APPELLATE CIVIL.

1917
January, 16

Before Mr. Justice Piggott and Mr. Justice Walsh.

RAMAN LALJI (DEFENDANT) *v.* GOKUL NATHJI (PLAINTIFF) *

Practice—Suit filed by an agent on behalf of an absent plaintiff—Objection raised as to authority of agent—Duty of Court in which the plaint is presented.

In the case of a suit filed by an agent on behalf of an absent plaintiff, where the authority of the plaintiff to have a suit brought at all and to allow his name to be used as a plaintiff in the case, is seriously questioned, that is a matter of principle which it is a court's duty to decide ; and, unless it is shown that the plaintiff has in fact authorized the suit, either expressly or impliedly, a court ought not to grant a decree in his favour. But where authority has been given by the plaintiff in some form or another, and the question is whether the agent has complied with the rules as laid down in the Code of Civil Procedure, that is not a question of principle at all, but a question of practice and procedure. It is the first court's business to see that the rules are complied with and it should not leave the investigation of that question to the appellate court. But a suit should not be dismissed without the party who has failed to comply with the rules of procedure being given an opportunity of correcting the defect in procedure, if there be any.

THE facts of this case were as follows :—

A suit was brought on a promissory note. The plaint was signed and verified by one Bhiki Mal who alleged himself to be the general attorney of the plaintiff, who resided in Bombay. It was signed also by a pleader appointed by Bhiki Mal and presented by the pleader. One of the pleas raised in defence was that Bhiki Mal had no authority to sign and verify the plaint on behalf of the plaintiff, and the suit should therefore be dismissed. An issue was framed as to whether the plaint was properly signed, verified and presented. The power-of-attorney produced by Bhiki Mal conferred upon him powers of management of certain immovable properties owned by the plaintiff and situate in the Muttra district. The powers were confined to actions relating to the said properties. It was not found that the promissory note had anything to do with those properties. The court of first instance held that Bhiki Mal had no authority to sign and verify the plaint. It dismissed the suit, relying on a case reported in I. L. R., 16 All., 420. The lower appellate court took the same view of the scope of the power-of-attorney, but

* First Appeal No. 97 of 1916, from an order of H. J. Collister, Subordinate Judge of Muttra, dated the 1st of April, 1916.

1917

RAMAN LALJI v. GOKUL NATHJI.

held that the plaintiff was in fact privy to the filing of the suit and had himself signed the *vakalatnama* of the pleader who filed the appeal. Taking the view that the plaintiff's failure to sign the plaint was a mere irregularity, and relying upon 22 Indian Cases, 140, and I. L. R., 22 All., 55, the court remanded the suit for trial on the merits "after the necessary amendments had been made" in the plaint and the *vakalatnama*. The defendant appealed to the High Court against this order.

Munshi *Baleshwari Prasad* (for the Hon'ble Munshi *Narayan Prasad Ashthana*), for the appellant:—

Order VI, rules 14 and 15, of the Code of Civil Procedure lay down the modes prescribed for the signing and verification of plaints. It has been found by the lower courts that Bhiki Mal was not a person "duly authorized" to sign the plaint, nor was he a "recognized agent" within the meaning of order III, rule 2. He had no authority to appoint a pleader on behalf of the plaintiff in this suit. The pleader who signed the plaint was not duly appointed. None of the signatures on the plaint was that of a proper person. The suit was rightly dismissed by the first court; *Nam Narain Singh* v. *Raghu Nath Sahai* (1). The case of *Basdeo* v. *John Smidt* (2) which has been relied upon by the lower appellate court, is distinguishable. There the plaintiffs were represented by an advocate, for whom a *vakalatnama* was not necessary; the signing and presentation of the plaint by him were, therefore, quite proper. Moreover, the objection was, for the first time, raised in second appeal. The presentation of the plaint was invalid and the suit could not be entertained. The question of presentation was included in the issue which was framed by the first court and the ruling cited by that court shows that the point was pressed. The order of the lower appellate court to the effect that the necessary amendment should be made in the *vakalatnama* shows that the question of presentation was fully before his mind. The pleader who presented the plaint was not appointed by either the plaintiff or a duly authorized agent or a "recognized agent". The presentation was

(1) (1892) I. L. R., 19 Calc., 678.

(2) (1899) I. L. R., 22 All., 55.

void. Reference was made to the case of *Badri Prasad* v. *Bhagwati Dhar* (1) and *Muhammad Ali Khan* v. *Jas Ram* (2). As was pointed out in the Full Bench case cited above, the subsequent adoption or ratification by the party of the suit or the appeal, as the case may be, and the subsequent filing of a fresh *vakalatnama* signed by the party and appointing the same pleader to prosecute the suit or the appeal would not be effective. Moreover, in the present case there was no ratification in the first court. In the lower appellate court, too, there was no express ratification. That court has proceeded on the mere fact that the *vakalatnama* of the pleader who filed the appeal was signed by the plaintiff himself. The case in 36 Allahabad, cited above, laid down that an objection on the score of invalidity of presentation by reason of a defective *vakalatnama* should be given effect to even if it was taken at a very late stage. The order of the lower appellate court directing necessary amendments to be made in the *vakalatnama* is absurd.

The Hon'ble Dr. *Tej Bahadur Sapru* (for whom Pandit *Kailas Nath Katju*) for the respondent, was not called upon.

PIGGOTT and WALSH, JJ:—This was a suit on a promissory note. The defendant, apart from his defence on the merits, raised in his written statement a plea that one Bhiki Mal, who purported to sign and verify the plaint in the capacity of general attorney of the plaintiff, had no authority to do so. The learned Munsif, in framing an issue on this plea, went a step further. He seems to have felt some doubt as to whether there had been a regular and valid presentation of the plaint in his court. He accordingly framed an issue as to whether the plaint had been "properly signed, verified and presented". In determining the issue, however, he dealt only with the question of signature and verification of the plaint, and held that Bhiki Mal had no authority to sign or verify the plaint. He dismissed the suit. On appeal by the plaintiff, the learned District Judge has reversed this finding and remanded the suit for decision on the merits. The appeal before us is against this order of remand. On the question of verification the lower appellate court was obviously right, as is sufficiently apparent from a perusal of the rules on

(1) (1894) I. L. R., 16 All., 240. (2) (1913) I. L. R., 36 All., 46.

1917

RAMAN LALJI v. GOKUL NATHJI.

the subject. With regard to the question of signature the learned District Judge has quoted authority of this Court in support of the course adopted by him. He points out that if there was any technical defect in the signature, it was at the most an irregularity capable of being cured by a subsequent amendment. We have been referred to no authority to the contrary, and the case relied upon by the court of first instance is not in point. What has been strenuously contended before us here is that there has been no valid presentation of the plaint. The point has not been decided by either of the courts below. The plaintiff is a resident of Bombay, and Bhiki Mal aforesaid is his local agent for the management of certain property in the Muttra district. So far as we can judge, the position of Bhiki Mal might well be considered to fall within the definition of a "recognized agent" contained in clause (*b*) of order III, rule 2, of the Code of Civil Procedure. In any case, it seems to us that the manner in which this question of presentation has been dealt with is unsatisfactory. If the learned Munsif felt any serious doubt as to whether there had been a valid presentation of the plaint in his court he could have called upon the plaintiff to look into the matter and given him an opportunity to correct any irregularity of a technical nature which might have occurred. In framing an issue on the point, and one which went outside the pleadings, the learned Munsif seems to have adopted a course which it is difficult to support. The lower appellate court has concluded from subsequent proceedings that there is fair reason to infer that the plaintiff was cognizant of the action taken by Bhiki Mal in filing this suit. If it is regarded as a question of fact, which it is apparently necessary to determine before justice can be done to the parties, there would be no objection to further evidence being taken on the point in the court of first instance. On the point actually raised before him, the order of the District Judge seems to us clearly right, and we are certainly not disposed to interfere with the order under the circumstances already set forth by reason of the difficulty now pressed upon our notice on the question of presentation.

It seems desirable with reference to cases like this, which are not of infrequent occurrence, to add a few general observations.

Where the authority of a plaintiff to have a suit brought at all and to allow his name to be used as a plaintiff in the case, is seriously questioned, that is a matter of principle which it is a court's duty to decide; and unless it is shown that the plaintiff has in fact authorized the suit, either impliedly or expressly, clearly a court ought not to grant a decree in his favour, and the Privy Council case reported in I. L. R., 19 Calc., 678, is an illustration of that principle. But where authority has been given by the plaintiff in some form or another, and the question is whether the agent has complied with the rules as laid down in the Code, that is not a question of principle at all, but a question of practice and procedure. It is the first court's business to see that its own rules are complied with, and in our view it is not right that the first court should leave the investigation of that question to the appellate court. If a defect is brought to its notice by its own officer—and it is duty of an officer of the court, if there is any defect in procedure or in the frame of the suit or in similar matters, to draw the attention of the Judge to the fact—or by the parties, or one of them, the Judge ought to put the defaulting party on terms to correct the defect. If the defaulting party, on the defect being pointed out to him, declines to obey the court's order to correct it, obviously he has only himself to thank for any penalty which may ensue. But in our view a court ought not to dismiss a suit without at any rate giving the defaulting party an opportunity of correcting the defect in procedure, if there be any. And the reported cases show that courts of appeal have been driven to indulge in refinements in order to prevent the ends of justice being defeated on a point of this kind. It is not in the interests of the litigants themselves that a court should be astute to defeat a claim, not on a consideration of the merits, but on some technical point of procedure. There is no defect in procedure which anybody is capable of making which cannot as a rule be amended and compensated for by an order as to costs.

We dismiss this appeal with costs.

Appeal dismissed.