

(2000) 08 MP CK 0060
In the Madhya Pradesh High Court
Case No : Second Appeal No. 609/95

Ganga Ram

APPELLANT

Vs

Choudhary Jai Kumar Jain and others

RESPONDENT

Date of Decision : 17-08-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)

Citation : (2001) 1 MPHT 136

Hon'ble Judges : S.S. Saraf, J

Bench : Single Bench

Advocate : Shri N.K. Patel, for the Appellant; Shri R.K. Verma, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a Second Appeal u/s 100 of the CPC against the judgment and decree dated 28-8-1995 passed by the learned IXth Additional District Judge, Jabalpur in Civil Appeal No. 60-A/95 arising out of the judgment and decree dated 23-10-1992 passed by the learned XIVth Civil Judge, Class-II, Jabalpur in Civil Suit No. 91-A/92.

2. The facts as emerging from the judgments of the Courts below are these: The appellant/defendant is the tenant of a shop bearing house No. 419 East Niwarganj Ward, Jabalpur commonly known as Jawaharganj or Lordganj (which shall hereinafter be referred to as "Suit Premises") which has been used for non-residential purposes. Choudhary Ratan Chand Jain, original plaintiff, filed civil suit for eviction of the appellant/defendant from the suit premises on the ground of bonafide need of his son Dhananjay Kumar Jain, the respondent/plaintiff No. 5. The appellant/defendant challenged the above ground for eviction on the fact that there was a family partition and the suit premises fell into the share of Choudhary Jai Kumar Jain, the original respondent/plaintiff No. 2 (since dead) and therefore as per provisions of law the suit premises could not be got vacated

for the alleged requirement of Dhananjay Kumar Jain, the brother of Choudhary Jai Kumar Jain. The Trial Court found that the suit premises is bonafide required by Dhananjay Kumar Jain for starting his business and that there was no partition in the family and therefore the suit premises did not fall into the exclusive share of Choudhary Jai Kumar Jain. The learned Trial Court, thus, decreed the suit in plaintiffs/respondent's favour. Against such judgment and decree, the appellant/defendant preferred an appeal before the District Court. In the first Appellate Court, the appellant/defendant filed an application under Order 41 Rule 27, CPC alleging that he got a copy of the partition deed which may be permitted to be filed as an additional evidence before the first Appellate Court. The application was allowed and the appellant/defendant was permitted to file the document. The learned first Appellate Court, however, dismissed the appeal confirming the decree of eviction passed against the appellant/defendant by the impugned judgment and decree dated 28-8-1995 passed by IXth Additional District Judge, Jabalpur in Civil Appeal No. 60-A/95. Being aggrieved with the said judgment and decree dated 28-8-95, this Second Appeal has been filed by the appellant/defendant.

3. While admitting this appeal u/s 100, CPC, the following substantial question of law was formulated by this Court:--

"Has the first Appellate Court grossly erred in law in not considering the effect of the document dated 30-3-1986 (Annexure A-I) ?"

4. The contention of the learned counsel for the appellant/defendant is that the partition deed Annexure A-I was admittedly filed in the first Appellate Court but the first Appellate Court did not consider this document and therefore it grossly erred in law and consequently the decree passed by the first Appellate Court is not sustainable in law. On the other hand, the learned counsel for the respondents/plaintiffs has urged that the matter concerning the document Annexure A-I has been considered at length by the first Appellate Court and therefore no substantial question of law arises in the present appeal.

5. Admittedly, the document dated 30-3-1986 Annexure A-I is the alleged partition deed. The facts that there was a partition in the family and the suit premises was given in the share of Choudhary Jai Kumar Jain were extensively considered by the first Appellate Court. This is the concurrent finding of fact based on the proper appreciation of evidence that no partition was effected and suit premises was not given to Jai Kumar Jain's share. There is, thus, concurrent finding of fact that no partition was effected in the family and the suit premises was not given in the exclusive share of Choudhary Jai Kumar Jain. No question of law would arise as alleged by the appellant/defendant, unless the above findings of fact are re-opened and therefore it cannot be said that a substantial question of law is involved in this appeal. The mere non-mention of the alleged deed Annexure A-I in the judgment of the first Appellate Court does not mean that it has not been considered by the first Appellate Court when it is clear from the record that the point of partition has already been considered by the first

Appellate Court.

6. It is also clear from the record that the disputed deed Annexure A-I is the deed signed only by the father of Choudhary Jai Kumar Jain and Dhananjay Kumar Jain and therefore it cannot be inferred that the disputed deed is the deed of partition as it is not signed by all the affected members of the family.

7. For the reasons stated above, it is apparent that the matter pertaining to the alleged deed Annexure A-I has already been considered by the first Appellate Court which has given clear finding that there was no partition in the joint family and therefore merely because the disputed document Annexure A-I has not been mentioned in the judgment of the first Appellate Court, it cannot be said that this document has never been considered by it. The learned counsel for the appellant/defendant has placed reliance on decision of this Court in Bhagwandas Pawaiya Vs. Regd. Firm Kailash Narain and Bros. 1994 JLJ 174. In the facts and circumstances of the given case, the ratio in Bhagwandas Pawaiya's case (supra) is not applicable in the present case.

8. In view of above, I do not see any reasonable ground to interfere in the concurrent findings of fact which is based on the proper appreciation of evidence. The appeal is, therefore, dismissed.

9. Second Appeal dismissed.