
(1983) 04 AHC CK 0050
In the Allahabad High Court
Case No : Writ Petition No. 657 of 1980

Ganga Ram Sharma

APPELLANT

Vs

Smt. Kashmiri Devi and Others

RESPONDENT

Date of Decision : 13-04-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 5

Citation : (1983) 04 AHC CK 0050

Hon'ble Judges : K.S. Varma, J

Bench : Single Bench

Advocate : S. Mirza and I.P. Shukla, for the Appellant; D.K. Trivedi, for the Respondent

Final Decision : Allowed

Judgement

K.S. Varma, J.—In order to appreciate the controversy between the parties a few facts have to be stated in detail. Smt. Kashmiri Devi claiming to be the landlord of the accommodation in suit filed a suit for eviction against Ganga Ram Sharma, her tenant. According to the Plaintiff the rent of the disputed accommodation was Rs. 90/- per month and the same had not been paid even though a notice of demand in respect at Rs. 3240/- representing the arrears of rent and for terminating the tenancy was served on-opposite party No. 1 since a part of the claim had become barred by time, she had claimed for a decree for a period from 18-2-1971 to 18-2-1974.

2. The suit was contested by Ganga Ram Sharma on the ground that Smt. Kashmiri Devi is not the landlord and himself claimed to be the owner of the disputed accommodation. Ganga Ram Sharma also claimed that he is not a defaulter and that no rent is due against him. The case of Ganga Ram Sharma is that he had executed a sale deed in favour of Smt. Kashmiri Devi in respect of the disputed accommodation and simultaneously executed a deed of reconveyance. In the deed of reconveyance it was mentioned that the disputed accommodation shall be reconveyed if within a year the entire sale consideration

is paid to Smt. Kashmiri Devi. The period fixed by the deed of reconveyance was extended upto 15-3-1973. The case of Ganga Ram Sharma was that he tried to pay the amount during this period to Smt. Kashmiri Devi but she refused and consequently a suit was filed for specific performance of contract which was decreed on 11-1-1977. Ganga Ram Sharma also claimed that he had complied with the decree in order to get the decree for specific performance of contract executed. In a nutshell the case of the Petitioner is that he is not the tenant of the accommodation in question. The trial Court decreed the suit of Smt. Kashmiri Devi for ejectment of Ganga Ram Sharma from the accommodation in question and for arrears of rent. A copy of the judgment rendered by the trial Court is annexure 1 to the petition. A perusal of the said judgment would indicate that one of the issues framed in the case was whether Smt. Kashmiri Devi was the landlord of the accommodation in question and whether she was entitled to rent at the rate of Rs. 90/- per month. A perusal of the judgment also indicates that the dispute between the parties was whether the relationship of landlord and tenant existed between Smt. Kashmiri Devi and Ganga Ram Sharma. It is not in dispute that aggrieved by the judgment and decree annexure-1 Ganga Ram Sharma filed an appeal in the Court of the District Judge, Sitapur. In the appeal the decision annexure-1 has been challenged which mean that the question whether Smt. Kashmiri Devi is or is not the landlord of the accommodation is in dispute in appeal. In other words the question whether the relationship of landlord and tenant exists between Smt. Kashmiri Devi and Ganga Ram Sharma or not was in issue before the trial Court and is in issue before the Court of Appeal.

3. It appears that during the pendency of appeal an application was moved by Smt. Kashmiri Devi purporting to be one under Order XV Rule 5 CPC and it was prayed that the defence of Ganga Ram Sharma in the Court of appeal be struck off on account of noncompliance of Order XV Rule 5 CPC as it stands amended by the State of Uttar Pradesh. Before the District Judge it was contended on behalf of Smt. Kashmiri Devi that since the trial Court has held the Appellant to be a tenant and he has not deposited the amount as required by Order XV Rule 5 CPC the defence of the Appellant has to be struck off. The appellate Court by its order dated 3-3-1979 directed that the appeal is struck off for breach of the provisions of Order XV Rule 5 Code of Civil Procedure. The order is annexure-2 to the writ petition. This order has been challenged by Ganga Ram Sharma in this writ petition.

4. The contention of the learned Counsel for the Petitioner is that in the trial Court there was a dispute whether Smt. Kashmiri Devi is the landlord of the accommodation in question and the question whether relationship of landlord and tenant existed or not between Smt. Kashmiri Devi and Ganga Ram Sharma. This question was again involved in the appeal preferred by Ganga Ram Sharma before the District Judge, Sitapur. It is contended that since the question of landlord and tenant is in dispute before the appellate Court the provision of Order XV Rule 5 CPC will have no application. The said provision, according to

the Petitioner applies only to those cases in which admittedly there is no dispute that the relationship between landlord and tenant exist between the Plaintiff and the Defendant and the suit for ejectment or for arrears of rent or for both proceed on the assumption of the existence of relationship of landlord and tenant between the parties. Since this question is in issue in appeal, the provision of Order XV Rule 5 CPC will not apply in the instant case.

5. On the other hand it is contended by the learned Counsel for opposite party No. 1 that the appeal is a continuation of the suit and if the provisions of Order XV Rule 5 CPC can be invoked before the trial Court the similar provision would apply before the appellate Court. It was thus contended that the IV Additional District Judge Sitapur was justified in striking off the appeal under Order XV Rule 5 Code of Civil Procedure.

6. In *Lakhan Lai v. Lakshmi Pustakalaya*, Pukharayan 1978 AWC 707 this Court held that in a case where the lessee does not admit his liability and contends that no amount of rent or damages was due from him. Court has no jurisdiction to strike off his defence. This decision is applicable to the facts of the present case. In the instant case there is a specific case put forward by Ganga Ram Sharma that he is not tenant of the accommodation in dispute and the amount claimed by Smt. Kashmiri Devi is not the rent of the accommodation.

7. In this view of the matter, in my opinion, the decision referred to above *Lakhan Lai v. Lakshmi Pustakalaya*, Pukharayan (Supra) applies to the facts of the instant case. Learned Counsel for the Petitioner relied upon *Sanyukta Prantiya Arya Pratinidhi Sabha, Uttar Pradesh Vs. Mewa Lal Gupta*, . In that case a suit for ejectment and arrears of rent was filed in which the defence taken was that the Plaintiff was not the landlord. The trial Court accepting the Plaintiff's case decreed the suit. The lower appellate Court, on appeal filed by the Defendant, set aside the trial Court's decree and dismissed the Plaintiff's suit. The lower appellate Court accepted the Defendant's case that the Plaintiff was not the landlord and there did not exist relationship of landlord and tenant between the parties. An appeal was preferred against the decree passed by the trial Court and before the lower appellate Court the Plaintiff moved an application under Order XV Rule 5 CPC for striking off the defence and deciding the appeal without giving the Defendant hearing in the appeal because the Defendant had not deposited the amount of rent alleged to be due. This Court held that the provisions of Order XV Rule 5 CPC would not be applicable at the appellate stage as the question of striking off the defence arises only before the suit is finally disposed of and after the decree of the Court dismissing the suit intervenes, question of striking off defence does not arise. Hari Swarup, J. observed as follows:

The intention of Rule 5 is to strike off the defence only before the decree of the Court comes into existence. If the defence is struck off at this stage the result may be the setting aside of the decree even when on the findings legally reached by the Court below, it cannot be deemed to be contrary to law. The Intention of

Rule 5 which has been inserted in Order XV of the CPC is to prevent proceedings and not to destroy decree.

8. I find myself in complete agreement with the observations of Hari Swarup, J. quoted above and hold that Order XV Rule 5 CPC has no application at the stage of appeal when the principal question involved in the appeal is whether relationship of landlord and tenant exists between the parties or not.

9. For the reasons stated above, the writ petition is allowed. Costs of this Court shall be borne by the parties. The order of IV Additional District Judge, Sitapur on application 21-C is quashed. Civil Appeal No. 110 of 1978 is restored to its original number and shall be decided by the District Judge, Sitapur either himself or by any Additional District Judge competent to hear the appeal. The parties are directed to appear before District Judge, Sitapur on 29-4-1983.