SUREME COURT OF INDIA

Seth Anand Kumar

Vs.

Abnash Kaur

(Sikri, Bachawat and Hegde JJ.)

11.02.1969

JUDGMENT

HEGDE, J.

1. The question for consideration in this appeal by Special leave is whether the order of remand made by the High Court is in accordance with law.

2. This appeal arises from a probate proceeding. The question therein was whether the will propounded by the respondent herein, said to have been executed on 26th January 1957 by her late husband Seth Shiv Prasad was genuine. When that proceeding was pending before the Circuit Bench of the Punjab High Court at Delhi yet another proceeding to which the parties herein were also parties was also pending. That was a petition for winding up Lord Krishna Sugar Mills. It was numbered as Civil Original 58-D of 1960. On March 19, 1965 the parties to the probate proceedings agreed before the court that the evidence led in Civil Original 58-P of 1960 be read as evidence in the probate case. On the basis of that agreement the learned judge directed that the evidence in C. O. 58-D/1960 be read as evidence in the probate proceedings. After ah elaborate trial wherein considerable evidence, oral as well as documentary was led, the trial judge came to the conclusion that the will propounded was not genuine. He accordingly dismissed the application. Aggrieved by the decision, the respondent in this case appealed to the Letters Patent Bench of the Punjab High Court which later stood transferred to the Delhi High Court.

3. In the appeal no objection was taken to the mode in which the evidence was recorded nor was there any allegation that there was no proper trial or complete or effectual adjudication of the proceedings. We were told that no such contentions were taken at the hearing of the appeal nor any request made to remand the case for retrial. It appears that the appeal was heard on number of days and the case reserved for judgment. The High Court by its order dated October 20, 1967 set aside the order of the trial court and remanded the case to the trial court for a fresh trial.

4. Quite clearly the remand was not ordered under Rule 23, Order 41, CPC. The trial court had not decided the case on any preliminary ground nor is this a case which falls under Rule 25, Order 41. Therefore the order in question can at best be said to have been made only in exercise of the inherent powers of the court. The scope of inherent powers of the court to order a remand has been considered in several decisions of this Court. In Civil Appeal No. 618 of 1960 (A. Shankararamiah v. M. S. Lakshmi narayana Moorthi and Ors.) this Court observed:

"An order remanding a proceeding may ordinarily be made under Order 41, Rule 23 of the CPC when the Trial Court has decided the case on a preliminary point arid the appellate court reverses the decision of the Trial Court. An order of retrial after remand may also be made in exercise of the inherent jurisdiction, of the Court where the Court of appeal is satisfied that there has been no proper trial or no complete or effectual adjudication of the proceeding and the party complaining of the error or omission or irregularity has suffered material prejudice on that account. Such an order may also be made to prevent abuse of the process of Court. But power to order retrial after remand where there has already been a trial on evidence exercised merely because the appellate court is of the view that the parties who could lead better evidence in the Court of first instance have failed to do so. A trial de novo after setting aside a final order passed by the Court of first instance may therefore be made in exceptional circumstances, where there has been no real trial of the proceeding, or where allowing the order to stand would result in abuse of the process of Court."

5. In the case before us the appellate bench of the Delhi High Court has neither come to the conclusion that there has been no real trial of the proceeding nor that the procedure adopted by the trial court has resulted in abuse of the process of the Court. Its reasons for ordering retrial are stated thus :

"On 19-3-65 when Anand Kumar R. W. 6 was being examined, the counsel for the parties before the learned Single Judge agreed that the evidence in C.O. No. 55-D of 1960 which is apparently the petition for winding up the Lord Krishna Sugar Mills Ltd., be read as evidence in this case and the court ordered accordingly. It is this order which has created considerable confusion in the hearing of this appeal before us and in deed, on more than one occasion, when the counsel at the bar referred to some applications or statements on the record of C. O. No. 58-D of 1960 for contradicting or discrediting the statements of some of the witnesses. We were faced with the difficulty of determining whether they would legally be admissible and what was their value for they were not put to the witnesses for explanation. "In the absence of a proper printed record of this appeal and without knowing what documents and statements properly constituted the record of this case, we have found it extremely difficult, if not almost impossible, to have a clear vision even of the overall picture of the material constituting the record of this case. It is note-worthy that the record of C. O/58-D of 1960 is also fairly bulky and being not printed, one has to wade through the mass of papers to find out various applications and documents to understand the arguments of the counsel before us most of the arguments before us were not fully discussed in the order of the learned Single Judge and, in any event, this appeal being a rehearing, the records of both the cases were assumed by the parties to be the record of this case.

The result is that the situation is so confusing, and if we may gay so baffling that we do not find it possible to deal with and dispose of satisfactorily the arguments addressed before us. It is true that both sides have tried to get typed, parts of the record from their respective points of view, but this has not solved our difficulty."

6. From the above observations it is clear that the only ground on which the retrial of the case has been ordered is that in the absence of a properly arranged and printed record the court found if difficult to decide the case. We do not think that on this ground a remand could have been ordered. It is a serious matter to order the retrial of a case which means considerable waste of considerable public time. Retrial can be ordered only in exceptional circumstances. We quite realise that hearing of a heavy appeal without proper assistance in the shape of properly prepared records is quite a difficult matter but such difficulties will have to be overcome by the appellate court by taking

necessary steps under its rules. Absence of such facilities do not justify an order of remand. It may be that the manner in which the evidence has been recorded has led to considerable difficulty in hearing the appeal. This certainly is regretable. But that was done under the orders of a court and it is too late in the day to undo that order. We are quite sure that the learned Judges of the appellate court with their and do experience will be able to overcome those difficulties and do justice according to law without driving the parties to a fresh trial.

7. The learned counsel for the respondent wanted to justify the order of remand on grounds other than those mentioned in the order. We did not permit him to do so. As mentioned earlier the oral in question had not be en made on the basis of any application, oral or written made by any of the parties to the proceeding. It was a suo moto order. Therefore all that we have to consider is whether the reasons which persuaded the learned judges of the appellate court to make that order are valid in law. We are satisfied that those reasons are not relevant. At any rate they do not afford any legal basis for the impugned order.

8. For the reasons mentioned above this appeal is allowed and the order of the High Court remanding the case is set aside. The High Court will now proceed to dispose of the appeal in accordance with law. There will be no order as to costs in this appeal.