

Ratan Lal Shah

Vs

Firm Lalmandas Chhadammalal and Another

Civil Appeal No. 1019 of 1966

(CJI M. Hidayatullah, S. M. Sikri, R. S. Bachawat, K. S. Hegde, A. N. Grover, J. M. Shelat, V. Bhargava, C. A. Vaidialingam, J. C. Shah, V. Ramaswami-I, G. K. Mitter JJ)

15.04.1969

JUDGMENT

SHAH, J. -

1. Firm Lalmandas Chhadammalal - hereinafter called 'the plaintiffs' - commenced an action against "Mohan Singh Ratan Lal, through its partners Mohan Singh and Ratan Lal" in the Court of the Senior Civil Judge, Nainital, for a decree for Rs. 12,883/- and interest thereon for value of goods supplied. Ratan Lal denied liability for payment of the amount claimed. Mohan Singh by a separate written statement admitted that goods were supplied by the plaintiffs to the firm, but submitted that he was liable only for one-fifth of the amount claimed. The Trial Judge decreed the claim of the plaintiffs in its entirety against "Mohan Singh and Ratan Lal and the firm known as Mohan Singh Ratan Lal."

2. Against the decree, Ratan Lal alone appealed to the High Court of Allahabad. Mohan Singh was impleaded as the second respondent in the appeal. The notice of appeal sent to Mohan Singh was returned unserved and an application made by counsel for the appellant to serve Mohan Singh "in the ordinary course as well as by registered post" was not disposed of by the Court. On July 9, 1963, Ratan Lal applied that it was "detected that there had been no service of the notice of appeal upon Mohan Singh and it was essential for the ends of justice that notice of appeal may be served upon Mohan Singh". The Court by order, dated July 10, 1963, rejected the application and proceeded to hear the appeal. The Court was of the view that since there was a joint decree against Ratan Lal and Mohan Singh in a suit founded on a joint cause of action and the decree against Mohan Singh had become final, Ratan Lal could not claim to be heard on his appeal. The High Court observed :

"If we hear him (Ratan Lal), the result may be that on the success of his appeal there will be two conflicting decisions between the same parties in the same suit based on the same cause of action. Furthermore, the appellant has not taken steps to serve the second respondent (Mohan Singh) and the appeal must be dismissed for want of prosecution. On both these grounds we dismiss this appeal."

Against the order passed by the High Court, this appeal has been preferred with special leave.

3. In our view the judgment of the High Court cannot be sustained. The appeal could not be dismissed on the ground that Mohan Singh was not served with the notice of appeal, nor could the appeal be dismissed on the ground that there was a possibility of two conflicting decrees. Order XLI, Rule 4 of the Code of Civil Procedure provides :

"Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be."

The object of the rule is to enable one of the parties to a suit to obtain relief in appeal when the decree appealed from proceeds on a ground common to him and others. The Court in such an appeal may reverse or vary the decree in favour of all the parties who are in the same interest as the appellant. There was some conflict of judicial opinion in the High Courts on question whether power under Order XLI, Rule 4 of the Code of Civil Procedure may be exercised where all the parties against whom a decree is passed on a ground which is common to them are not impleaded in the appeal. The preponderance of authority in the High Courts was that even in the absence of a person against whom a decree has been passed on a ground common with the appellant, the appeal was maintainable, and appropriate relief may be granted. It is, however, unnecessary to examine those decisions, for, in our judgment, the question has been considered by this Court in *Karan Singh Sobti and Another v. Shri Pratap Chand and Another* ((1964) 4 SCR 647). In that case a landlord of certain premises filed an action in ejectment against the tenant and the sub-tenant in respect of premises on the ground that the tenant had sub-let the premises without the landlord's consent. The Trial Judge decreed the suit holding that the landlord had not acquiesced in the sub-letting. The sub-tenant alone appealed to the Additional Senior Subordinate Judge who set aside the order of the Trial Court. It was urged before this Court that the appeal by sub-tenant to the Subordinate Judge was incompetent, because the tenant against whom a decree in ejectment was passed had not appealed. On certain questions which are not material for the purpose of this judgment, there was difference of opinion between Sarkar, J., on the one hand, and S. K. Das, Acting C.J. and Hidayatullah, J., on the other, but the Court unanimously held in that case that the appeal was maintainable before the Subordinate Judge, even though the tenant had not appealed against the order of the Court of First Instance. Sarkar, J., observed at Page 663 :

"The suit had been filed both against the tenant and the sub-tenant, being respectively the Association and the appellant. One decree had been passed by the trial Judge against both. The appellant had his own right to appeal from that decree. That right could not be affected by the Association's decision not to file an appeal. There was one decree and, therefore, the appellant was entitled to have it set aside even though thereby the Association would also be freed from the decree. He could say that that decree was wrong and should be set aside as it was passed on the erroneous findings that the respondent had not acquiesced in the sub-letting by the association to him. He could challenge that decree on any ground available. The lower appellate Court was, therefore, quite competent in the appeal by the appellant from the joint decree in ejectment against him and the Association, to give him whatever relief he was found entitled to, even though the Association had filed no appeal."

With that view S. K. Das, Acting C.J. and Hidayatullah, J., agreed, see p. 652. It is true that in that case the tenant was made a party to the appeal before the subordinate Judge. But the judgment of the Court proceeded upon a larger ground that the sub-tenant had a right to appeal against the decree passed against him and that right was not affected by the tenant's decision not to file an appeal.

4. Counsel for the plaintiffs contended that the appeal filed by Ratan Lal if it be heard may possibly result in an order which may prejudicially affect Mohan Singh, and if Mohan Singh has no

opportunity of being heard no decree may be passed against him, for, to do so would be contrary to the fundamental rules of natural justice. But in the appeal filed by Ratan Lal there is no possibility of a decree being passed which may impose a more onerous liability upon Mohan Singh. The Trial Court has passed a decree against Ratan Lal and Mohan Singh jointly and severally. Mohan Singh is liable for the full amount of the claim of the plaintiffs. If the appeal filed by Ratan Lal succeeds, the Court may reduce the liability of Mohan Singh, but there may conceivably be no order by the Court operating to the prejudice of Mohan Singh in the appeal.

5. It was also urged by counsel for the plaintiffs that Ratan Lal had been negligent in the High Court in prosecuting the appeal, and it would be putting a premium upon his negligence to allow him now to prosecute the appeal. It is not possible on the record, as it stands, to say whether failure to serve notice of appeal upon Mohan Singh was wholly attributable to the negligence of Ratan Lal. But even if it be assumed that he was negligent, on that ground he cannot be deprived of his legal right to prosecute the appeal and to claim relief under Order XLI, Rule 4 of the Code of Civil Procedure, if the circumstances of the case warrant it. The decree of the Trial Court proceeded on a ground common to Mohan Singh and Ratan Lal. In the appeal filed by Ratan Lal he was denying liability for the claim of the plaintiffs in its entirety. This was essentially a case in which the Court's jurisdiction under Order XLI, Rule 4, Code of Civil Procedure could be exercised.

6. The appeal is allowed and the decree passed by the High Court is set aside. The proceedings are being remanded. The High Court will admit the appeal in its original number and hear and dispose it of according to law. There will be no order as to costs in this Court of this appeal. In view of the fact that there has been some negligence on the part of Ratan Lal to prosecute the appeal in the High Court, we direct that he will pay the costs of the appeal in the High Court in any event.

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