

Patna High Court - Orders

Bhagirath Prasad Sigh @ Bachcha ... vs Ram Narayan Rai @ Ram Narayan on 24 June, 2010

IN THE HIGH COURT OF JUDICATURE AT PATNA

C.R. No.2143 of 2009

BHAGIRATH PRASAD SIGH @ BACHCHA BABU, Son of Late

Sri Narayan Singh, Resident of village Chhitnama, P.S. Maner, District Patna

..... Defendant Petitioner

Versus

1. RAM NARAYAN RAI @ RAM NARAYAN SINGH

2. Ram Nath Rai

Both sons of late Siya Sharan Rai

Resident of village Daudpur, P.S., Shahpur, District

Patna

..... Plaintiffs Opposite Parties

For the Petitioner : M/s Shiv Nandan Roy, Sr. Advocate and Dronacharya, Advocate For the opposite Parties : M/s Ganesh Chandra Thakur and Ajay Kumar Singh, Advocates

8 24.06.2010 This civil revision is directed against the order dated 5.11.2009 passed by Munsif, Danapur, in Title Suit No. 46 of 2008, whereby the application filed by the defendant - petitioner under Order VII Rule 11 of the Code of Civil Procedure had been rejected.

Heard learned counsel for the defendant - petitioner and the plaintiffs - opposite party nos. 1 and This revision is being disposed of at this stage with the consent of the parties.

Plaintiffs - opposite parties did not raise any issue with regard to maintainability of this civil revision. However, in view of the law laid down by the Division Bench in Civil Revision No. 1067 of 2009 and other referred matters, it is held that that this civil revision is maintainable.

Now, I proceed to consider this revision on its merit.

The defendant - petitioner had filed Title Suit No. 125 of 1969 for declaration of title and confirmation of possession and alternatively for recovery of possession with respect to open space of land and for other ancillary reliefs. The suit was dismissed by the learned Munsif-II, Patna, by judgment dated 31.3.1979 against which the defendant - petitioner (plaintiff in the aforesaid suit) preferred Title Appeal No. 78 of 1979, which was allowed by learned Additional District Judge, XIII, Patna by judgment dated 23.12.1987. Against the said judgment and decree the plaintiffs - opposite parties (defendants in the Title Suit No. 125 of 1969) preferred Second Appeal No. 78 of 1988. In the Second Appeal an order dated 11.1.2000 was passed by this Court on the application of the decree holders-opposite parties, who claimed that the judgment debtors taking advantage of order of ad-interim injunctions were making certain constructions over the suit property upon which it was ordered that though there was no reason to restrain the judgment debtors from making new construction but if construction is made over the suit land the same shall be subject to result of the

Second Appeal and the judgment debtors shall not be entitled to claim any equity. Ultimately the aforesaid Second Appeal was finally dismissed and the plaintiffs - opposite parties (judgment debtors in the earlier suit) moved to the Hon'ble Apex Court but there also they lost and finally execution proceeding was initiated. During the execution proceeding a Pleader Commissioner was appointed, who submitted a report with specific finding that the constructions made on the land in question were new and, thus, in view of the earlier order passed in Second Appeal No. 78 of 1988 and upon consideration of the report of the Pleader Commissioner, the Executing Court passed an order dated 20.11.2006 directing the building in question to be demolished and possession be given to the plaintiffs - decree holders, who are defendant - petitioner herein.

The aforesaid order was challenged by the defendants - judgment debtors of the earlier suit who are the plaintiffs- opposite parties herein by filing C.R. No. 61 of 2007. That civil revision was dismissed by this Court by reasoned order dated 1.5.2008, a copy of which has been appended as Annexure 2. Thereafter, it had been submitted on behalf of the defendant - petitioner that the building in question in fact was demolished. However, the plaintiffs - opposite parties filed a fresh Title Suit No. 46 of 2008 for declaration that the order dated 20.11.2006 passed by the Executing Court and all actions in pursuance thereof were fraudulently obtained by the defendant. The defendant appeared and filed a petition under Order VII Rule 11 of the Code of Civil Procedure stating all the facts as aforesaid including the factum of order passed in Civil Revision No. 61 of 2007 and made a prayer for rejection of the plaint on the ground that no cause of action has arisen as the matter had finally been set at rest by this Court by order dated 1.5.2008 passed in the aforesaid civil revision which had attained finality on not having been challenged. Therefore, the subsequent suit was barred by res judicata also. Lastly it was contended that the defendants (the plaintiffs - opposite parties in present revision) having lost all along up to the Apex Court and subsequently even in the execution proceeding and the civil revision as aforesaid, the fresh suit was merely a vexatious litigation for harassing the defendant-petitioner.

Learned counsel for the defendant -
petitioner submitted that when the order dated

20.11.2006 had been held to be valid by this Court vide Annexure 2, it is not open to the court concerned to decide the issue as to whether the same was obtained by playing fraud upon the court. Learned counsel submitted that very cleverly the plaintiff had deliberately suppressed the fact of filing of civil revision by him against the order dated 20.11.2006 passed by the Execution Munsif and its dismissal by a reasoned order dated 1.5.2008. It had been contended that the factum was brought to the notice of the court below by stating the relevant facts in the petition filed under Order VII Rule 11 of the Code of Civil Procedure (which has been brought as Annexure 4), however, the court below had decided that the subsequent suit is not barred by res judicata and erroneously held that the issue requires to be heard and disposed of after appreciation of evidence. Learned counsel further submitted that it is well settled that all the order passed by the Court below upon adjudication by the superior court merges into the same. In support of the submissions, learned counsel for the petitioner placed reliance upon a decision rendered by the Apex Court in Shankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat [AIR 1970 Page 1]. The Apex Court had held

that once a revisional jurisdiction was invoked against the order of the appellate court and the High Court dismissed the revision after hearing both the parties, the order of the appellate court merged in the order passed in revision and, thereafter, the appellate order cannot be challenged and adjudicated in the High Court under Article 226 and 227 of the Constitution. It was urged that, thus, court below was not competent to entertain a fresh suit for declaration that the order dated 11.1.2000 was obtained by fraud upon the Court. It had further been contended that in view of the above it could safely be construed that no cause of action actually had arisen and by using the word "fraud" upon the Court", the plaintiffs- opposite parties have made an endeavour to create an illusory cause of action, which is not permissible under law. In support of his submission learned counsel had placed reliance upon a decision of the Apex Court rendered in *I.T.C. Limited Versus Debts Recovery Appellate Tribunal and others* [1998(2) SCC 70]. In its aforesaid decision the Apex Court has held that the power of rejection of the plaint can be exercised even after framing of issues and matter is posted for evidence and has further held that it was incumbent upon the concerned court to look into the matter as to whether real cause of action has been set out or something illusory has been stated with a view to get out the Order VII Rule 11 of the Code of Civil Procedure. Learned counsel submitted that the defendant had only supplied the material facts which the plaintiffs were bound in law to disclose but they had deliberately not disclosed.

On the other hand the learned counsel appearing for the plaintiffs - opposite parties contended that it is well settled that in terms of Order VII Rule 11 of the Code of Civil Procedure for the purpose of rejection of plaint the pleading as made in the plaint can only be looked into. Even written statement is not required to be gone into. Since there is no statement in the plaint admitting the aforesaid facts, the trial court concerned was within its jurisdiction to hold that the subsequent proceeding is not barred by *res judicata* and it requires proper trial after framing of issues. Whatever is brought on record by the defendant would be matter of adjudication at the time of deciding the suit finally. The plaintiffs may lose the suit on merit but in the aforesaid circumstances certainly the plaint cannot be rejected in terms of Order VII Rule 11 of the Code of Civil Procedure.

I find no force in the submission raised on behalf of the plaintiffs - opposite parties. No doubt, as per the provisions of Order VII Rule 11 of the Code of Civil Procedure, for the purposes of determining the question of rejection of plaint on the other grounds mentioned therein, it is the plaint that has to be looked into, but the question is that if the plaintiffs have deliberately suppressed the material facts, the disclosure of which is required by law to be made in terms of Order VI Rule 2 of the Code of Civil Procedure, whether it was open for the court concerned to proceed with the trial and decide the suit after framing issues. The order dated 20.11.2006 was challenged by the plaintiffs-judgment debtors themselves before this Court and the civil revision was dismissed by a reasoned order dated 1.5.2008. Thus, this fact was well known to the plaintiffs and they were duty bound in law to disclose the same which they have not done. Order VI Rule 2(1) of the Code of Civil Procedure clearly stipulates that the pleadings should contain the material facts. It has been observed by the Apex Court in *Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others* [2004(3)SCC 137] that omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. Order VII Rule 11 of the Code of Civil Procedure lays down an independent remedy made available to the defendant to challenge the

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maintainability of the suit itself, irrespective of his right to contest the same on merits. The real object of Order VII Rule 11 of the Code of Civil Procedure is to keep out of courts irresponsible law suits and in case Court is prima facie persuaded of the view that the suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code of Civil Procedure can be exercised.

Law is well settled that dexterity of the draftsman whereby the material facts are camouflaged in a cleverly drafted plaint and illusionary cause of action is set out, cannot defeat the right of the defendant to get the plaint rejected. In this regard it would be pertinent to quote the relevant passage of the observation of the Apex Court in T. Arivandandam v. T.V. Satyapal [1977(4)467] (SCC p. 470, para 5 as under).

"We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending

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before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful - not formal- reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power and Order 7 Rule 11 CPC, taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist judge is the answer to irresponsible law suits."

From the aforesaid decisions of the Apex Court rendered in T. Arivandandam v. T.V. Satyapal (supra) as well I.T.C. Limited Versus Debts Recovery Appellate Tribunal and others (supra) it would emerge that the gross abuse of process of Court would be condemned. Further, the reading of plaint for the purposes of Order VII Rule 11 of the Code of Civil Procedure would be meaningful reading and not only the formal reading of the same. If real cause of action has not been set out in the plaint rather something illusionary has been stated with a view to get out the

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scope of Order VII Rule 11 of the Code of Civil Procedure, such clever drafting and suppression of material facts are not permitted in law and hence such action should be nipped at the bud. Similar view has been taken by learned Single Judge of this Court in Vikash Singh & Anr. Vrs. Sri Krishna Prasad Sinha and others (C.R. No. 1044 of 2006) disposed of on 27.9.2007.

In the present case it has to be held that in view of the suppression of the material fact by the plaintiffs by cleverly omitting to state regarding the factum of challenging the order dated 20.11.2006 in Civil Revision No. 16 of 2006, which has been dismissed by a reasoned order dated 1.5.2008, the subsequent suit challenging the same order on the ground of fraud is not at all maintainable and plaint was liable to be rejected on this ground. The court below has committed serious error by holding that the suit is not barred by res judicata and, thus, the plaint is not required to be rejected rather the suit is to be tried after framing of issues. Continuance of the suit, for the aforesaid reasons, in my opinion, would amount to abuse of process of court.

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In above view of the matter the impugned order dated 5.11.2009 passed in Title Suit no. 46 of 2008 is set aside and it is held that in this case there was not only clever drafting but also suppression of material facts and some how or other the plaintiffs - opposite parties want to carry on the litigation that had been set at rest by the decision rendered in C.R. No. 61 of 2007, which cannot be permitted. Thus, it is held that the plaint is liable to be rejected and the same is rejected. .

This civil revision is, accordingly, allowed.

Spd/-
A.F.R.

(Dr. Ravi Ranjan, J.)