

Mohinder Singh Jaggi

Vs

Dataram Jagannath

Civil Appeal No. 470 of 1973

(V. R. Krishna Iyer, R. S. Sarkaria JJ)

11.10.1973

JUDGMENT

KRISHNA IYER, J. -

1. We see no reason to interfere with the judgment of the High Court in Civil Revision No. 33 of 1972, nor is there any need to set out the facts in detail.
2. A preliminary decree had been passed in favour of the present appellant who was the defendant in the suit pursuant to the cross claim he had made. That preliminary decree was challenged by the plaintiff in appeal before the High Court and pending the appeal the High Court had directed that while final decree proceedings could be continued, no final decree as such should be passed. Eventually, the High Court set aside the preliminary decree passed by the trial Court. Against that judgment, an appeal was carried to this Court in Civil Appeal 471 of 1971. This Court ultimately restored the trial Court's decree in these words;

In the result, we set aside the judgment and decree of the High Court and restore that of the trial Court.

This Court further directed :

We may mention that in pursuance of the preliminary decree passed by the trial Court, certain proceedings were taken but the trial Court was directed not to sign the final decree by order of the High Court. That order is now set aside and the trial Court will now proceed from the stage where it left the proceedings and pass a final decree in accordance with law.

Thus, the matter went back to the trial Court.

3. Meanwhile, the trial Court had appointed a commissioner to investigate and report on the accounts and claims of the two parties in the light of the preliminary judgment. The commissioner submitted his report on January 16, 1966. Thereafter, objections were filed and the Court heard the objections and passed its order dated May 13, 1967. According to the order, a sum of money was directed to be paid to the defendant by the plaintiff. But it fell far short of what the defendant had claimed. He carried a revision to the High Court in Civil Revision No. 33 of 1972, which was dismissed. And it is against this order that the present civil appeal has been filed.

4. It appears to us that there is really nothing to alter or modify in the order of the High Court. What

has been done by the trial Court is to investigate into the accounts in accordance with the directions in the preliminary decree. Resultantly, it has passed the order dated May 13, 1967. This order will naturally be incorporated in a decree which will be the final decree in the case. Either party, if aggrieved by that final decree, will be free to file an appeal to the High Court and the High Court as the Court of appeal will go into the facts fully. The apprehension, perhaps warranted in the light to the language used by the trial Court, voiced by the appellant is that the learned Subordinate Judge is under the impression that even the order dated May 13, 1967 has been upheld by this Court while disposing of the Civil Appeal No. 471 of 1971. This is wrong, because this Court while disposing of the appeal merely restored the preliminary decree of the trial Court and did not either approve or disapprove of the order passed at the post-preliminary-decree stage. All that it stated was that the Court would be free to continue the proceedings and pass a final decree according to law. This Court has not affirmed the order passed by the trial Court fixing the amount payable by the plaintiff to the defendant. Indeed, this Court has directed that the matter would be disposed of according to law. The High Court has made this position clear when it pointed out that it was open to the aggrieved party to come up in appeal to the Court against the final decree. The Court has observed :

If the petitioner is aggrieved by the final decree passed by the trial Court, it is open to him to come up in appeal where the entire matter would be looked into.

We make it absolutely plain that this Court has not in any manner affirmed the order passed on May 13 1967 by the trial Court or the quantification thereon. This is a matter to be considered by the Courts below when seized of the subject-matter, and by this Court, if it comes here at any stage. Suffice it to say that the Courts below have to proceed on the footing that the state of accounts will have to be decided in the light of the preliminary decree passed by the trial Court and affirmed by this Court, and there should be no impression that this Court has in any manner upheld the order dated May 13, 1967. But we would also like to make it clear that proceedings already taken are not to be re-opened and this Court's direction in Civil Appeal No. 471 of 1971 merely means that those proceedings would be continued and culminate in the passing of a final decree.

5. It is represented to us by the appellant who argued in person that no final decree has yet been passed; we proceed on the basis of this statement. We make no observations as to whether the trial Court should review its order or not. That depends entirely on the exercise of its own jurisdiction under Order 47, Civil Procedure Code.

6. With these observations, we dismiss the appeal. No costs.

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