

CIVIL REVISION

Present :

The Hon'ble Mr. Justice Prasenjit Mandal

Judgment on 02.09.2010

C.O. No. 3961 of 2009

Raja Katra Pvt. Ltd.

Versus

Sujit Kumar Auddy (dead) & ors.

Points:

Abatement-If the defendant did not supply the names of the heirs of his brother and sister, who were not contesting, in spite of request of the plaintiff, whether the suit abates or the name of those defendants can be expunged- Code of Civil Procedure, 1908 O 22 R 4

Facts:

Plaintiff filed a suit for eviction of a tenant. After the death of the tenant his heirs were substituted. Except one heir the other heirs of the original tenant have not appeared in the suit. From the proceeding of another suit plaintiff came to know of the death of two heirs. Plaintiff's advocate requested the learned advocate appearing in the suit to furnish the names of the heirs of said two deceased heirs of the original tenant but he did not furnish the said particulars. Plaintiff thereafter filed an application for deleting the names of those two non-contesting defendants. Trial Court rejected the application holding that the suit has abated.

Held:

It is difficult for the plaintiff to collect the names of the heirs of the deceased substituted defendants and so under the compelling circumstances, he had no other option but to pray for deletion of the names of the two deceased

defendants from the plaint. When a litigant is to face such a situation, Order 22 Rule 4 of the C.P.C. lays down the procedure to get rid off that situation and in appropriate cases such provision can well be considered. But, in the instant case, the learned Trial Judge has failed to appreciate the facts and circumstances of the case and that is why, he has rejected the application filed by the plaintiff. The contesting the defendants has deliberately withheld the names of the heirs of his deceased brother and sister with the only motive to drag the suit for an unending period and to get any benefit if could be derived by any lapse on the part of the plaintiff. So, the conduct of the contesting defendant is not supported. The learned Trial Judge has committed errors of law in not allowing the application of the plaintiff/petitioner in the given circumstances. Para 12

Cases cited:

Susanta Kumar Choudhury & anr. Vs. Birendra Kumar Deb Roy & ors., AIR 1997 Gauhati 19; Papanna & anr. Vs. State of Karnataka & ors., (1996) 1 SCC 291; Mukhtiar Singh & anr. Vs. Kishan Kaur & Ors., (1996) 7 SCC 299.

For the Petitioner: Mr. U. C. Banerjee.

For opposite party no.3: Mr. Supriya Chatterjee.

Prasenjit Mandal, J. : This application is at the instance of the plaintiff and is directed against the order dated October 30, 2005 passed by the learned Judge, Small Causes Court, Fourth Court, Calcutta in ejectment suit no.592 of 2002 thereby rejecting an application filed by the plaintiff.

2. The plaintiff filed a suit for ejectment being no.403 of 1991 in the City Civil Court at Calcutta for eviction of the sole defendant, Ajit Kumar Auddy

from the premises in suit, as described in the schedule of the plaint. That suit was subsequently transferred to Small Causes Court, Calcutta and renumbered as Ejectment Suit No.592 of 2002. Ajit Kumar Auddy died sometime in 1994 and his brothers and sisters were substituted in his place. Summons have been served upon all the substituted defendants but none of the substituted defendants have appeared and filed any written statement in the ejectment suit or in the appeal pending before the Hon'ble High Court except, the defendant no.3, Ranjit Kumar Auddy who appeared and filed a written statement and other incidental applications like under Section 17(2) of the West Bengal Premises Tenancy Act, 1956 in the suit before the Small Causes Court.

3. In the instant suit, no written intimation of the death of Sujit Kumar Auddy and Uma Rani Das has been filed at any stage. On learning from the information furnished by Ranjit Kumar Auddy in the other suit being no. Title Suit No.590 of 2002 between the parties that Sujit Kumar Auddy and Uma Rani Dutta died, the plaintiff's Advocate wrote a letter dated December 15, 2006 to Mr. Surajit Auddy, Learned Advocate requesting the contesting defendant's Advocate to furnish the names of the heirs of Sujit Kumar Auddy and Uma Rani Dutta. The defendant nos.3 & 7's Advocate is also the son of the contesting defendant, Ranjit Kumar Auddy. But he did not furnish the names of heirs of Sujit Kumar Auddy and Uma Rani Dutta. In spite of efforts, the petitioner has not been able to ascertain the names of heirs of the deceased substituted defendants.

4. Under such circumstances, the plaintiff filed an application before the Small Causes Court for deletion of the names of noncontesting dead defendants. The contesting defendant filed an objection to the said application and contended that the entire suit has abated by operation of law.

5. The petitioner has no obligation to substitute the heirs of the non-contesting deceased substituted defendants who were not contesting the suit. But the learned Trial Judge rejected the application by the impugned order holding that the suit has abated. Being aggrieved by the said order, this application has been filed.

6. Mr. U. C. Banerjee, learned Advocate appearing on behalf of the applicant, draws my attention to the fact of the plaint case and he submits that though the learned Advocate who is appearing for the contesting substituted defendant no.3 intimated the fact of death of the two deceased substituted defendants in the other suit between the parties, did not furnish the particulars of the heirs of the said two deceased substituted defendants, namely Sujit Kumar Auddy and Uma Rani Dutta. The whereabouts of such persons are not traceable. For that reason, in view of the provisions of Order 22 Rule 4 of the Code of Civil Procedure, the plaintiff prayed for exemption from taking steps against those deceased defendants because they did not contest the suit at all in spite of having been summoned in the suit. He prayed for deletion of the names of the two non-contesting deceased defendants but the learned Trial Judge without appreciating the real fact, rejected the application and such order is not tenable.

7. On the other hand, Mr. S. Chatterjee, learned Advocate appearing on behalf of the opposite party no.3, vehemently opposes to the contention of the learned Advocate for the plaintiff/petitioner and submits that since in spite of supplying the information of the death of the substituted defendants, namely, Sujit Kumar Auddy and Uma Rani Dutta, the plaintiff failed to take necessary steps for substitution and so the suit has abated. The learned Trial Judge has rightly recorded the order of abatement.

8. Thus, the point for consideration under the circumstances is whether the impugned order can be sustained.

9. Upon hearing the submission of the learned Advocate for the parties and on perusal of the materials on record, I find that though the plaintiff filed the suit for ejectment in the year 1991, still it is pending for final decision. In the meantime, the original defendant/tenant died and his heirs have been substituted who are none but the brothers and sisters of the original tenant. Thereafter, two substituted defendants, namely, Sujit Kumar Auddy and Uma Rani Dutta expired during the pendency of the suit and the learned Advocate who is defending the contesting defendant no.3 filed the death report in the Court without any mention who are the heirs of those two substituted deceased defendants. The plaintiff served an application dated December 15, 2006 upon the learned Advocate for the contesting the defendant no.3 to intimate him the names of the heirs of the deceased defendants, but the learned Advocate appearing for the contesting the defendant no.3 preferred to remain silent meaning thereby he did not supply the names of the heirs of the two substituted deceased defendants. Admittedly, save and except, the defendant no.3, no other substituted defendants are not contesting the ejectment suit filed by the plaintiff/petitioner. Nor did they file any written statement in the suit at all. The defendant no.3 filed a written statement and other applications such as, under Section 17(2) of the West Bengal Premises Tenancy Act, 1956. He is alone contesting the suit.

10. The learned Advocate for the opposite party has referred to the following decisions in support of his contentions:

1. Susanta Kumar Choudhury & anr. Vs. Birendra Kumar Deb Roy & ors. reported in AIR 1997 Gauhati 19.

He submits that the plaintiff knowing about the death of defendants long ago and failed to file an application for substitution for many years - exemption under Order 22 Rule 4 cannot be granted.

2. Papanna & anr. Vs. State of Karnataka & ors. reported in (1996) 1 SCC 291.

He submits that since the legal representatives of the deceased defendant has not been on record, the appeal stood abated.

3. Mukhtiar Singh & anr. Vs. Kishan Kaur & Ors. reported in (1996) 7 SCC 299.

He submits that since the application for impleading the legal representatives of the deceased was filed after long and unexplained delay the suit abated as a whole.

11. Upon due consideration of the said decisions, I find that none of these three decisions is application in the instant case. The decision of Susanta Kumar Choudhury & anr (supra) relates to an Will where both the parties to the Will are known to each other. This is not the situation in the instant case. So far as the decision of Papanna & anr (supra) is concerned, I find that relates to compensation under the provisions of Section 4(1) of the Land Acquisition Act. This is not also applicable here because in the instant case the deceased defendants being the heirs of the original tenant were not known to him. As regards, the other decision of Mukhtiar Singh & anr (supra), I find that relates to mutation being jointly in the name of all the defendants and so the suit abated as a whole. This is not also the case in the instant application.

12. This being the position, it is difficult for the plaintiff to collect the names of the heirs of the deceased substituted defendants and so under the compelling circumstances, he had no other option but to pray for deletion of

the names of the two deceased defendants from the plaint. When a litigant is to face such a situation, Order 22 Rule 4 of the C.P.C. lays down the procedure to get rid off that situation and in appropriate cases such provision can well be considered. But, in the instant case, the learned Trial Judge has failed to appreciate the facts and circumstances of the case and that is why, he has rejected the application filed by the plaintiff. The contesting the defendants has deliberately withheld the names of the heirs of his deceased brother and sister with the only motive to drag the suit for an unending period and to get any benefit if could be derived by any lapse on the part of the plaintiff. So, the conduct of the contesting defendant is not supported. The learned Trial Judge has committed errors of law in not allowing the application of the plaintiff/petitioner in the given circumstances.

13. This being the position, the order impugned cannot be supported. The application succeeds. It is allowed. The impugned order dated October 30, 2009 passed by the learned Judge, Small Causes Court, Fourth Court, Calcutta in Ejectment Suit No.592 of 2002 is set aside. Order of abatement is also set aside. The name of the deceased substituted defendant, namely, Sujit Kumar Auddy and Uma Rani Dutta be deleted. Thereafter, the suit shall proceed in accordance with law.

14. Considering the circumstances, there will be no order as to costs.

15. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.

(Prasenjit Mandal, J.)