SUPREME COURT OF INDIA

Sumtibai

Vs.

Paras Finance Co. Mankanwar W/o Parasmal Chordia (D)

(A. K. Mathur and Markandey Katju JJ.)

04.10.2007

JUDGMENT

MARKANDEY KATJU, J.

1. This appeal has been filed against the impugned judgment and order dated 7.1.2000 in S.B. Civil Revision Petition No. 835of 1997.

2. Heard learned counsel for the parties and perused the record.

3. The Revision Petition was filed in the High Court against an order dated 6.8.1997 passed by the trial court whereby the application filed by the revisionists under Order 22 Rule 4(2) CPC read with Order 1 Rule 10 CPC was rejected.

4. The appellants are the legal representatives of late Kapoor Chand. A suit was filed by the respondent herein against Kapoor Chand for specific performance of a contract for sale. It was alleged that Kapoor Chand had entered into an agreement to sell the property in dispute to the plaintiff- respondent, M/s. Paras Finance Co. In that agreement Kapoor Chand stated that the property in dispute was his self acquired property. During the pendency of the suit Kapoor Chand died and his wife, sons etc. applied to be brought on record as legal representatives. After they were impleaded they filed an application under Order 22 Rule 4(2) read with Order 1 Rule 10 CPC praying inter alia, that they should be permitted to file additional written statement and also be allowed to take such pleas which are available to them. The trial court rejected this application against which a revision was filed by the appellant which was also dismissed by the High Court. Hence this appeal by special leave.

5. We are of the opinion that a party has a right to take whatever plea he/she wants to take, and hence the view taken by the High Court does not appear to be correct.

6. Learned counsel for the respondent submitted that in view of Order 22 Rule 4(2) a person who has been made a party can only take such pleas which are appropriate to his character of legal representative of the deceased. Learned counsel also submitted that two of the applicants/legal representatives of deceased Kapoor Chand, i.e. Narainlal and Devilal, had applied to the court under Order 1 Rule 10 to be impleaded, but their applications were rejected. An application was also filed by late Kapoor Chand praying that his sons be impleaded in the suit but that application was also rejected. Hence, the learned counsel submitted that the appellants cannot be permitted to file an additional written statement in this suit.

7. Before adverting to the question involved in this case, it may be noted that in the registered sale deed dated 12.8.1960 the shop in dispute has been mentioned and the sale was shown in favour of Kapoor Chand and his sons, Narainlal, Devilal and Pukhraj. Hence, the registered sale deed itself shows that the purchaser was not Kapoor Chand alone, but also his sons as co- owners. Hence, prima facie, it seems that the sons of Kapoor Chand are also co-owners of the property in dispute. However, we are not expressing any final opinion on the question whether they are co-owners as that would be decided in the suit. But we are certainly of the opinion that the legal representatives of late Kapoor Chand have a right to take this defence by way of filing an additional written statement and adduce evidence in the suit. Whether this defence is accepted or not, of course, is for the trial court to decide. Hence, in our opinion, the courts below erred in law in rejecting the applications of the heirs of Kapoor Chand to file an additional written statement.

8. Every party in a case has a right to file a written statement. This is in accordance with natural justice. The Civil Procedure Code is really the rules of natural justice which are set out in great and elaborate detail. Its purpose is to enable both parties to get a hearing. The appellants in the present case have already been made parties in the suit, but it would be strange if they are not allowed to take a defence. In our opinion, Order 22 Rule 4(2) CPC cannot be construed in the manner suggested by learned counsel for the respondent.

9. Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in Kasturi vs. Iyyamperumal and others - (2005) 6 SCC 733. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute. In the present case, the registered sale deed dated 12.8.1960 by which the property was purchased shows that the shop in dispute was sold in favour of not only Kapoor Chand, but also his sons. Thus prima facie it appears that the purchaser of the property in dispute was not only Kapoor Chand but also his sons. Hence, it cannot be said that the sons of Kapoor Chand have no semblance of title and are mere busybodies or interlopers.

10. As observed by this Court in State of Orissa vs. Sudhansu Sekhar Misra (AIR 1968 SC 647 vide para 13):-

A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in Quinn v. Leathem, 1901 AC 495:

Now before discussing the case of Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not

intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.

11. In Ambica Quarry Works vs. State of Gujarat & others (1987) 1 SCC 213 (vide para 18) this Court observed:-

The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

12. In Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd (2003) 2 SC 111 (vide para 59), this Court observed:-

It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

13. As held in Bharat Petroleum Corporation Ltd. & another vs. N.R.Vairamani & another (AIR 2004 SC 4778), a decision cannot be relied on without disclosing the factual situation. In the same Judgment this Court also observed:-

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid`s theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In London Graving dock co. Ltd. vs. Horton (1951 AC 737 at p. 761), Lord Mac Dermot observed:

The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J. as though they were part of an Act of Parliament and

applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

In Home Office vs. Dorset Yacht Co. (1970

(2) All ER 294) Lord Reid said, Lord Atkin`s speech . is not to be treated as if it was a statute definition it will require qualification in new circumstances. Megarry, J. in (1971)1 WLR

1062 observed: One must not, of course, construe even a reserved judgment of Russell L. J. as if it were an Act of Parliament. And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said:

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

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Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.

14. In view of the aforesaid decisions we are of the opinion that Kasturis case (supra) is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.

15. Also, merely because some applications have been rejected earlier it does not mean that the legal representatives of late Kapoor Chand should not be allowed to file an additional written statement. In fact, no useful purpose would be served by merely allowing these legal representatives to be impleaded but not allowing them to file an additional written statement. In our opinion, this will clearly violate natural justice.

16. For the reasons aforementioned, the impugned orders of the High Court dated 7.1.2000 as well as the trial court dated 6.8.1997, are set aside.

The appellants shall be allowed to file additional written statement and thereafter the suit should proceed expeditiously in accordance with law.

17. The appeal is allowed. There shall be no order as to costs.