

Court No. - 29

Case :- FIRST APPEAL FROM ORDER No. - 52 of 2024

Appellant :- Indra Bahadur Yadav

Respondent :- Harkhas And Aam And Another

Counsel for Appellant :- Ram Milan Yadav,Om Prakash Yadav

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard learned counsel for the appellant.
2. The instant appeal has been filed to set aside the impugned judgement and order dated 22.12.2023 passed by Additional District Judge, Court No.3, Pratapgarh, in M.N.R./203/2014 (*Indra Bahadur Yadav vs. Harkhas Aam & others*) whereby the amendment application of the appellant was dismissed.
3. The contention of learned counsel for the appellant is that the appellant had filed a petition u/s 278 of the Indian Succession Act, 1925 (hereinafter referred to as "Act, 1925") for grant of letters of administration and during its pendency, he filed an amendment application which was rejected by the impugned order. It is further submitted that the impugned order is absolutely erroneous as if the amendment was allowed that would not change the nature of the suit as he simply wanted to add the date of the will dated 4.6.1996 in the plaint.
4. After considering the aforesaid submission, a question arises as to whether against the rejection of an amendment application under Order 6 Rule 17 of C.P.C. by the District Judge, while hearing the suit u/s 278 of the Act, 1925, an appeal lies under Section 299 of the Act, 1925.
5. On that issue, learned counsel for the appellant submits that as per Section 299 of the Act, 1925, every order passed by the District Judge in the proceeding under Section 278 of the Act, 1925, is appealable.
6. From perusal of Section 299 of the Act, 1925, it appears that under this Section only those orders are appealable which were passed by the District Judge in exercise of power, conferred upon him under the Act and same will be in accordance with the provision of CPC. For reference Section 299 of the Act, 1925 is quoted as under:-

"299. Appeals from orders of District Judge.—Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High. Court in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals."
7. The provision of appeal against an order is provided under Order 43 Rule 1 of C.P.C. For reference the Order 43 Rule 1 of C.P.C. is quoted as under:-

"1. Appeal from orders.- An appeal shall lie from the following orders under the

provisions of section 104, namely :-

(a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court 1[except where the procedure specified in rule 10A of Order VII has been followed];

(b) [***]

(c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;

(e) [***]

(f) an order under rule 21 of Order XI;

(g) [***]

(h) [***]

(i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;

(j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;

[(ja) an order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of rule 105 of that Order is appealable;]

(k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

(l) an order under rule 10 of Order XXII giving or refusing to give leave;

(m) [***]

(n) an Order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(na) an order under rule 5 or rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person ;

(o) [***]

(p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;

(q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;

(r) an order under rule 1, rule 2, [rule 2A], rule 4 or rule 10 of Order XXXIX;

(s) an order under rule 1 or rule 4 of Order XL;

(t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of

Order XLI to re-hear, an appeal;

(u) an order under rule 23 1b[or rule 23A] or Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court ;

*(v) [***]*

(w) an order under rule 4 of Order XLVII granting an application for review."

8. From perusal of the Order 43 Rule 1 of C.P.C., it is clear that against the rejection of an amendment application under Order 6 Rule 17, no appeal lies. Appeal is creation of statute which cannot be inferred without statutory provision. Section 295 of the Act provides that if the proceeding u/s 278 of the Act, 1925 is contentious, the same will proceed in the form of regular suit, according to the provision of C.P.C. Section 295 of the Act, 1925 is quoted as under:-

"295. Procedure in contentious cases.—In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (5 of 1908) in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant."

9. On combine reading of Sections 299 and 278 of the Act, 1925, it is clear that contentious proceeding u/s 278 of the Act, 1925 will proceed as regular suit and appeal against any order, passed during the proceeding u/s 278 of the Act, 1925, will be in accordance with the C.P.C. Therefore, this Court holds that the appeal u/s 299 of the Act, 1925 will lie only against those orders that are appealable as per Order 43 Rule 1 C.P.C. and rejection of the amendment application under Order 6 Rule 17 C.P.C. does not find place in Order 43 Rule 1 C.P.C.

10. In view of the above analysis, this Court is of the view that against the rejection of amendment application under Order 6 Rule 17 C.P.C. during the proceeding of Section 278 of Indian Succession Act, 1925, no appeal lies u/s 299 of the Act, 1925 and the same can be challenged by the appellant either in revision u/s 115 C.P.C. or under the supervisory jurisdiction of the High Court, under Article 227 of Constitution of India.

11. Accordingly, the present appeal is **dismissed** with a liberty to the appellant to challenge the impugned order in appropriate proceeding.

Order Date :- 21.2.2024

Vandana