

Mir Sahebmiya Bahadarmiya Sheikh Vs. State of Gujarat

LegalCrystal Citation : legalcrystal.com/741729

Court : Gujarat

Decided On : Feb-11-1980

Reported in : (1981)22GLR72

Judge : N.H. Bhatt, J.

Appellant : Mir Sahebmiya Bahadarmiya Sheikh

Respondent : State of Gujarat

Judgement :

N.H. Bhatt, J.

1. This is a revision application by the original plaintiff challenging a part of the order passed by the learned trial Judge in the City Civil Court at Ahmedabad in the Civil Suit No. 1097 of 1972 decided by him on 4-3-1977, the occasion to challenge which has arisen on the passing of the order below the application of the petitioner, ex.239, by the Successor Judge. The plaintiff had filed the aforesaid suit for the following three reliefs:

- (1) That the defendants in the suit be restrained from interfering with the possession of the suit land;
- (2) That defendants in the suit be restrained from obstructing the petitioner from removing the huts of the defendants; and
- (3) That the defendants be restrained from obstructing the use and occupation of the land occupied by the plaintiff.

2. The learned trial Judge while disposing of the suit passed the following operative order:

The plaintiff must pay the deficit court-fees stamp on the basis of valuing Relief A in the relief clause of the plaint para 8A by putting the valuation at Rs. 61,000/- for the purpose of court fees and suit valuation and must pay the deficit court fees by deducting the amount of court-fees paid for relief A, i.e. Rs. 30/- paid. The (sic) must value reliefs A and C of para 8 of the plaint at Rs. 3900/- and must pay the deficit court fees after deducting Rs. 60/- paid for these two reliefs. If the plaintiff does not pay the deficit amount of court fees within one month from the date of this order, the copy of this order must be sent to the Collector for recovering the deficit court-fees from the plaintiff and the decree must not be drawn till the deficit amount of court fees is paid or recovered. However, if the defendants want the decree to be drawn, they can pay the deficit amount of court fees stamp and on their paying the same, the

decree to be drawn and in that case the defendant paying the deficit amount of court fees, are entitled to recover the same from the plaintiff as the costs allowed.

Thereafter the plaintiff gave the application, ex. 239, requesting the learned Chamber Judge to direct the Registrar of the City Civil Court to draw up the decree in that suit. The learned Chamber Judge declined to oblige and hence the present revision application.

3. The short but interesting question that arises for determination in this revision application is whether the court is bound to proceed to draw the decree on the pronouncement of the judgment or whether it can order that the decree shall not be drawn till the particular order (e.g. the order of payment of court fees as it is in the present case) is carried out.

4. As far as the Gujarat High Court is concerned, there is no binding judgment in this regard. The question had come up squarely before the Full Bench of the Madras High Court in the case of Velagala Sriramareddi and Ors. v. Karri Sriramareddi A.I.R. 1941 Madras 929. Referring to Section 33 of the Civil Procedure Code and to order 20 Rule 7 of the Code, the Full Bench clearly laid down as a matter of categorical proposition that where the judgment has been pronounced, the court has no power to order stay of the drafting of the decree and that judgment having been pronounced, the decree must follow. The Full Bench of the Madras High Court in its turn adopted the view of the Division Bench of the Patna High Court in the case of Kedar Nath Goenka v. Chandra Mauleshwar Prasad Singh A.I.R. 1932 Patna 228. The Patna High Court has expressed its view more forcefully. It has laid down that after the judgment has been pronounced and it has been signed and sealed, no power is left in the court to alter it or add to it or subtract anything from it, and the judgment having been pronounced, a decree must be prepared in accordance with it. The Division Bench has further observed that Section 28 of the Court-Fees Act did not empower the court to call upon the parties to pay the deficit court fee after judgment has been pronounced. The inevitable conclusion drawn by the Division Bench is that when once the judgment has been pronounced, the court has no power to stop the preparation of the decree merely on the ground that proper court-fees is not paid by the party.

5. What the court could not do after the pronouncement of the judgment cannot be done by the court while pronouncing the judgment, because the question involved is whether the court has power to arrest the natural to normal process of law.

6. Mr. Christie, the learned Assistant Govt. Pleader, however, relied upon some observation of V.R. Shah J. of this High Court reported in the case of Bai Vasanti v. Suryaprasad Ishwarlal Palel 10 G.L.R. 571. He urged that passing of a decree was distinct from drawing up of a decree and that the passing of the decree automatically took place the moment the judgment was pronounced, but the drawing of the decree could wait. It is no doubt true that in that case some observations of the nature have been made, but it was in the context of the starting point of the period of limitation. The question arose in connection with an order passed by the court below the compromise presented by the parties. The court's order below that compromise purshis was recorded and pronounced on 20-3-58, but the decree came to be prepared and signed long thereafter, that is, on 26-4-61, though the decree bore the date 20-3-58. The question arose whether the execution was barred by limitation. It is in this context that a distinction was sought to be drawn between the passing of a decree and drawing up of a decree. No such absolute proposition of law as is sought

to be canvassed by Mr. Christie for the Government had been sought to be laid down by the learned judge dealing with that case. Therefore, there is no question of my departing from the ratio laid down by the predecessor judge of this Court.

7. If what has been insisted upon by the learned Assistant Government pleader is adhered to, it more often than not would result into miscarriage of justice. Say for example, the plaintiff's suit is dismissed with costs amounting to a substantial amount to be recovered by the defendant. The plaintiff is in no mood to pay up the deficit court fees and that would, if the opinion of Mr. Christie is upheld, result into the not drawing of the decree. This would deprive the defendant of the fruits of the litigation because he can recover his costs if and only if the decree is executed by him. A crafty plaintiff in such a situation might deprive the defendant of his legitimately awarded costs and thus cause obvious miscarriage of justice.

8. It is, therefore, inevitable to hold, following the line adopted by the Madras High Court and the Patna High Court that the decree must follow and it is not open to the courts to delay the drawing up of the decree simply because one or the other of the parties does not comply with one or the other of the incidental orders of the court, like the payment of court-fees.

9. In above view of the matter, the direction in the operative part of the Judgment pertaining to not drawing of the decree till the plaintiff paid up the court-fees are set aside and the City Civil Court is directed to draw up the decree. It is, however, made clear that the order of the learned Judge regarding sending of the copy the decree or order for the purpose of realising the deficit court-fees would remain unaffected by this order of mine. The decree to be drawn may also mention that the court has ordered the plaintiff to pay up a certain amount of additional court fees. Rule is accordingly made absolute with no order as to costs.