

Balbir Singh

Vs

Bogh Singh

Civil Appeal No. 1629 Of 1969

(P. N. Bhagwati, P. K. Goswami JJ)

23.01.1974

JUDGMENT

GOSWAMI, J. -

1. The appellant aged about 45 years at the time of trial is crippled son of the respondent, Bogh Singh. Bogh Singh is in possession of ancestral land. The appellant is a disabled person having defective arms with which he cannot do any manual labour. Some time back his father executed an agreement in his favour to give him maintenance but subsequently he refused to do so. On the other hand he gave some of his land other sons. That led to the filing of a suit by the appellant against his father, the respondent, for grant of maintenance allowance at the rate of Rs. 150 per month on the plea that he is entitled to it on the basis of custom. The suit was resisted by the respondent on various grounds. Several issues were framed in the trial and the trial Court, amongst others, decided the first issue with regard to custom against the plaintiff the appellant herein. The trial Court found that the appellant was a disabled person but was not entitled to claim maintenance from his father. The other issues were also decided against the appellant. The suit was thus dismissed. The Additional District Judge, Ferozepur, in appeal held that the appellant, although a disabled person incapable of doing any manual work to earn his livelihood, failed to prove any custom or any other provision of law entitling him to claim maintenance from his father. With regard to the agreement dated September 11, 1961. Which was sought to be relied upon by the appellant, the Court did not admit it into evidence on account of its being unstamped and his inability to pay the stamp duty and the impounding fee. The additional District Judge found it to be "a hard case" but observed that the law did not help him. The Additional District Judge, therefore, dismissed the appeal. The suit was originally instituted in forma pauperis and the appeal before the Additional District Judge was also in the same manner that led to the filing of a regular second before the Punjab and Haryana High Court along with an application dated March 27, 1968, under Order 33, Rule 1, Civil Procedure Code in forma pauperis. The value for the purpose of jurisdiction of the suit was Rs. 21,000 and on an objection being raised by the High Court office, the appellant converted it into a regular first appeal and made an application for condoning the delay under Section 5 of the Lamination Act, read with Section 151 of the Code of Civil Procedure. The High Court refused to condone the delay. Hence this appeal by special leave) in forma pauperis).

2. It appears that the original suit being valued for the purposes of jurisdiction at Rs. 21,000, the first appeal against the judgment and decree of the trial Court lay to the High Court, but the appellant prosecuted the appeal before the Additional District Judge who also did not take any note of this wrong institution of the appeal before him. The appellant filed the second appeal before the High Court on the same mistaken assumption. It is rather surprising that this escaped the notice of the office of the Additional District Judge as also of the Court. It is abundantly clear that the

appellant and his legal adviser somehow prosecuted the first appeal before the Additional District Judge bona-fide and on some kind of mistaken belief for which the appellant should not suffer. Since the appellant was prosecuting the appeal before the Additional District Judge, bona-fide, and the matter escaped scrutiny by the office at the time of its institution and even in course of hearing before the District Judge which had no jurisdiction to entertain the same, we are satisfied that the appellant, under the entire circumstances of the case, had sufficient cause for the delay in filing the first appeal in the High Court and the delay under the circumstances ought to have been condoned by the High Court under Section 5 of the Limitation Act. The appellant is, therefore entitled to the deduction of the period during which he prosecuted the appeal before the Additional District Judge and it is conceded by learned Counsel for the respondent that if that period were to be excluded, the first appeal before the High Court will be in time. We therefore, condone the delay in filing the first appeal before the High Court and set aside the judgment of the High Court and allow the appeal. The first appeal is remanded for an early disposal by the High Court in accordance with law. There will be no order as to costs except that the court fees in this appeal will be recoverable from the respondent.

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