

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4017 OF 2003

Raghbinder Singh

....Appellant

Versus

Bant Kaur & Ors.

....Respondents

JUDGMENT

AFTAB ALAM, J.

1. Bant Kaur, the widow of Lal Singh and Sukhwinder Singh and Paramjit Kaur, his son and daughter respectively filed a suit (No.877 of December 20, 1994) in the court of Civil Judge (Junior Division), Dhuri, claiming a sum of Rs.2,00,000.00 (rupees two lakhs only) as damages from Jang Singh and his two sons Raghbinder Singh and Jinder Singh (Harjinder Singh) who, according to them, had killed Lal Singh in an occurrence that took place at village Kumbherwal (P.S. Ranike), Tehsil Dhuri, District Sangrur, Punjab, on August 7, 1994 at 11:30am. The trial court by judgment and order dated March 7, 1998 found and held that the defendant nos.1 & 2

murdered Lal Singh over property dispute and they were, therefore, liable to compensate the plaintiffs for the loss of their dependency and mental agony suffered by them. The trial court then calculated the compensation payable to the plaintiffs and arrived at the sum of Rs.2,40,000.00 (rupees two lakhs forty thousand only). However, since the plaintiffs had claimed the lower sum of Rs.2,00,000.00 (rupees two lakhs only), it decreed the suit for that amount. The two defendants, Jang Singh and Raghbinder Singh, against whom the suit was decreed, took the matter in appeal (Civil Appeal No.43 of April 17, 1998). But the District Judge, Sangrur, dismissed the appeal by judgment and order dated July 27, 2000 without any modification in the decree passed by the trial court. The two defendants then carried the matter to the High Court in second appeal (RSA No.4562 of 2000). The High Court dismissed the second appeal by a brief order dated, December 18, 2000 observing that no case was made out for any interference in second appeal. Raghbinder Singh, alone, then brought up this matter in appeal by grant of special leave, impleading his father defendant no.1 before the trial court as proforma respondent no.4.

2. It appears that the civil proceedings for damages instituted by the widow and the children of the deceased moved much faster than the criminal proceedings against the three accused (defendants in the civil proceedings)

on the charge of committing murder of Lal Singh. And this seems to have provided to the appellant the first ground to challenge the judgments and orders passed against him by the courts. It was contended before this Court that both, the district judge and the High Court had dismissed the appellant's first appeal and the second appeal respectively even while their criminal appeal against the judgment and order of their conviction and sentence was pending before the High Court. As a matter of fact, even on May 5, 2003 when this Court granted special leave for filing the present appeal, the appellant's criminal appeal was pending before the High Court.

3. In order to get the position clarified, we called for a report from the Punjab and Haryana High Court, Chandigarh. The report is received and it is now on the record of the case.

4. From the report received from the High Court and the other materials on record it is evident that at the conclusion of the trial, Harjinder Singh, one of the three accused (defendant no.3 in the suit from which the present appeal arises) was acquitted but the other two accused, namely, Jang Singh and Raghbinder Singh (defendants 1 and 2) were convicted under section 302 read with section 34 of the Penal Code for committing the murder of Lal Singh and sentenced to undergo life imprisonment and a fine of Rs.1,000.00 each (and in default of payment of fine to undergo rigorous imprisonment

for six months) vide judgment and order dated August 17, 1996 by the Sessions Judge, Sangrur. Against the judgment of the trial court, Jang Singh and Raghbinder Singh preferred appeal (Criminal Appeal No.449-DB of 1996) before the High Court. The State too went up in the appeal (Criminal Appeal No.228-DBA of 1997) against the trial court judgment insofar as it acquitted the third accused, Harjinder Singh. A division bench of the High Court by judgment and order dated November 20, 2004 dismissed both the appeals, thus, maintaining the conviction and sentence awarded to the appellant and Jang Singh by the trial court. Against the judgment of the High Court, the appellant and Jang Singh came before this Court in SLP (Crl.) No.4500 of 2005. It was dismissed *in limine* by order dated August 18, 2005. The aforesaid developments, after the filing of the present appeal, take away the objection raised on behalf of the appellant.

5. However, Mr. Rishi Malhotra, counsel appearing for the appellant submitted that the suit, when it was filed was quite premature and the defect was such that it could not be cured by any developments after the filing of the suit. Learned counsel stated that the occurrence took place on August 7, 1994 and the suit was filed on December 20, 1994 when even the charge sheet might not have been filed. The date on which the suit was filed, the culpability of the defendants was yet to be judged in a criminal trial and,

therefore, the suit, according to him, was premature. The judgment in the criminal trial was pronounced on August 17, 1996 and, in the criminal appeal, by the High Court on November 20, 2004. Their SLP was dismissed by this Court on August 18, 2005. Mr. Malhotra contended that all these developments would not cure the defect in the suit which was not maintainable on the date it was filed.

6. At this stage, it may be said to the credit of Mr. Malhotra that he himself brought to our notice a decision of this Court in *Vithalbhai (P) Ltd. v. Union Bank of India*, (2005) 4 SCC 315. The decision in *Vithalbhai* arose from a suit for eviction that was instituted even before the expiry of the lease by efflux of time within the meaning of clause (a) of section 111 of the Transfer of Property Act, 1882. But in that case, this Court exhaustively considered the issue of a suit being premature and its consequences, and in paragraph 22 of the judgment summarized its conclusions, which are as under:

“22. We may now briefly sum up the correct position of law which is as follows:

A suit of a civil nature disclosing a cause of action even if filed before the date on which the plaintiff became actually entitled to sue and claim the relief founded on such cause of action is not to be necessarily dismissed for such reason. The question of suit being premature does not go to the root of jurisdiction of the court; the court entertaining such a suit and passing decree

therein is not acting without jurisdiction but it is in the judicial discretion of the court to grant decree or not. The court would examine whether any irreparable prejudice was caused to the defendant on account of the suit having been filed a little before the date on which the plaintiff's entitlement to relief became due and whether by granting the relief in such suit a manifest injustice would be caused to the defendant. Taking into consideration the explanation offered by the plaintiff for filing the suit before the date of maturity of cause of action, the court may deny the plaintiff his costs or may make such other order adjusting equities and satisfying the ends of justice as it may deem fit in its discretion. The conduct of the parties and unmerited advantage to the plaintiff or disadvantage amounting to prejudice to the defendant, if any, would be relevant factors. A plea as to non-maintainability of the suit on the ground of its being premature should be promptly raised by the defendant and pressed for decision. It will equally be the responsibility of the court to examine and promptly dispose of such a plea. The plea may not be permitted to be raised at a belated stage of the suit. However, the court shall not exercise its discretion in favour of decreeing a premature suit in the following cases : (i) when there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event; (ii) when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose; (iii) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the court's jurisdiction; and (iv) where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency. (See *Samar Singh v. Kedar Nath*.) One more category of suits which may be added to the above, is: where leave of the court or some authority is mandatorily required to be obtained before the institution of the suit and was not so obtained. ”

7. Thus, the decision in *Vithalbhai* is a complete answer to the point raised by Mr. Malhotra.
8. No other point was raised for our consideration.
9. We find no merit in the appeal and the same is dismissed, but with no order as to costs.

.....J
(AFTAB ALAM)

.....J
(R.M. LODHA)

New Delhi,
September 22, 2010