Geddam Sita Ram Reddy (dead) and Others Vs Yerrasani Venkat Varada Reddy

Court: Andhra Pradesh High Court

Date of Decision: Nov. 4, 1953

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 43 Rule 1, Order 47 Rule 1, Order 47 Rule 2, Order 47 Rule 4, Order 47 Rule 4(1)
Constitution of India, 1950 â€" Article 227
Hyderabad Limitation Act, 1322 â€" Article 146, 17

Hon'ble Judges: Palnitkar, Acting C.J.; Mohd. Ahmed Ansari, J; Jaganmohan Reddy, J

Bench: Full Bench

Advocate: Sadashivrao and Srirampandit, for the Appellant; Vinayakrao Vaidya and Manohar Rao Jagirdar, for the Respondent

Judgement

1. A Division Bench has referred this case to the Pull Bench. The brief facts necessary for the disposal of this appeal may be stated as follows.

2. Yerrasani Venkat Varada Beddi, Plaintiff filed a suit in the lower Court against Cieddam Sita Rama Reddi for possession and mesne profits.

During the pendency of the suit, the Defendant died on the 18th of Behman 1354P. corresponding to 21-12-1944. An application for substitution

and bringing the legal representatives of the deceased on record was submitted by the Plaintiff on 13th Ardibehist 1354F corresponding to 17-3-

1945. The application mentioned two sons of the deceased namely Upendra Reddi and Surendra Reddi, minors, under the guardianship of their

mother Shakunbala Devi as the legal representatives of the deceased. It is evident that as the natural guardian of the minors did not appear, the

Court appointed One Mustanser All, Vakil as their guardian who filed a formal application denying the allegations and stating that the petition be

dismissed.

The proceedings were unnecessarily delayed. On 1st of Amardad 1355 F., the natural guardian of the minors appointed Shri Ranga Rao, Vakil, on

her behalf who stated that a son was born to the deceased on the 11th of Meher 1354 F. corresponding to 17-8-1945. The Court directed that

the name of that son be disclosed and entered in the L. Rule petition. On 7th Meher 1355F., corresponding to 13-3-1946 the name of, the newly

born third son Mahendra Reddi was disclosed and the L.R. petition was accordingly amended. On 8th Dai 1357F., the proposed L.R. submitted

their counter; they stated that as the name of the 3rd L.R. was disclosed on the 7th Meher 1355, the L.R. petition was time-barred so far as

Mahendra Reddi was concerned and as Mahendra Reddi was a coparcener with the other two proposed L. Rs. the L.R. petition should be

dismissed in upto. The lower Court on 21st Behman 1357 P. corresponding to 21-12-1947 rejected the L.R. petition.

It was of the view that on 3rd Ardibehist 1354F., corresponding to 3-3-1944 (the lower Court was obviously wrong in giving this date; the correct

one is 13th Ardibehist corresponding to 17-3-1944)," when the L.R. petition was submitted the 3rd son Mahendra Reddi was in the womb of his

mother. A son conceived must be regarded as a son born and therefore it was the duty of the Plaintiff to have mentioned that fact along with the

L.R. petition; his failure to mention the third son within the time prescribed by law from the death of the sole Defendant resulted in the abatement of

the suit against Mahendra Reddi and as the latter was a member of the joint family with the two other sons, the whole suit will be abated; the Court

relied upon--Mohd. Azam Gori v. Haji Tahur All Khan 37 DLR 429 (A), and thought that it was held in that case that the new proposed L.R.

could not be substituted as the same was not disclosed within six months--the time prescribed under the law--and therefore the whole suit should

abate. I (3) Against the said decision, the Plaintiff filed [a review petition which was allowed on 3th Ardijbohist 1353 P., the lower Court holding

that in the very ruling cited in the judgment under review it was held that no question of limitation will arise if the petition for substitution was within

time and that an additional L.R. could always be added though his name was not disclosed in the first petition for substitution.

4. Against the later judgment this appeal has been filed, under the provisions of Order 47, Rule 7 and Order 43, Rule 1(w). A preliminary

objection was raised by the learned advocate for the Respondent--stating that the appeal was not maintainable under Order 43 Rule 1(w) as there

was no contravention of the provisions of Rule 4 of Order 47 in the order granting the review. It was argued that the application for review was

granted after notice to the opposite party and after hearing him. Thus the provisions of Order 47, Rule 4, Proviso (a) were complied with. Reliance

was placed upon--Kailash Narain v. Raj Mukar AIR 1945 Oudh 183 (B), in which it was held that no appeal will lie from in order granting review

on the ground that there is an error apparent on the face of the record.

In--Kathyuvnma v. Ruhaminad Kutty AIR 1026 Mad 1083 (C), it was held that a review petition on the ground of an accidental slip is

entertainable before the successor of the Judge who disposed of the case. The learned Advocate for the Appellant argued that the order of the

lower Court should be regarded as contravening the provisions of Order 47, Rule 4 inasmuch as under Sub-rule (1) of Rule 4, the Court should

reject the application for review if there was not sufficient ground and it was therefore argued that the application for review will be, granted only

when, there--are sufficient grounds and as the wrong interpatation of a ruling is not a sufficient ground, therefore the order of the lower Court

should be deemed to have contravened the provisions of Rule 4.

5. It is to be remembered that for the purposes of an appeal, Order 43, Rule 1(w) and Order 47, Rule 7 should be read together and no appeal

will lie from an order granting a review in cases other than those specified in Rule 7(a), (b) and (c) namely the contravention of the provisions of

Rule 2 or a contravention of Rule 4 or filing the review petition after the expiration of the period of limitation and without sufficient cause. Thus

sufficient cause will come in only when deciding the question under Rule 7(c). We do not see any contravention of the provisions of Rule 2 of

Order 47 in this case. That point was not pressed before us. There is no question of contravention of Rule 4 as the review was granted after issuing

notice to the opposite party. We are therefore of the opinion that the preliminary objection succeeds and the appeal is not maintainable. In--Harl

Sankar Pal v. Anath Nath AIR 1949 PC 106 (D), the question as to what will be a decision ""erroneous in law"" and a decision of a case ""without

the Court adverting to or applying its mind"" to a provision of law has been discussed. Their Lordships observed at P. 110, Para. 18 as follows:

That a decision is erroneous in law is certainly no ground for ordering review. If the Court has decided a point and decided it erroneously, the error

could not be one apparent on the face of the record or even analogous to it. When, how ever, the Court disposes of a case without adverting to or

applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent

on the face of the record sufficient to bring the case within the purview of Order 47, Rule 1, Code of Civil Procedure.

6. The learned advocate for the Appellant argued that if the preliminary point succeeds this Court should look into the judgment of the lower Court

under the provisions of Section 115, CPC and should treat the appeal as a revision and exercise its revisional powers. We do not find any reason

to interfere with the order of the lower Court under the provisions of Section 115, CPC It cannot be said that the lower Court has exercised

jurisdiction not vested in it by law or to have acted in the exercise of its jurisdiction illegally or with material irregularity. It was contended that the

wrong decision of the question of law at the first instance by the lower Court is not sufficient for granting a review and therefore the Court should

be regarded as having acted with material irregularity.

We do not agree with this. As laid down in the decision of the Federal Court in-- AIR 1949 106 (Federal Court) it was clearly a case of the Court

disposing of the case without adverting to or applying its mind to the case reported in " 37 DLR 429 (A)" and therefore it amounts to an error

analogous and apparent on the face of the record and sufficient to bring the case under the purview of Order 47, Rule 1, Code of Civil Procedure

7. In "37 DLR 429 (A)" it has been clearly laid down at P. 437 that once the petition for substitution and making the legal representatives of the

deceased, party to the suit, is submitted within six months, the provisions of Article 146, Hyderabad Limitation Act will be regarded to have been

fulfilled; if the Petitioner wishes to add someone else as L.R. then the Court can make that person a party after the expiration of the period

prescribed under the law. The lower Court in its judgment dated 21st Behman 1357F. read this decision to mean that, a new party or person

whose name is not disclosed within the time prescribed by law cannot be made a legal representative; that is clearly a misreading of the case and

amounts to not adverting or applying the mind. We are therefore of the opinion that there is no reason to interfere with the order of the lower Court

even under the provisions of Section 115, Code of Civil Procedure.

8. So far as the legal question of adding an additional legal representative is concerned, the judgment under appeal is, in our opinion, quite correct

and according to law and the learned Judge of the lower Court committed an egregious error in passing his order dated 21st Behaman 1357F.

9. Having come to the above conclusion, it is not necessary for us to discuss the scope of Section 17, Hyderabad High Court Act or of Article

227, Constitution of India. In the result, this appeal fails and is dismissed with costs.