

Maulvi Issa Qureshi

Vs

District Judge, Deoria and Others

Civil Appeals Nos. 11381-82 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

16.08.1996

ORDER

1. Leave granted.

2. We have heard learned counsel on both sides.

3. These two appeals by special leave arise against the orders of the High Court of Allahabad dated 15-11-1995 and 1-3-1995 made in Revision Petition No. 16944 of 1995 and in CMWP No. 29890 of 1991. The admitted facts are that Ram Nihore, said to be living, laid the suit, impleading Mansari as a co-plaintiff, for perpetual injunction restraining the appellant from possession and enjoyment of the plaint schedule property. The suit came to be laid on 25-4-1988. The suit was dismissed for default on 27-5-1988. An application under Order 9 Rule 4 CPC was filed for restoration on 30-5-1988. The appellant filed objections stating that Ram Nihore had already died on 4-9-1979. Therefore, it was a fraudulent suit laid on behalf of a dead person by the co-plaintiff. That application came to be dismissed on 30-5-1988. Subsequently, the co-plaintiff on 6-2-1990. The appellant raised objection that since the suit had already been dismissed, no substitution could have been made. Accordingly, the civil court dismissed the application on 6-2-1990. The respondent carried the matter in revision to the District Judge. The District Judge by his order dated 6-7-1991 allowed the application and directed substitution. When it came to be challenged before the High Court in writ petition, the High court dismissed the same.

4. The question, therefore, is whether the respondent is entitled to be substituted in a suit which is already dismissed and has become final ? Though Ms Sandhya Goswami, the learned counsel for the respondents, sought time again and again for filing the counter-affidavit, no counter-affidavit has been filed. From the narration of the facts, it is clear that when the suit has come to be filed on behalf of a dead person professing to be alive and the co-plaintiff played fraud upon the court and misused the judicial process. The question then is whether the substitution of the son of the dead plaintiff in the suit would be permissible ? It is axiomatic that the son of the deceased has no better independent right than what the original plaintiff himself had. After filing of the suit on behalf of a dead person and when the suit has already become final the question of substitution does not arise. Therefore, the District Judge committed a manifest error of law in directing substitution and the High Court was not right in declining to interfere with the order.

5. The appeals are accordingly allowed. No costs.