
(1967) 07 DEL CK 0001

In the Delhi High Court

Case No : Civil Revision Appeal No. 5 of 1967

Fikson Trading Company

APPELLANT

Vs

Qamaruddin

RESPONDENT

Date of Decision : 31-07-1967

Acts Referred:

Citation : (1968) 4 DLT 154

Hon'ble Judges : Hardayal Hardy, J

Bench : Single Bench

Advocate : V.K. Kaushal, Vijay Kishan, R.L. Tandon and H.R. Sawhney, for the Appellant;

Judgement

H. Hardy, J.

(1) The petitioner Fikson Trading Company was plaintiff in a suit instituted by it in the Court of a Subordinate Judge 1st Class Delhi seeking a declaration to the effect that the plaintiff was owner of the plto in dispute and that the defendant had no title to or interest therein. It was alleged that the plaintiff was in possession of the plto in dispute in its own right-and had put up strnctures upon it at its own expense and that.the defendant-respondent was wrongly alleging that he was the owner of the superstructures and bad let out the premises to the plaintiff.

(2) It appears that before the plaintiff brought its suit, the defendant had instituted a suit against it in the Court of Small Causes Delhi for recovery of Rs. 350.00on account of arrears of rent in respect of the property in dispute. The defendant Therefore, while denying the plaintiff's claim in the suit for declaration, raised a preliminary objection and alleged that the suit was liable to be stayed u/s 10 of the Code of Civil Procedure. Defendant's objection prevailed and the learned Subordinate Judge by his order dated 2nd November, 1966 stayed the suit of the plaintiff.

(3) I he present revision petition is directed against the said older of the learned

Subordinate Judge. Before me Mr. Vijav Kishan, learned counsel for the petitioner has cited a large number of case 1916 All 26 Champat v. Ttoi Rnm, Mayat Mohammad v. Bar Gaushala Ltd. Lyapur, Puvvada Srtyanarayanamati hy v. Gadepalli Sundara Rao, Mohd. Yusuf v. Abdul Wahid and others, Pateswari Parshad Singh v. A. S. Gilan, Ram Narain v. Ram Sarup. In all these cases it has been held that an incidental determination of an issue of title in a suit for rent of the nature cognizable in a Court of Small Causes does not finally estop the parties to such suit from raising the same issue in a suit brought to try the title. The submission made by the learned counsel is that a plea of res judicata on general principles, can be successfully taken in respect of judgments of Courts of exculsive jurisdiction but a Court of Small Causes cannot be regarded as one having exculsive jurisdiction to decide a particular matter. In as much as the question of title could not be decided by the Court of Small Causes Delhi a judgment rendered by it would not operate as res-judicata in the title suit brought by the petitioner. The matter in issue in the suit instituted by the petitioner would Therefore not a directly and substantially in issue in the suit instituted in the Court of Small Causes. In the circumstancas, the learned Subordinate judge had acted illegally or with matelial irregularity in the exercise of his jurisdiction in staying the petitioner"s suit.

(4) On behalf of the respondent a preliminary objection has been raised by Mr. Hans Ra] Sawhaey to the maintainability of this revision petition. Ha has argued that the order made by the learned Subordinate Judge does not involve any error of jurisdiction. I he learned Subordinate Judge had jurisdiction to decide whether suit the instituted by the petitioner should be stayed or nto. If in the exercise of its justifaction any error of law or fact has been committed it is not open to this Court in the exercise of its revisional jurisdiction u/s 115.Civil procedure Code to interfere with the order made by. the. .lower court. In this connection the learned counsel has directed my attention to the three decisions of the Supreme Court in Manindra Land and Building Corporation Ltd., v. Bhutnath Banerjee, Vohra Abbasbhail Alimahomed v. Haji Gulamnabi Haji Safibhi and Pandurang Dhondi Chougule and others v. Maruti Hart Jadhav.

(5) Thare is no doubt, as has been held by their Lordships of the Supreme "Court, that the High Court connto while exercising its jurisdiction u/s 110 CPC correct error? of fact however gross they may be or even eirors .of law and that it can only do so when the said errors have relation to the juridiction of the Court, to. .try the dispute itself the present case however, appears to me to be one which comes within the purview of section 115 CP.C. as the error involved therein is in my opinion, an error in relation to the jurisdiction of the Court. An order, u/s 10 C. P.C is in my "judgment not aa order dealing with procedure; it is an " order dealing with. the jurisdiction of the Court, because when an order is passed by the Court staying a certain suit it affects the jurisdiction of the Court. The result of the order is that the suit cannot go on .if it is stayed and when such is the case the decision must affect the jurisdiction to,the Court. The view I have taken of section 10 CPC is supported by a. Bench decision of the High Court of

bombay in Jai Hind Iron Mart v. Tulsiram Bhagwandas where Chagla C.J. sitting with Gajendragadkar J. (as he then was) held :-

"An order u/s 10 Civil P.C. is not an order dealing with procedure, it is an order dealing with the jurisdiction of the Court, because u/s 10 whatever order is passed affects the jurisdiction of the Court. " It is a mandatory provision and the suit cannot go on if it is stayed and Therefore the decision u/s 10 must affect the jurisdiction of the Court one way or the other, and every decision which deals with the jurisdiction of the Court is a decision which affects the right of the parties." (6) To the same effect are the observations of a learned single Judge of the High Court of Allahabad in Raw, Narain v. Raw Swarup 7 The other objection raised by the learned counsel for the respondent is that the revision petition has become infructuous because the suit instituted by the respondent against the petitioner in the Court of Small Causes, has since been decreed and if the learned counsel for the petitioner is right in his submission that the decree passed by the Court of Small Causes cannot operate as res judicata in the suit filed by the petitioner, it is open to him to move the lower Court for proceeding with the suit.

(7) Learned counsel for the petitioner informs me that "against the decree passed" by the Court of Small Causes a revision petition has already been admitted to hearing by this Court. In any event. I fail to see how the decision of the suit by the Court of Small Causes can have any effect on the present petition. If there is an error in the order of the lower "Court staying the suit, as I think there is, then the order has to be set aside and the petitioner cannot be asked to seek " its remedy by approaching the very Court against whose order he, has come up to this Court. The fact that the suit against the petitioner has already been decreed by the Court of Small Causes is also no bar to his getting an order from this Court. If anything, it rather helps the petitioner in asking for a direction that the lower Court should proceed" with "the suit instituted by it.

(8) For the foregoing reasons, the revision petition is" accepted with costs.