applications were rejected. An application was also filed by late Kapoor Chand praying that his sons be impleaded in the suit but that application

was also rejected. Hence, the learned Counsel submitted that the appellants cannot be permitted to file an additional written statement in this suit.

7. Before adverting to the question involved in this case, it may be noted that in the registered sale deed dated 12.8.1960 the shop in dispute has

been mentioned and the sale was shown in favour of Kapoor Chand and his sons, Narainlal, Devilal and Pukhraj. Hence, the registered sale deed

itself shows that the purchaser was not Kapoor Chand alone, but also his sons as co- owners. Hence, prima facie, it seems that the sons of

Kapoor Chand are also co-owners of the property in dispute. However, we are not expressing any final opinion on the question whether they are

co-owners as that would be decided in the suit. But we are certainly of the opinion that the legal representatives of late Kapoor Chand have a right

to take this defence by way of filing an additional written statement and adduce evidence in the suit. Whether this defence is accepted or not, of

course, is for the trial court to decide. Hence, in our opinion, the courts below erred in law in rejecting the applications of the heirs of Kapoor

Chand to file an additional written statement.

8. Every party in a case has a right to file a written statement. This is in accordance with natural justice. The CPC is really the rules of natural

justice which are set out in great and elaborate detail. Its purpose is to enable both parties to get a hearing. The appellants in the present case have

already been made parties in the suit, but it would be strange if they are not allowed to take a defence. In our opinion, Order 22 Rule 4(2) CPC

cannot be construed in the manner suggested by learned Counsel for the respondent.

9. Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in 274146 . He has submitted that in this case it has

been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as

defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood

to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute.

Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct

the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest

in the property in dispute. In the present case, the registered sale deed dated 12.8.1960 by which the property was purchased shows that the shop

in dispute was sold in favour of not only Kapoor Chand, but also his sons. Thus prima facie it appears that the purchaser of the property in dispute

was not only Kapoor Chand but also his sons. Hence, it cannot be said that the sons of Kapoor Chand have no semblance of title and are mere

busybodies or interlopers.

10. As observed by this Court in 272439 vide para 13:

A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein

nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in Quinn v. Leathem, 1901

AC 495:

Now before discussing the case of Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character

which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular

facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the

whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only

an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a

mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at

all.

11. In Ambica Quarry Works v. State of Gujarat and Ors., (1987) 1 SCC 213 (vide para 18) this Court observed:

The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an

authority for what it actually decides, and not what logically follows from it.

12. In Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd (2003) 2 SC 111 (vide para 59), this Court observed:

It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

13. As held in Bharat Petroleum Corporation Ltd. and Anr. v. N.R.Vairamani and Anr. AIR 2004 SC 4778, a decision cannot be relied on

without disclosing the factual situation. In the same Judgment this Court also observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which

reliance is placed. Observations of Courts are neither to be read as EuclidÃ¯Â¿Â½s theorems nor as provisions of the statute and that too taken out of

the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be

construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy

discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words

of statutes; their words are not to be interpreted as statutes.

In London Graving dock co. Ltd. v. Horton 1951 AC 737 Lord Mac Dermot observed:

The matter cannot, of course, be settled merely by treating the ipsissima ventral of Willes, J. as though they were part of an Act of Parliament and

applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that

most distinguished judge.

In Home Office v. Dorset Yacht Co. 1970 (2) AER 294 Lord Reid said, Lord Atkin`s speech...is not to be treated as if it was a statute definition

it will require qualification in new circumstances. Megarry, J. in (1971)1 WLR 1062 observed: One must not, of course, construe even a reserved

judgment of Russell L. J. as if it were an Act of Parliament. And, in Herrington v. British Railways Board 1972 (2) WLR 537 Lord Morris said:

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered

that judicial utterances are made in the setting of the facts of a particular case.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by

blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may

alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of

one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at

all decisive.

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Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you

will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.- 14. In view of

the aforesaid decisions we are of the opinion that Kasturi''s case (supra) is clearly distinguishable. In our opinion it cannot be laid down as an

absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In

our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would

lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the

decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.

15. Also, merely because some applications have been rejected earlier it does not mean that the legal representatives of late Kapoor Chand should

not be allowed to file an additional written statement. In fact, no useful purpose would be served by merely allowing these legal representatives to

be impleaded but not allowing them to file an additional written statement. In our opinion, this will clearly violate natural justice.

16. For the reasons aforementioned, the impugned orders of the High Court dated 7.1.2000 as well as the trial court dated 6.8.1997, are set

aside.

The appellants shall be allowed to file additional written statement and thereafter the suit should proceed expeditiously in accordance with law.

17. The appeal is allowed. There shall be no order as to costs.