Vijay Pratap Singh

Vs

Dukh Haran Nath Singh and Another (and Connected Appeal)

Civil Appeals Nos. 253 and 254 of 1961

(S. K. Das, M. Hidayatullah, J. C. Shah JJ)

19.01.1962

JUDGMENT

SHAH, J. -

Vijay Pratap Singh (hereinafter called the plaintiff) a minor-by his next friend Pandit Brij Mohan Misir filed a petition in the Court of the Subordinate Judge, Faizabad for leave to sue in forma pauperis for declaration of title to the Ajodhya Raj and accretions thereto and for possession and mesne profits for three years prior to the suit. The petition was rejected by the Subordinate Judge because, in his view, it disclosed no cause of action. An application by Ramjiwan Misir father of the plaintiff who was impleaded as the second defendant, to be transposed as a petitioner was also rejected by the Subordinate Judge. The plaintiff and Ramjiwan Misir applied to the High Court of the Judicature at Allahabad in the exercise of its revisional jurisdiction against the orders rejecting their respective petitions but without success. They have with special leave appealed to this Court against the orders passed by the High Court.

The case set up by the plaintiff in his petition was briefly this. Maharaja Sir Man Singh holder of the Ajodhya Raj was a Taluqdar in lists I, II and V of the Oudh states set I of 1869. He died in 1870 and the Raj devolved upon his daughter's son Maharaja Pratap Narain Singh, who died on November 9, 1906, leaving him surviving two widows Suraj Kumari and Jagdamba Devi and no lineal descendant. A will alleged to be executed by Maharaja Pratap Narain Singh on July 20, 1891, was set up but it was void and ineffective because, firstly, it was procured by undue influence, coercion and fraud practised upon the testater, and, secondly it created a line of succession contrary to law. Accordingly on the death of Maharaja Pratap Narain Singh the Raj devolved upon Maharani Suraj Kumari the senior widow and on her death in 1927 upon Maharani Jagdamba Devi, and on the death of the latter on June 18, 1928 upon Ganga Dutt Misir, grand father of the plaintiff Ganga Dutt Misir died in 1942 and the estate devolved upon his son Ramjiwan and his grandson, the plaintiff as co-parceners in a Hindu joint family. Even if the will was valid and effective "the terms thereof alongwith Maharaja Pratap Singh's other acts and declarations" had the effect of taking the estate out of the purview of Act I of 1869 with the result that Maharani Jagdamba Devi enjoyed the property in suit with a life estate therein, and on her death on June 18, 1938, the entire property in suit vested in Ganga Dutt on whose death the plaintiff and defendant No. 2 became owners of the entire property in suit as their joint ancestral property". Defendant No. 1 Dukh Haran Singh claimed to be adopted as a son by Jagdamba Devi on February 12, 1909 but, the claim was "utterly false, fictitious and untrue" for the reasons set out in the partition, and the Raj was in the wrongful possession of the first defendant Dukh Haran Singh.

The plaintiff alleged that his father Ramjiwan Misir was "detained and confined" by the first

defendant and was unable to join the plaintiff in the petition.

The first defendant Dukh Haran Singh resisted the petition inter alia contending that it did not disclose a cause of action and that, in any event, the claim made by the plaintiff was barred by law of limitation.

Initially Ram Jiwan Misir supported the will and the plea of adoption set up by the first defendant, but by an application dated April 21, 1951, prayed that he be transposed as a petitioner submitting that his previous statement was procured by coercion and contained averments which were untrue. Ramjiwan was directed to pay the court fee payable on the plaint within ten days and in default of payment, his application was to stand dismissed. Ramjiwan did not pay the court fee as directed but on July 23, 1951, he again applied for being transposed as a petitioner in the petition for leave to sue in forma pauperis filed by the plaintiff. Holding that it did not disclose a cause of action the Subordinate Judge rejected the petition of the plaintiff. The Subordinate Judge observed that there was nothing in the petition to show how the disputed estate came to be governed by the rule of inheritance under the Hindu Law and, in any event, there was nothing in the petition to support the plea that the estate had lost it impartible character, and that even if in view of the allegations contained in para 12 of the petition it be held that the estate came to be governed by the ordinary Hindu Law, it did not become a partible estate which the plaintiff could inherit, so long as his father Ramjiwan was alive. The petition filed by Ramjiwan Misir was then taken up for hearing and was also rejected because, in the view of the learned Judge, "no useful purpose would be served" by transposing Ram Jiwan Misir as co-plaintiff when the application filed by the plaintiff was held to be defective and liable to be rejected under O. 33, r. 5(d), of the Code of Civil Procedure.

Against the two orders passed by the subordinate Judge the plaintiff preferred Revision Application No. 881 of 1952 and Ram Jiwan preferred Revision Petition 882 of 1952. The High Court rejected the petition of the plaintiff holding that on the death of Ganga Dutt in 1942 the estate would devolve upon Ram Jiwan Misir alone according to the rule of impartibility which governed the devolution of the estate. The High Court also observed that there was nothing in the petition to show that Ganga Dutt succeeded to the estate "on the basis of his being the nearest male reversioner under the Ordinary Hindu Law", and that it was unnecessary to consider whether the will by Maharaja Pratap Narain took out the estate from the operation of the Act, "because the plaintiff did not rely upon the will and whatever the plaintiff had stated in the petition in connection with the will was simply by way of answer to what might be contended by the defendant in the suit." Dealing with the petition of Ram Jiwan Misir the High Court observed that "By an application to sue in forma pauperis the applicant prays for a relief personal to himself and therefore nobody else can be properly made a co-applicant. There is no direct provision which provides that a court should transpose a party from one side to the other. Order 1, r. 10, gives the power to the court to strike out or add the names of parties when it appears that he has been improperly joined or that he ought to have been joined or his presence before the court would be necessary in order to enable the court effectively and completely to adjudicate upon and settle and the questions involved in the suit. The provisions of this rule will not apply to the proceedings on an application for permission to sue as a pauper".

We are unable to agree with the view of the High Court that the petition filed by the plaintiff did not disclose a cause of action, or that O. 1, r. 10 of the Code of Civil Procedure cannot properly be resorted to for transposing a party in a petition for leave to sue in forma pauperis. The plaintiff had by his plaint set up an alternative case. In the first instance, he pleaded that the will alleged to be executed by Maharaja Pratap Narain on July 20, 1891, was "void and ineffective" and the estate devolved upon Ram Jiwan and the plaintiff was members of a coparcenary : alternatively, he

pleaded that even if the will was valid, by the terms thereof and by the other acts and declaration of Maharaja Pratap Narain Singh, the estate was taken out "of the purview of Act I of 1869" and on the death of Maharani Jagdamba Devi the property devolved upon Ganga Dutt, the nearest reversioner under the Hindu law and on his death it devolved upon the plaintiff and upon his father Ram Jiwan Misir.

Order XXXIII of the Code of Civil Procedure prescribes the procedure for institution of suits by paupers. Rule 2 provides that particulars a petition for permission to sue of forma pauperis shall contain and r. 3 sets out the mode of presentation of the petition. Rule 4 authorises the Court to examine the applicant or his agent regarding the merits of the case and the property of the applicant. Rule 5 provides :

> "The Court shall reject an application for permission to sue as a pauper -
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> (a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or
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> (b) where the applicant is not a pauper, or
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> (c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or
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> (d) where his allegations do not show a cause of action, or
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> (e) where he has entered into any agreement with reference to the subject matter of the proposed suit under which any other person has obtained an interest in such subject matter."

Where the application is not rejected on the grounds set out in r. 5, the Court has under r. 6, to proceed, after giving notice to the opposite party and the Government pleader, to receive evidence as the applicant may adduce in proof of his pauperiam. By r. 7 the Court is authorised to consider where the applicant is not subject to any of the prohibitions specified in r. 5. The Court is enjoined to reject a petition where the prohibitions mentioned in cls. (a) to (e) of r. 5. exist. Even if the petition is not so rejected at the hearing of the petition, if the court is satisfied as to the existence of these prohibitions it may be dismissed under r. 7.

It does not appear that any objection was raised as to the existence of prohibitions (c) and (d) set out in r. 5, and the subordinate Judge disallowed the objection that the petition was not framed and presented as prescribed by r. 2 and 3. He did not consider the question whether the plaintiff was a pauper. He rejected the application only on the ground that it did not show a cause of action, and the High Court confirmed the order also on that ground. By the express terms of r. 5 cl. (d), the court is concerned the ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed : it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show

a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him. By the Statute, the jurisdiction of the Court is restricted to ascertaining whether on the allegations a cause of action is shown : the jurisdiction does not extend to trial of issues which must fairly be left for decision at the hearing of the suit.

We do not propose to express any opinion on the question whether on the death of Jagdamba Devi the estate devolved under s. 22(10) of Act I of 1869 upon Ramjiwan Misir and the plaintiff as members of a coparcenary. Even if that claim is inconsistent with the words of s. 22(10) of Act I of 1869 on which the plaintiff himself relies, the plaintiff had an alternative claim that the estate had become non-taluqdari by virtue of the will and "the acts and declaration" of Maharaja Pratap Narain. In support of this claim, s. 15 of Act I of 1869, before it was amended by U.P. Act III of 1910, is relied upon. At the time when Maharaja Pratap Narain died, s. 15 of the Act stood as follows :-

> "If any taluqdar or grantee shall hereto before have transferred or bequeathed, or if any taluqdar or grantee or his heir or legatee shall hereafter transfer or bequeath, to any person not being a taluqdar or grantee the whole or any portion of his estate, and such person would not have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferor or the testator had died without having made the transfer and intestate, the transfer of and succession to the property so transferred or bequeathed shall be regulated by the rules which would have governed the transfer of and succession to such property if the transferree or legatee had brought the same from a person not being a taluqdar or grantee."

It is true that by s. 8 of Act III of 1910, the section has been substantially modified and reads as follows :-

> "If any taluqdar or grantee, or his heir or legatee, shall heretofore have transferred or bequeathed, or if any taluqdar or grantee, or his heir or legatee, shall hereafter transfer or bequeath the whole or any portion of his estate to any person who did not at the time when the transfer or bequest took effect belong to any of the classes specified in section 14, the transfer of and succession to the property so transferred or bequeathed shall be regulated by the rules which would have governed the transfer of and succession to such property if the transferee or legatee had bought the same from a person not being a taluqdar or grantee, heir or legatee."

By s. 21 of the Amending Act III of 1910 a partial retrospective operation was given to the amended section. The retrospective operation was limited by the proviso which enacted that nothing contained in the amending section shall affect suits pending at the commencement of the amending Act, or shall be deemed to vest in or confer upon any person any right or title to any estate, or any portion thereof, or any interest therein, which is, at the commencement of the Amending Act, vested in any other person who would have been entitled to retain the same if the amending Act had not been passed, and the right or title of such other person shall not be affected by anything contained in the said section.

Mr. Agarwalla, appearing on behalf of the first defendant Dukh Haran Singh, has contended that in view of the retrospective operation given to s. 15, as amended, the claim of the plaintiff that the taluqdari character of the state is destroyed has no force and he has invited our attention to two decisions of the Oudh Chief Court in Kaur Nageshar Sahai v. Shiam Bahadur [A.I.R. 1922 Oudh.

231] and Mohammad Ali Khan v. Nisar Ali Khan [A.I.R. 1928 Oudh. 67]. But we need express no opinion on the correctness or otherwise of these decisions. An enquiry whether by virtue of certain provisions of the statute on which the first defendant relies, the plaintiff may not be entitled to the estate is, as already observed, not contemplated to be made in considering a petition for leave to sue in forma pauperis. The true effect of the amended section 15 of the Oudh Estates Act I of 1869 is a complicated question of law which the Court will not proceed to determine in ascertaining whether the petition for leave to sue discloses a cause of action.

The High Court, in our judgment, was in error in observing that there was nothing in the plaint to show that Ganga Dutt succeeded to the estate because he was the nearest male reversioner under the ordinary Hindu law. The plaintiff has emphatically made that assertion : whether the claim to relief on the basis of that assertion was justified must be adjudicated at the trial of the suit, and not in deciding whether the plaintiff should be permitted to sue in forma pauperis.

We are also of the view that the High Court was in error in holding that by an application to sue in forma pauperis, the applicant prays for relief personal to himself. An application to sue in forma pauperis, is but a method prescribed by the Code for institution of a suit by a pauper without payment of fee prescribed by the Court Fees Act. If the claim made by the applicant that he is a pauper is not establish the applicant that he is a pauper is not establish the application may fail. But there is nothing personal in such an application. The suit commences from the moment an application for permission to sue of forma pauperis as required by O. 33 of the Code of Civil Procedure is presented, and O. 1, r. 10, of the Code of Civil Procedure would be as much applicable in such a suit as in a suit in which court fee had been duly paid. It is true that a person who claims to join a petitioner praying for leave to sue in forma pauperis must himself be a pauper. But his claim to join by transposition as an applicant must be investigated; it is not liable to be rejected on the ground that the claim made by the original applicable is personal to himself. In our view, the orders passed by the High Court in both the revision applications must be set aside.

Before parting with the case, we must take notice of the unsatisfactory progress this litigation has made since it was instituted nearly twelve years ago. We regret to observe that the petition filed in July 1950 for leave to sue in forma pauperis was not disposed of by the Subordinate Judge for two years and it took the High Court three years to dispose of the revision petitions against the orders of the Subordinate Judge. The proceedings were further held up even after special leave was granted by this Court in March, 1957 for nearly five years before the appeal could be heard. This Court had ordered that the hearing of the appeals be expedited and heard on cyclostyled record but the record was not made ready for a long time. We also find that a large number of documents were included in the books prepared for use of the court to which no reference was made at the Bar during the course of the hearing. We trust that the case will be taken up for hearing with the least practicable delay and disposed of according to law.

The appellants in the two appeals will be entitled to their costs both in this Court and the High Court. The costs of the trial court will be the cost in the cause.

Appeals allowed. Cases remitted.

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