

Puran Singh *v.* Gehal Singh, etc. (Pandit, J.)

Ordinarily, in a Letters Patent Appeal, the Bench is entitled to consider the evidence afresh but unless very strong grounds are made out, the Letters Patent Bench will accept the finding of the fact arrived at by the learned Single Judge after due consideration of the evidence on the record. The evidence on the record in the instant case is not sufficient to come to the conclusion that the charge of adultery has been proved.

(9) For the reasons given above, this appeal fails and is dismissed with no order as to costs.

MEHAR SINGH, C.J.— I agree.

K. S.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

PURAN SINGH,—*Petitioner*

versus

GEHAL SINGH AND OTHERS,—*Respondents*

Civil Revision No. 527 of 1968.

July 31, 1968

Code of Civil Procedure (Act V of 1908)—S. 151, Order 41 and Rule 20—Certified copies of judgment and decree under appeal not mentioning the name of a contesting party—Parties names in Memorandum of appeal mechanically copied from such judgment and decree—Mistake of the appellants—Whether bona fide—Such contesting party—Whether can be impleaded in appeal after the expiry of period of limitation.

Held, that where a memorandum of appeal does not mention the name of a contesting party and the mistake creeps in on account of the erroneous certified copies having been supplied by the court officials to the appellants, he should not be made to suffer on account of the mistake having been committed by some officer of the court in the discharge of his duties. It is quite apparent that the appellants or his counsel did not notice that error at the time when the appeal

was filed and the names of the parties in the memorandum of appeal had been mechanically copied out from those mentioned in the heading of the judgment of the trial court. The mistake on the part of the appellant or his counsel is, therefore, *bona fide* and honest. The appellate Court has ample power under order 41 Rule 20 of Code of Civil Procedure to allow the mistake to be rectified and the party added even after the expiry of period of limitation for appeal.

(Para 7)

Petition under Section 115 Civil Procedure Code and Article 227 of the Constitution of India for revision of the Order of Shri J. S. Chatha, Additional District Judge, Amritsar, dated 5th June, 1968.

K. L. KAPUR, ADVOCATE, for the Petitioner.

NEMO, for the Respondents.

JUDGMENT

PANDIT, J.—In March, 1959, one Amar Singh sold agricultural land in favour of Gehal Singh, Mehal Singh and Maghar Singh. In April, 1965, Puran Singh brought a suit for possession of the land, covered by the sale deed, on the ground that his father Amar Singh had no authority to sell the land which was ancestral without consideration and legal necessity and the said sale was, therefore, not binding on his reversionary interests. The suit was brought against Gehal Singh, Mehal Singh and Smt. Shanti alias Banti,, widow of Maghar Singh, he having died in the meantime. Puran Singh impleaded his sister, Surinder Kaur, also as a defendant in the case.

(2) This suit was resisted by the vendees, but after trial the same was dismissed on 20th of June, 1966. Against that decision, Puran Singh filed an appeal before the Additional District Judge, Amritsar, on 19th of July, 1966. The appeal was filed against Gehal Singh, Mehal Singh, Inder Singh, Amar Singh and Surinder Kaur. That means that Shanti's name was omitted from the list of respondents and in her place the names of Inder Singh and Amar Singh were included. In January, 1967, before the appeal was heard, an application was filed by Puran Singh under Order 1, rule 10 read with section 151 of the Code of Civil Procedure for the amendment of the memorandum of appeal by deleting the names of Inder Singh and Amar Singh and adding the name of Smt. Shanti alias Banti. The

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ground given for making that application was that the memorandum of appeal had been drafted on the basis of the certified copies of the judgment and the decree-sheet prepared by the trial court. There, the name of Smt. Shanti had been eliminated and the names of Inder Singh and Amar Singh had been mentioned. The mistake on his part, therefore, according to him, was *bona fide*.

(3) This application was contested by the vendees and their case was that this omission of Shanti's name from the list of respondents before the learned Additional District Judge was due to the gross neglect on the part of the plaintiff who fully knew that Shanti was one of the vendees.

(4) This application was rejected by the learned Additional District Judge on the ground that the mistake on the part of the plaintiff in the drafting of the memorandum of appeal could not be considered as *bona fide*, but it was due to carelessness and there were no valid reasons for permitting the plaintiff to add the name of Shanti as a respondent after the period of limitation had expired. He, however, directed that the names of Inder Singh and Amar Singh be deleted from the memorandum of appeal, as that could be done at any time.

(5) Against this order, the present revision petition has been filed by the plaintiff, Puran Singh.

(6) In spite of service having been effected on the respondents, none of them has appeared before me.

(7) After hearing the counsel for the petitioner, I am of the view that this petition must succeed. There is no manner of doubt, as contended by the learned counsel for the petitioner, that in the certified copies of the judgment and decree-sheet of the trial court, the names of Inder Singh and Amar Singh had been mentioned and the name of Smt. Shanti, widow of Maghar Singh, who was one of the vendees, omitted. It is, therefore, quite obvious that the mistake crept in on account of the erroneous certified copies having been supplied by the court officials to the petitioner. The petitioner, therefore, should not be made to suffer on account of the mistake having been committed by some officer of the court in the discharge of his duties. It was remarked by the learned Additional District Judge in his judgment that if the plaintiff had just applied his mind,

he could have known that the names of Inder Singh and Amar Singh mentioned in the copy of the judgment were wrong. The copy of the plaint would obviously be with the plaintiff and that fact, according to the learned Judge, could be verified from there. It is true that the mistake, if noticed, would have been verified from the copy of the plaint, but ordinarily nobody consults the plaint before filing an appeal. It is quite apparent that the petitioner or his counsel did not notice that error at the time when the appeal was filed and the names of the parties in the memorandum of appeal had been mechanically copied out from those mentioned in the heading of the judgment of the trial court. The mistake on the part of the petitioner's counsel was, therefore, *bona fide* and honest. In similar circumstances, a Full Bench of this Court consisting of S. S. Dulat, K. L. Gosain and A. N. Grover, JJ., in *Notified Area Committee Buria v. Gobind Ram Lachhman Dass and others* (1), allowed the addition of a party in the memorandum of appeal after the period of limitation was over. It was observed :—

“If a party to the original proceedings is not impleaded in appeal on account of a *bona fide* and honest mistake on the part of the appellant, the appellate Court has ample powers under Order XLI, rule 20, Civil Procedure Code to allow the mistake to be rectified and the party to be added.

* * * * *

Apart from the provisions of Order XLI, Rule 20, the appellate Court has inherent powers to permit parties to be added to appeals in suitable cases and the language of rule 20 of Order XLI is not exclusive or exhaustive so as to deprive the appellate Court of the inherent powers in this respect.

No inflexible rule of interpretation of the words “interested in the result of the appeal” in Order XLI Rule 20, has been given by the Privy Council in A.I.R. 1927, P.C., 252, and it must be decided on the facts and circumstances of each particular case whether the person sought to be added in that case is one interested in the result of the appeal. The Privy Council case cannot, at any rate, be taken to be an authority for the proposition that a party left out or not

(1) A.I.R. 1959 Pb. 277.

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impleaded in appeal on account of a *bona fide* mistake cannot be so impleaded under the inherent powers of the Court more especially when the error is on the part of the Court or its officials in supplying an erroneous copy either of the decree or of the judgment."

(8) The learned Additional District Judge did not follow this decision, because according to him, another Full Bench of the Lahore High Court in *Labhu Ram and others v. Ram Partap and others* (2), had taken a contrary view. There, it was held—

"When once time for an appeal has run out, it is not possible for an appellant subsequently to implead those defendants who were not originally impleaded as respondents in the appeal. In a case in which a necessary party to an appeal has been omitted, the Court cannot exercise any power vested in it under Order 41, rule 20 to cover the omission. An appellate Court could not exercise its power under Order 41, Rule 20, if limitation had already expired. No question of Section 5, Limitation Act, arises in such cases. No right vests in any appellant to make an application under Order 41, Rule 20....."

(9) The learned Additional District Judge, in my view, should have followed the Full Bench of this Court, especially when the latter decision had been expressly dissented from in *Notified Area Committee Buria's case*. It is significant to mention that the Full Bench in *Notified Area Committee Buria's case* had been constituted to re-examine the earlier Full Bench and other cases taking the same view.

(10) If the application of the petitioner is not allowed, the result would be that the appeal would be dismissed as incompetent as having not been properly constituted, Smt. Shanti being a necessary party. In the circumstances of this case, therefore, I would hold the application of the petitioner should be allowed.

(11) The result is that this petition succeeds and the order under revision is set aside. Since the respondents are not represented before me, there will be no order as to costs.

K. S.

(2) A.I.R. 1944 Lahore 76.