

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment : 14.9.2010

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RSA No.131/2009 & CM No.14783/2009

RAVINDER KUMAR

.....Appellant

Through: Mr. Pradeep Jain, Advocate.

Versus

- 1. THE CHAIRMAN, CBSE SHIKSHA KENDRA**
- 2. THE PRINCIPAL, GOVT. BOYS SR.SECONDARY SCHOOL,
KARAMPURA, NEW DLEHI**
- 3.MUNICIPAL CORPORATION OF DELHI**
- 4.DELHI ADMINISTRATION**
- 5.UNION OF INDIA**
- 6.THE CHAIRMAN, RAILWAY BOARD.**

.....Respondents

Through: Mr.Amit Bansal, Advocate for
R-1/CBSE.
Mr.Majira Dasgupta for Mr. Shyel
Trehan, Advocate for R-3/MCD
Ms.Geetanjali Mohan & Mr.Ketan
Madan, Advocates for R-6/Railway
Board.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.(Oral)

1. This second appeal has impugned the judgment and decree dated 30.9.2009 which had endorsed the finding of the Trial Judge dated 23.7.2008 dismissing the suit of the plaintiff.

2. Present suit was a suit for declaration, mandatory and permanent injunction. Contention of the plaintiff that he was born on 5.8.1961 but the Central Board of Secondary Education (CBSE) had incorrectly recorded his date of birth as 1.7.1960 in the certificate issued to him. By way of the present suit, he had sought

a declaration with a direction to the CBSE to endorse his correct date of birth i.e. 5.8.1961.

3. The case of the plaintiff was that he was borne to his parents Lila Wati and Roop Lal on 5.8.1961 at District Hamirpur. He had three other siblings; his elder brother Rajender Kumar was born on 26.12.1959; his younger brother Vinay Kumar was born on 24.4.1964; his sister Sunita Rani was born on 14.11.1967. He was the second sibling. He was born on 5.8.1961 and not on 1.7.1960. This was evident from the fact that his elder brother Rajender Kumar was born on 26.12.1959; he could not have been born within less than seven months of the birth of his elder brother. In February 1985 he discovered his correct date of birth. Appropriate application in this regard was filed on 10.7.1985 before the Assistant Education Officer of the MCD for the correction of his date of birth in his primary school record which was accordingly corrected. Pursuant thereto on 17.7.1985, the appellant/plaintiff made an application before CBSE; another application dated 11.2.1987 was also filed. Stand of the department i.e. CBSE was that no correction can be made after one year of the declaration of the result. His representation was rejected.

4. Petitioner was constrained to file a writ petition registered as CWP No.1429/1988. Thereafter the writ petition was withdrawn with liberty to the plaintiff to pursue his remedy by way of a civil suit. In the course of these proceedings on 24.8.1993, the appellant/plaintiff was employed by the Railway Board as a stenographer.

5. Seven issues were framed by the Trial Judge. Issue no.4 is relevant in this context; it inter alia reads as follows:

“Whether the plaintiff is entitled to a decree of declaration? OPP”

6. Three witnesses had been examined on behalf of the plaintiff which included the plaintiff himself, his elder brother as also his mother. Plaintiff had also summoned the record from the Office of the Death and Birth Department, Hamirpur. Birth certificate, Ex.PW-4/1 had been proved evidencing his date of birth as 5.8.1961. The defendant/CBSE department had examined one witness in defence; DW-1 had deposed that as per their rules no correction of the date of birth can be entertained after one year of the issue of the qualifying certificate.

7. Admittedly, the Higher Secondary Examination result of the plaintiff had been declared in 1977. First representation for correction of the date of birth had been sent to the department i.e. the CBSE in 1987 i.e. after a lapse of a decade. The birth certificate Ex. PW-4/1 produced before Trial Judge had indicated the name as Subhash whereas the name of the plaintiff/appellant was Ravinder Kumar. Testimony of PW-2, the mother of the plaintiff, was examined in detail by the Trial Judge; her contrary stand and her explanation furnished for the mistake in the name of the plaintiff was appreciated, the explanation had however been rejected. The Trial Judge had held that the circumstances in which the plaintiff had alleged that he came to know about his date of birth also did not inspire confidence. Issue was accordingly decided against the plaintiff.

8. Issue no.1 is also relevant which related to limitation, this issue inter alia read as follows:

“Whether the suit is within time? OPP”

9. This issue was also decided against the plaintiff. It was held that the present suit which was a suit for declaration is governed by Article 58 of the Limitation Act; cause of action had accrued for the first time in February 1987; suit having been filed in 1994 is beyond limitation. Suit of the plaintiff was accordingly dismissed.

10. The first Appellate Court had endorsed these findings of the Trial Judge.

11. Counsel for the appellant has contended that these findings of the courts below have incorrectly recorded his date of birth which findings call for an interference by the second Appellate Court. Learned counsel for the appellant has placed reliance upon a judgment reported in AIR 2008 (NOC) 2795 (P &H) Pervinder Kumar Vs. Secretary, Central Board of Secondary Education, Haryana Circle to support his submission that an order for correction of the date of birth can be passed even by the second Appellate Court. Only the head note of the said judgment has been filed on record, certified copy of the said judgment is not on record. The head notes make a reference to the provisions of Article 226 of the Constitution of India meaning thereby this order was passed in a writ petition and not in a second appeal.

12. Learned counsel for the respondent has opposed the maintainability of this appeal. Reliance has been placed upon a judgment of the Apex Court reported in (2000) 7 SCC 413

Thimmaiah Vs. Ningamma to support his submission that the scope of interference by the High Court in a second appeal is only on a substantial question of law and even if there is mis-appreciation of evidence on facts the same cannot be interfered with in second appeal.

13. This is a second appeal. Substantial questions of law have been formulated on page 2 and are nine in number; they inter alia read as follows:-

“A. Whether in view of facts and circumstances of the present case, proved public documents namely certificates issued by Registrar Births & Deaths i.e Birth Certificate of eldest brother PW4/3, Death Certificate of Eldest brother PW4/4, Birth Certificate of Plaintiff PW4/1 and PW4/2 under Sec. 35 of Indian Evidence Act and further Oral evidences of Mother, Elder Brother, Appellant on oath in the witness box, and other evidence by way of affidavits of father, Gram Pradhan etc., Gazetted Officers, Expert Opinions and Literature does not falls under the four corners of the definition of proof under Indian Evidence Act and whether the above evidence on record does not shift the onus on adverse parties to disprove the facts and whether disproving facts without clinchable evidence based on mere suspicion, surmises, conjectures and allegations is permissible under law and can take place of the proof?

B. Whether Appellant have still fallen short for proving his correct date of birth despite the fact that none of evidence as so produced whether documentary or oral have been disputed or disproved by any of the respondents and especially when any of the respondents had not produced any evidence to disprove the claim of the Appellant?

C. Whether in view of facts and circumstances of the present case, name mentioned in Birth Records of the Registrar of Births & Deaths is admissible in evidence without proving the identity of named person by adverse party and whether evidence of mother and brother on this issue in the witness box on oath has no weight and evidentiary value and can be discarded? Whether ignoring quality evidence and seeking quantity of evidence is permissible under the law?

D. Whether date of birth mentioned in CBSE Certificate is conclusive and the conclusion, findings and issuance of corrected certificate showing claimed DOB i.e. 05.08.1961 by Statutory Body, namely M.C.D., a limb of the Govt. of India i.e. Respondent No.3 (M.C.D.) at undisputed point of time are so unreasonable or so unconscionable that warrants departure from the "Wednesbury Principle of Reasonableness" approved by Hon'ble Supreme Court in number of cases?

E. Whether the Respondent No.6 has acted contrary to their rules contained under Indian Railway Establishment Code and especially rule contained in para No.225 which are the rules framed in consonance with Article 309 of the Constitution of India? Whether the respondent No.6 can ask essentially for CBSE certificate as the basis of proof when the rules contemplate that even a school leaving certificate can be taken on record which, admittedly, has been amended in the present case and the correct date of birth 5.8.61 has already been entered, and whether Respondent No.6 can deny the appellant his job which is enshrined under Article 21 of the Constitution of India on flimsy and certain extraneous ground which is contrary to the reading of the rules in question?

F. Whether pronouncing judgment without analysis of quality evidence, discarding the evidence on record without reasoning and finding for want of quantity of evidence which tantamount to perversity is permissible under law?

G. Is it lawful to consider the Appellant overage by Respondents for service purposes at undisputed point of time in 1985 when even there was no vacancy published and Appellant voluntarily took initiative to get his date of birth in the school records corrected?

H. Whether it is lawful to suppress, distort and doubt the correctness of facts without any contradictory evidence on record, and instead of impartially endeavoring to unravel the truth to bent upon persecuting the Appellant to get him somehow convicted. Whether both the Courts below have not committed the serious error in presuming the guilt of the appellant first and try thereafter to find out one or other reason to justify such a conclusion without an objective, independent and impartial analysis or assessment of the materials, before recording a finding on the guilt of the appellant. Insignificant things have been unduly magnified. Whether period prescribed by CBSE under its

regulations is something like prescribing a period of limitation for filing a suit?

I. The action of Respondent No.6 is against the spirit of Hon'ble Supreme Court referring to the lack of sensitivity on the part of authorities and their attitude of 'let the matter get settled in court' in one of the cases a Bench comprising Hon'ble Mr. Justices Ashok Bhan and Altamas Kabir observed "Unfortunately, a dangerous attitude – resulting in institutional damage – is developing, that justice is required to be done by the courts." The attitude was a betrayal of the Constitution as well as laws". "Every and any authority working under the statute has to discharge its duties in a just manner, otherwise people will lose faith in governance."

14. All these questions border and boil down to the date of birth of the appellant. They all are fact based. The memo of appeal has engrafted submissions which are all facts based. The arguments urged before this Court are also based on the submission that the two Courts below had not given due weightage to the evidence led before the Trial Court; the thrust of the contention being that if the elder brother of the appellant/plaintiff had been born on 26.12.1959, it was biologically impossible for his mother to have given birth to another child on 1.7.1960. These contentions urged before this Court had been appreciated and gone into by both the Courts below. Testimony of mother was held to be shaky. Ex.PW-4/1 did not conform to the name of the plaintiff who was Ravinder Kumar; Ex.PW-4/1 referred to Subhash. The contention of the learned counsel for the respondent that a child can be born even after a seven month pregnancy is also a forceful contention and cannot be ignored.

15. Be that at it may, arguments addressed before this Court all relate to the appreciation of fact based evidence. This is not a case of a perverse finding recorded by the Courts below.

In the judgment of Thimmaiah cited supra, the Supreme Court has held as follows:

“.....this Court has noted that the High Court has no jurisdiction to entertain a second appeal “on the ground of an erroneous finding of fact however gross or inexcusable the error may seem to be”. In other words, if there is some evidence and the appreciation of the evidence is erroneous, a second appeal will not lie.

The Apex Court has time and again held that if there is some evidence in support of the finding of the lower Court, the High Court is not entitled to reassess the evidence and to arrive at a different conclusion. This Court is bound to act within the parameters and the fetters contained in Section 100 of the Code of Civil Procedure; unless and until a substantial question of law has arisen, there is no scope for interference.

16. No such substantial question of law having arisen in this matter, this appeal is dismissed in limine; the pending application is also dismissed.

INDERMEET KAUR, J.

SEPTEMBER 14, 2010
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