
(2016) 01 AHC CK 0039
In the Allahabad High Court
Case No : Second Appeal No. 51 of 2016

Akhil Bhartiya Dayanand Sevashram Sansthan	APPELLANT
Vs	
Salik Ram And 5 Others	RESPONDENT

Date of Decision : 25-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2016) 3 ADJ 779 : (2016) 116 ALR 94 : (2016) 1 ARC 575

Hon'ble Judges : Pramod Kumar Srivastava, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pramod Kumar Srivastava, J. - Heard learned counsel for the appellant on admission of Second Appeal and perused the record.

2. In Original Suit No. 1299/1987 (Akhil Bhartiya Dayanand Sevashram Sansthan v. Salik Ram and Ors.) the plaint case was that plaintiff is a tenant of defendants, and has been paying regular rent for its use and occupation of building in question. But the defendants had illegally and unauthorisedly evicted the plaintiff from said building, therefore the plaintiff has filed suit for recovery of possession of his building under his tendency.

3. The defendants had filed written statement, by which plaint case was denied. They further pleaded that plaintiff was never in tenancy of plaintiff nor was in the possession over the disputed property. They pleaded that plaintiff had been hanging a board in front of disputed property on Chabutara, which was removed by the police and not by the plaintiff. The suit of plaintiff is liable to be dismissed.

4. After affording an opportunity of hearing to the parties, the Court of Additional Civil Judge (Junior Division), Court No. 1, Varanasi, had dismissed the original suit by its judgment dated 20.04.2004, in which finding of fact was given to the effect that plaintiff was never a tenant in disputed house, and he was not evicted by the defendants but by the police. It was also held by the trial court that

plaintiff had been hanging a play-card on the Chabutara situated in front of house of defendants and used it to sale medicines. He was neither tenant nor any deed of tenancy was executed. The trial court had held that plaintiffs suit was not proved.

5. Aggrieved by the judgment of the trial court, Civil Appeal No. 52 of 2004 (Akhil Bhartiya Dayanand Sevashram Sansthan v. Salik Ram and Ors.) was preferred by the plaintiff of the original suit. This appeal was heard and dismissed by the judgment dated 25.08.2015 of the Court of Additional District Judge, Court No. 9, Varanasi. In its judgment, the first appellate court had meticulously considered the facts, evidences, circumstances and arguments of the parties and gave specific finding that from perusal of the evidences it is not proved that plaintiff was ever a tenant of the defendants. It was also held in this judgment that plaintiff had failed to prove his alleged tenancy of disputed property, and the findings of the trial court are correct, which are confirmed.

6. Aggrieved by the judgment of the trial court as well as the first appellate court, the present Second Appeal was preferred by the plaintiffs of original of original suit.

7. Learned counsel for the appellant contended that from the evidences it was proved that defendant-plaintiff was inducted in tenancy of defendants and was handed over the possession of the disputed building, and had been paying the rent. He contended that the basis of the suit of tenancy was undated agreement, which was executed by the landlord. He also contended that trial court had erroneously set up a third case of lease, which was not a case of parties. He also contended that lower courts had erroneously not framed the issue of tenancy of the plaintiff and passed judgment ignoring the available evidences, therefore their judgments are liable to be set aside. So the appeal should be admitted for being allowed.

8. A perusal of the record reveals that in spite of many arguments raised by plaintiff, the only dispute between the parties has been as to whether there existed any relationship of the tenant and landlord between the plaintiff-appellant and defendant-respondent. This was a question of fact that can be determined and decided on the basis of evidences, as has been done by the two lower courts. There is no question of law involved in it.

9. So far argument relating to third case of lease set up by trial court is concerned, this argument is found unacceptable. The word lease was mentioned at one place in judgment of first appellate court while giving details of arguments of appellant's side. But neither trial court nor the first appellate court had considered the case of any party beyond their pleading. No finding was given by any court that was unconcerned to the pleadings of parties.

10. The question of relationship of landlord and tenant between the parties was only point to be determined in the trial court and in appeal. There was no misunderstanding in the parties on this point, and on this point they had led

evidences and contested the original suit and appeal. No prejudice was caused to plaintiff-appellant on framing of issue.

11. In *Makhan Lal Bangal v. Manas Bhunia*, (2001) 2 SCC 652, the Apex Court had held :

"21. However, in the facts of the present case, we are of the opinion that the defective framing of the issues though material, has not vitiated the trial inasmuch as we are satisfied that the parties have gone to the trial with full knowledge of the allegations and counter-allegations made in the pleadings. None of the parties has complained of prejudice. None had made a prayer to the High Court, before going for trial, for amending or striking down any of the issues. We need say no more about the issues."

12. In *Swamy Atmananda v. Sri Ramakrishna Tapovanam*, (2005) 10 SCC 51, the Supreme Court had held as under:

"39. If the parties went to the trial knowing fully well the real issues involved and adduced evidence in such a case, without establishing prejudice, it would not be open to a party to raise the question of non-framing of particular issue."

13. In *Nedunuri Kameswaramma v. Sampati Subba Rao*, (1963) 2 SCR 208, the Apex Court had held :

"No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion. Neither party claimed before us that it had any further evidence to offer. We, therefore, proceed to consider the central point in the case, to which we have amply referred already."

14. The real question and point to be determined in the case was known to parties and they had led their evidences and contested their case on it; and the judgments had been passed on it, without chance of any prejudice. Although issue was framed on general averment in plaint, but parties had no confusion regarding cause of action or real point of dispute between, and they had not made request either in trial court or in first appellate court regarding adducing any further evidence on any point, therefore there is no probability of any prejudice to appellant due to alleged non framing of any particular issue on point of relationship of alleged tenancy. Therefore the contentions of appellant in this regard are unacceptable.

15. The trial court and first appellate court had separately considered the facts and evidences of the parties in light of the arguments preferred by them and

both the courts have separately gave their findings to the effect that their existed, no relationship of landlord and tenant between the plaintiff-appellant and defendant-respondents. They have given specific finding that plaintiff had been doing his business of selling the medicines on the Chabutara in front of disputed property by hanging over a play-card, and was not in occupation of property in question. Both the courts below have separately given finding that plaintiff was neither in occupation of disputed property. Even from Chabutara, he was removed by police and Administration, and not by the defendant-respondents. With such findings, the first appellate Court had confirmed the findings of the trial court and dismissed the appeal. Thus there has been concurrent finding of facts of two courts below on the basis of evidences, and such finding appears to be correct and acceptable. There appears no infirmity in the findings of court below.

16. On examination of the reasonings recorded by the trial court, which are affirmed by the learned first appellate court in first appeal, I am of the view that the judgments of the trial court as well as the first appellate court are well reasoned and are based upon proper appreciation of the entire evidence on record. No perversity or infirmity is found in the concurrent findings of fact recorded by the trial court that has been affirmed by the first appellate court to warrant interference in this appeal. No question of law, much less a substantial question of law, was involved in the case before this Court. None of the contentions of the learned counsel for the appellant-plaintiffs can be sustained.

17. In view of the above, this Court finds that no substantial question of law arises in this appeal. The second appeal is dismissed.