Sagua Barik Vs. Bichinta Barik and anr.

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Court : Orissa

Decided On : Jul-03-1965

Reported in : AIR1966Ori225

Judge : G.K. Misra, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 2(2), 35, 151 and 152 - Order 20, Rule 6(1)

Appeal No. : Civil Revn. No. 377 of 1964

Appellant : Sagua Barik

Respondent : Bichinta Barik and anr.

Advocate for Pet/Ap. : R.N. Sinha and ;S.N. Sinha, Advs.

Disposition : Revision allowed

Judgement :

ORDER

G.K. Misra, J.

1. In T. S. No. 122/56 in the Court of the Munsif, Bargarh a preliminary decree for partition was passed on 13-11-58 which was confirmed in T. A. No. 61 of 59 in the Court of the Subordinate Judge of Sambalpur on 9-4-60. Concluding portion of the order dated 20-10-1962 in the final decree proceeding was to the following effect:

'In the result, the preliminary decree be made final. The report of the Commissioner, traced map be made part of the final decree. The defendants are entitled to get Rs. 1.700 from the plaintiff towards the mesne profits for the years 1957 to 1960. The final decree proceeding shall remain open till the mesne profits for the year 1961 is calculated.'

It is thus manifest that the Court did not pass any order regarding costs in the judgment of the final decree proceeding. On the basis of the order dated 22-10-62 final decree was drawn up on 17-11-1902. The decree however contained a clause regarding payment of costs which was not in the judgment to the effect-

'Parties shall hear their own costs of thefinal decree in proportion to their share. Thesum of Rs. 375.03 np. be paid by the plaintiffs to the defendants the costs of the finaldecree proceeding.'

In T. S. No. 139/26 of 1962-63, the Subordinate Judge reduced the quantum of mesne profits to Rs. 1,280. But no reference was made in the appellate judgment to the award of the costs to the defendants against the plaintiffs in the final decree. Ex. Case No. 12/63 was filed by the defendants for realisation of cost. Plaintiff's objection that the costs have not been included in the judgment was rejected on 14-9-64. On 30-10-64 plaintiffs filed application for amendment of the decree under Section 152, C. P. C. This application was rejected on 23-11-64. Against the order rejecting the application, the Civil Revision has been filed. The learned trial Court dismissed the application mainly on the ground that under Section 35(2), C. P. C. where the Court directs that any costs shall not follow the event, the Court shall state its reason in writing. As the judgment did not contain any reasoning, award of costs in the decree, was legal and that was the intention of the Court. He further found that the mistake was not a clerical or arithmetical mistake and the decree cannot be amended.

2. The questions arise for consideration, (1) is the amendment of the decree permissible in the facts and circumstances of the case, and (2) even if it is permissible whether it should be allowed at such a late stage when the matter was not agitated in appeal.

3. For reasons, I would presently discuss, the amendment should be allowed both under Sections 151 and 152, C. P. C. Order 20, Rule 6(1) enacts that the decree shall agree with the judgment. This is in consonance with the definition of 'decree' given in Section 2(2), C. P. C. 'Decree' means the formal expression of an adjudication. The adjudication is made in the judgment. In the decree a formal expression is given to such an adjudication.

If the decree is not in conformity with the judgment, the decree must be amended to bring it in line with the judgment. Their Lordships of the Privy Council observed in AIR 1944 PC 46 as follows:

'Under the Code, the decree is the formal expression of the adjudication (Section 2): it is imperative that it should conform to the judgment (Order 20, Rule 6); every Court has power to amend its decree so as to carry out its own meaning (cf. Section 152).'

A classical exposition of the law was given in (1885) 30 Ch D 239 In re, Swire; Mellor v. Swire. This decision was accepted as laying down good law in AIR 1926 PC 136. In that case Lindley, L. J. said:

'This case has raised a discussion of some importance, because it was contended that when once the order of the Court was passed and entered it could not be put right, even although as drawn it did not express the order as intended to be made. I protest against any such notion. There is no such magic in passing and entering an order as to deprive the Court of jurisdiction to take its own records true, and if an order as passed and entered does not express the real order of the Court, it would as it appears to me, be shocking to say that the party aggrieved cannot come here to have the record set right, but must go to the House of Lords by way of appeal.'

In the same case Bowen, L. J., said:

'Every Court has inherent power over its own records so long as those records are within its power and it can set right any mistake in them. It seems to me that it would

be perfectly shocking if the Court could not rectify an error which is really the error of its own minister. An order, as it seems to me, even when passed and entered, may be amended by the Court so as to carry out the intention and express the meaning of the Court at the time when the Order was made, provided the, amendment he made without injustice or on terms which preclude injustice.'

The same view has been taken in AIR 1962 SC 633. In that case amendment of the decree of the High Court was sought for after the Supreme Court Appeals were admitted in Supreme Court. In the judgment of the High Court there was a direction for taking accounts of the 'net profits'. The decretal order However wrongly referred to 'mesne profits'. Their Lordships held that this error would be corrected by the High Court under Sections 151 and 152 of the Code even though the appeals had been admitted in the Supreme Court before the date of correction.

Section 152, C. P. C. lays down that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accident, slip or omission may at any time be corrected by the Court either of its own motion or on the application of any parties. On bare perusal of the judgment in the final decree proceeding and the decree drawn up in accordance therewith it would be manifest that there was no award of costs in the judgment but the same was incorporated in the decree, probably due to the clerical mistake. On the authorities aforesaid the decree should be amended and must he brought in accordance with the judgment by deleting the portion 'parties shall bear their own costs of the final decree in proportion to their share. The sum of Rs. 375.03 nP. be paid by the plaintiffs to the defendants the costs of the final decree proceeding'. In exercising this power under Sections 151 and 152, C. P. C. the Court is merely correcting a mistake of its ministerial officer by whom the decree was drawn up.

4. The second question for consideration is whether the amendment should be allowed after long lapse of time and when the matter was not canvassed in T. A. 139/26 of 1962-63, under Section 152, the power of the Court is very wide. The expression used is 'may at any time be corrected'. There is no limitation for such correction and delay by itself is not a bar to an application for amendment. Each case must be decided on its own facts. This power is not to be exercised in cases where third parties have acquired right under the erroneous decree for valuable consideration and in ignorance of the error in the decree. The aforesaid Supreme Court case is itself an illustration that though the appeal was pending before the Supreme Court, amendment was not sought for in appeal, but the application for amendment was filed before the High Court itself. In AIR 1948 Cal 126, their Lordships held that the power of amendment can be exercised in the trial Court even if an appeal against a j decree had been decided by the appellate Court. In view of the Supreme Court decision, it is unnecessary to cite a plethora of authorities on this point. Even though this question was not canvassed in T. A. 139/26 of 1962-63 and the application for amendment was filed two years after the decree was drawn up, no prejudice would be caused by allowing the amendment. No interest of any third party would he affected by the amendment.

5. For reasons already staled, the order dated 23-11-1964 of the learned Munsif is set aside and the Civil Revision is allowed.

6. Parties to bear their own costs.