
(2012) 02 PAT CK 0059

In the Patna High Court

Case No : Second Appeal No. 94 of 2010 and Second Appeal No. 95 of 2010

Lakhan Prasad Gupta and Others

APPELLANT

Vs

Dumraon Properties Enterprises (Pvt.) Ltd.

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Citation : (2012) 02 PAT CK 0059

Final Decision : Dismissed

Judgement

Vijayendra Nath, J.—Heard Mr. S.S.Dwivedi, the learned senior counsel appearing on behalf of the appellants in both the appeals and also Mr.Chandrashekhar Prasad Singh, the learned counsel appearing on behalf of the respondent in these appeals.

2. Defendant is the appellant against a common judgment and decree dated 16.01.2010 passed in T.A.No. 08/91 and T.A.No. 09/91 by Additional District and Sessions Judge F.T.C. V, Buxar dismissing the appeals and affirming the judgment and decree dated 23.02.1991 of eviction passed in T.S.No. 31/80/08/90 and T.S.No. 32/80/09/90 by Additional Munsif I, Buxar.

3. The respondent, as plaintiff, had filed the aforesaid two suits for eviction of the defendant from the suit premises in Municipal Plot no. 280 in T.S.No. 31/80 and Municipal Plot No. 265(part) in T.S.No. 32/80. Both the suits were decreed, and T.A.No. 08/91 was filed against the judgment and decree of T.S.No. 31/80 and T.A.No. 09/91 was filed against the judgment and decree of T.S.No. 32/80. After the dismissal of the two appeals by common judgment, the S.A.No. 94/10 and S.A.No. 95/10 have been filed.

4. In order to appreciate the issues arising between the parties, the factual background which is similar in both the appeals, in short, is as follows:

The plaintiff a registered body under the Company Act claimed to have purchased the suit premises from the ex-landlord Maharaja Kumar Kamal Singh of Dumraon Estate. It is the case of the plaintiff that original defendant (since

deceased, through L.R.) had been inducted as tenant in the suit premises on monthly rental but he subsequently defaulted in payment of rent and even on demand did not pay the same. It was also case of the plaintiff that the suit premises was very old and required construction and the plaintiff was in need of the suit premises for its own purposes and hence the suits for eviction were filed.

The defendant in the written statement contested the claim of the plaintiff and asserted that there was no relationship of landlord and tenant as claimed by the plaintiff. The defendant had pleaded that M.S.Plot No. 265 originally belonged to Sital Ram who orally sold the same to the father of the defendant for a sum of Rs. 25/- and delivered possession. After the purchase, the father of the defendant amalgamated the same with his own plot no.280 which was contiguous to the said plot and thereafter, pucca house was constructed thereupon. Thus, the defendant had set up his own title over the suit premises in both the suits.

5. It would be relevant to mention here that initially the plaintiff had prayed for the relief of eviction alone alongwith the arrears of rent but later on the plaintiff added the relief for adjudication of title also. The trial court after considering the evidence of the parties decreed the suits. However, in appeal, the appellate court set aside the judgment and decree of the trial court and remanded the matter back for determination of the question of valuation of the suits. The plaintiff challenged the orders of remand in both the cases before this Court in M.A.No. 336/02 & 340/02 which were allowed by order dated 29.07.2004 by this Court by which the orders of remand were set aside and the appellate court below was directed to dispose of the two appeals on merits with further direction to dispose of the issue of valuation as well alongwith the disposal of the appeal, if the said plea was still raised by the defendant. It appears that thereafter, the plaintiff sought amendment in the plaint with regard to valuation and by order dated 29.08.2005 the prayer for amendment in the plaint was allowed by the appellate court whereby the valuation of the suit was amended as Rs. 50,000/- and ad valorem court fee was paid thereupon. Thereafter, the appellate court heard the two appeals on merits and by the impugned judgment and decree dismissed both the appeals. In view of the common judgment and decree under appeal in both the second appeals, they have been heard together with the consent of the parties and are being disposed of by this common judgment.

6. By order dated 18.04.2011, both these appeals were admitted for hearing on the common question of law which is as follows:

...Since the valuation of the suit having been enhanced to Rs. 50,000/- and in terms of Section 19 of Bengal, Agra and Assam Civil Courts Act, 1887(Bihar Amendment), an Additional Munsif, has jurisdiction to try a suit only up to the valuation of Rs. 20,000/-, whether whole trial of the suit of the plaintiff-respondent by Learned Additional Munsif has vitiated in the eye of law and consequently, the impugned judgment and decree passed by the learned trial court is a nullity in the eye of law, since the suit was tried and decreed by the

Learned Additional Munsif, which was beyond his pecuniary jurisdiction...

7. When these two appeals were taken up for hearing, the learned senior counsel for the appellants submitted that other substantial questions of law were also involved in the two appeals and in the interest of justice, the same might be formulated and considered.

8. After hearing on the point of formulation of additional substantial questions of law, the following additional substantial questions of law have been formulated:

(i) Whether the sheet-anchor of the plaintiff's case for showing relationship of landlord and tenant, being the Kiraynama dated 01.04.1953(Ext.7), the stamp for which was purchased on 14.04.1953, being clearly forged and fabricated, the findings of the learned courts below on that basis is grossly vitiated in law?

(ii) Whether Dumraon Raj having vested in the State of Bihar in 1952 and rent in its favour having been fixed with respect to only Block-D of Ext.16A, which does not contain the disputed land, any title over the suit lands can be said to have passed to the plaintiff vide its sale deed dated 15.10.1963(Ext.3)?

9. Both the parties have been heard on the original substantial question of law as also on the additional substantial questions of law.

10. The title suit no. 31/80 was filed for eviction of the defendant from the premises in M.S.Plot No. 280 with the pleading that the suit premises belonged to the ex-proprietor of Dumraon Raj who had inducted the defendant as monthly tenant on 01.04.1953 and a Kiraynama was also executed by the defendant in favour of the landlord. The plaintiff has claimed to have purchased the suit premises alongwith the other properties from the ex-landlord abovesaid by sale deed dated 15.10.1963(Ext.3). The eviction was sought on the ground of non-payment of rent and for reconstruction of the premises. The T.S.No. 32/80 was filed with the statement that the suit premises (Godown) in M.S.Plot No. 265(part) had been purchased by the plaintiff from the ex-landlord (Dumraon Raj) by registered sale deed dated 15.10.1963 and thereafter the defendant had been inducted as tenant by the plaintiff in the year 1965 on monthly rental. The defendant(since deceased, through L.R), however, in his written statement in both the aforesaid suits averred that M.S.Plot No. 280 was in possession of his predecessors since before the cadastral municipal survey of 1911-1912 and since then his predecessors and after them, he had been coming in possession of the same. With regard to municipal plot no.265(part), the defendant claimed that his grand father orally purchased the same from the owner Sital Ram and after coming in possession, amalgamated the same with his own plot no.280 and constructed the house. Thus, from the rival cases of the parties, it is clear that the core dispute was with regard to title over the suit premises in both the suits and in this view of the matter, the plaint was allowed to be amended by order dated 15.07.1988 by which the relief for adjudication of title was added. From the records of both the suits, it appears that the defendant led evidence on the question of title alone as the defence of the defendant as tenant had already

been struck off. From the judgment of the trial court in both the suits, it does not appear that the defendant had raised any objection to the hearing of the suit by the trial court on the ground of valuation of the suit property or regarding the absence of pecuniary jurisdiction of the Court. The trial court decreed the suit after hearing the parties but the appellate court set aside the judgment and decree of the trial court in both the suits and remitted the matter back to the trial court for consideration of the issue of valuation of the suit, after accepting the contention of the defendant that the same related to the pecuniary jurisdiction of the trial court.

11. As stated earlier, the remand orders of the appellate court below were assailed before this Court in two miscellaneous appeals. After hearing both the parties at length, this Court allowed the miscellaneous appeals and set aside the remand orders with specific direction to the appellate court below to dispose of the appeals on merits. It appears that this Court has considered the submission of the defendant (appellants herein) that the question of valuation of the suit related to the jurisdiction of the Court and proper valuation might change the very forum of the trial court and the appellate court. This Court has also considered the question of prejudice caused to the defendant by wrong valuation of the suit. It will be apposite to take notice of some of the findings of this Court, in its order in the two miscellaneous appeals, which are as follows:

...The fact that the trial court would be the Munsif or the Sub Judge, and the first appellate court would be the District Judge or the High Court has not at all in law been taken to cause any prejudice to the parties...

...The Munsif can try suits up to the pecuniary jurisdiction of rupees thirty thousand, the first appeal whereof lies before the District Judge against which a second appeal is competent before the High Court. The Subordinate Judge has unlimited pecuniary jurisdiction. The pecuniary jurisdiction of the District Judge as the first appellate court is up to rupees sixty thousand...

I observe from the impugned judgment that the plaintiff's case is that the suit should be valued at Rs. 3,000/- whereas the defendants have asserted that it should be appropriately valued at Rs. 50,000/-. Therefore, in taking the defendant's case at its very best, the first appeal would in any case lie before the District Judge. Therefore, the parties in any view of the matter would not be deprived of the three forums up to the level of High Court. What then is the prejudice to the defendants ...

(Emphasis supplied)

12. After recording its finding as above mentioned, this Court further in its judgment and order directed the appellate court below to dispose of the appeals on merits and also to decide the defendant's plea of proper valuation of the suit in accordance with the provisions of Section 11 of the Suits Valuation Act. In view of the detailed consideration of the various aspects by this Court in its judgment and order in the two miscellaneous appeals, also reported in Dumraon

Properties and Enterprises (P) Ltd. Vs. Bihari Lal Gupta and Others , it appears that the contentions raised on behalf of the appellants here in this appeal have already been taken notice of and appropriately answered. The said judgment and order had attained finality between the parties as the defendant did not choose to challenge the same before the superior court. There is no dispute that after the judgment and order of this Court aforesaid, the plaintiff was allowed by order dated 29.08.2005 by the appellate court below to amend the plaint by adding the valuation of the suit as Rs. 50,000/- and to pay the ad valorem court fee upon the same. The appellants did not challenge the said order and participated in the hearing of the appeal thereafter. Thus, it is obvious that the contention of the defendant-appellants that the trial by the Munsif, of the suits, stood vitiated in view of the valuation of the suit being beyond his pecuniary jurisdiction, had already been canvassed before this Court unsuccessfully by the defendant-appellants and this Court had overruled this objection and the appellate court below thereupon was directed to hear the appeals on merits and in the process to decide the question of valuation also if the need arose. This Court clearly did not hold the judgment and decree passed by the Munsif to be vitiated for want of pecuniary jurisdiction, although all the facts including the fact that the valuation of the suit according to the defendant should have been Rs. 50,000/-, were taken notice of. The issue of prejudice to the defendant because of trial by the Munsif was also raised and did not find favour with this Court.

13. Now in second appeal, against the judgment and decree passed in pursuance to the remand order by this Court, the questions which have been finally decided between the parties before the matter was remitted back to the appellate court below by this Court, cannot be allowed to be reopened. It is manifest that in view of the dispute of title raised by the defendant, the plaintiff amended the relief portion by adding the relief with regard to adjudication of title. The parties thereafter, went to trial and it is not the case of the defendant that they raised any objection to the valuation of the suit during trial or before passing of judgment by trial court after the addition of the relief with regard to title. The two suits were decreed and thereafter the appellate court set aside the judgment and decree and remanded the matter back to the trial court in view of the dispute with regard to the valuation raised by the defendant. However, the said remand order had been set aside by this Court with specific direction to the appellate court to consider the appeal on merits. Now in second appeal against the dismissal of their appeals, the defendant-appellants have sought to rake up the same question regarding the valuation of the suit. During the course of argument, it could not be established on behalf of the appellants that any prejudice had been caused to the appellants because of the trial of the suit by the Court of Additional Munsif and the only submission made in this regard was that the appellants have been deprived of the trial by the Court of Sub Judge which according to the appellants had definitely better intellect. But in view of the principle in this regard as laid down by the apex court in the decision reported in Kiran Singh and Others Vs. Chaman Paswan and Others, , this

submission has no substance. Moreover, this aspect regarding the prejudice has also been discussed in detail in the matter of Dumraon Properties and Enterprises (P) Ltd. (Supra) by this Court and it was held that no prejudice could be caused to the appellants by the trial of the suit by the Court of Additional Munsif. Thus, I find no substance in the substantial question of law with regard to the valuation of the suit and jurisdiction of the Munsif and the same is accordingly, decided against the appellants.

14. The learned senior counsel for the appellant has next submitted that the Kiraynama (Ext.7) which is the basis of the claim of the plaintiff for establishing the relationship of landlord and tenant was a forged and fabricated document as a bare perusal of that document will show that it had been executed on 01.04.1953 on a stamp paper which had been purchased on 14.04.1953. It has been contended that this fact alone is sufficient to establish the forgery and fabrication or at least the suspicious character of the document. It has been argued, therefore, that once this Kiraynama(Ext.7) is found to be illegal, forged and fabricated document, the whole edifice of the case of the plaintiff will fall.

15. However, on behalf of the respondent, it has been contended that the Kiraynama has never been challenged by the defendant-appellants on this ground even after they had sufficient opportunity to inspect the Kiraynama and raise the objection appropriately at the initial stage. It has been urged that if this objection to the Kiraynama would have been raised earlier, at appropriate stage, the respondent would have the opportunity to rebut and explain the same by leading appropriate evidence. It has also been submitted that this is a pure question of fact and cannot be adjudicated for the first time in second appeal.

16. From the records of the court below, it appears that in view of the objection by the defendant regarding the genuineness of the Kiraynama(Ext.7), the plaintiff made the prayer for examination of the handwriting of the defendant Jagarnath Ram Kanu on the said document by expert. Obviously, till then the said Kiraynama(Ext.7) had been exhibited in the suit and the defendant had the opportunity to examine the same and raise all his objections to its validity. By order dated 22.05.1990, the trial court after hearing both the defendant and plaintiff passed the order for examination of the signature of the defendant on the said Kiraynama by expert. It does not appear from that order that the defendant had raised objection regarding the Kiraynama having been executed on 01.04.1953 on a stamp paper purchased on 14.04.1953. Even after the submission of the report of the expert, which found that signature of the defendant on the Kiraynama to be genuine, the defendant did not raise the aforesaid specific objection in the suit. Even during the hearing of the appeal also the defendant did not choose to raise this objection specifically. This aspect assumes importance because if such objection would have been raised during the trial, the plaintiff would have the opportunity to meet the said objection. At the stage of hearing of the second appeal, for the first time this specific objection has been raised by the defendant with the submission that this fact regarding the

discrepancy in the dates is apparent from the Kiraynama itself and no evidence is required in this regard. This may be true but the fact remains that this question, which is essentially a question of fact, has never been raised during the suit or appeal and the plaintiff thus, had no opportunity to place his defence in this regard. The jurisdiction of a second appellate court in entertaining a new plea of fact is very limited. Their Lordships of Hon"ble Supreme Court in the case of Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others, and in the case of P.R. Nayak Vs. Union of India (UOI), have succinctly laid down the law in this regard to the effect that the object of requiring a party to put forward his pleas in the pleadings is to enable the opposite party to controvert them and to adduce evidence in support of his case and it has been further held that "it would be neither legal nor just to refer to evidence adduced with reference to a matter which was actually in issue and on the basis of that evidence, to come to a finding on a matter which was not in issue, and decide the rights of parties on the basis of that finding"

17. It is also by now well settled that the plea which has never been raised at the trial or at the first appellate stage cannot be permitted to be raised for the first time in second appeal and in this regard reference may be made to the principle illumined by the Apex court in the decision reported in 1995suppl.(1)SCC 202 as follows:

...It is not disputed that there were neither pleadings nor an issue framed on this point by the trial court. Mr. B. Kanta Rao, learned counsel appearing for the respondent does not dispute that the point on which the High Court allowed the second appeal was not an issue before the two courts below. We are of the view that in the second appeal it was not open to the High Court to have gone into a question which was neither pleaded nor raised or dealt with by the trial Court and the lower appellate court. The High Court, in the facts and circumstances of this case, exceeded the jurisdiction vested in it u/s 100, Civil Procedure Code...

18. In view of the aforesaid discussion, I find no substance in the submission on behalf of the appellants to reappraise the evidence with regard to discrepancy in dates and hold the Kiraynama to be forged and fabricated document at this second appellate stage on that ground when it has been found by both the courts below to have been executed by the defendant whose signature had been found to be genuine. Therefore, this substantial question of law is, accordingly, also answered against the appellants.

19. Much emphasis has been laid on behalf of the appellants on the C.S. Khatian (Ext.15) where the names of the ancestors of the defendant had been mentioned as persons to be in possession over the suit premises but the perusal of this document only shows that the predecessor of the defendant were in possession of the suit premises but simultaneously, the name of the vendor of the plaintiff had also been mentioned therein as the person entitled to receive rent. It appears from the evidence on record as well as the finding by the courts below that the vendor of the plaintiff was the ex-landlord, and after the vesting of his

estate in accordance with the provisions of Bihar Land Reforms Act, 1950, the suit premises had been found to be in his khas possession, and in accordance with Section 5 of the Bihar Land Reforms Act, he was allowed to retain the same and there had been fixation of rent by the State of Bihar in his favour. The order sheet of the rent fixation case (Ext.16/A) also shows that the suit premises had been mentioned in Block-G and therefore the submission that it is not in Block D is not material. Both the courts below have elaborately considered the evidence of the parties in this regard and have come to the conclusion that after the vesting, the suit premises was allowed to be retained by the vendor of the plaintiff as his homestead after fixation of rent for the same in his favour. Thus, the claim of title of the defendant is not supported by the evidence on record and both the courts below have concurrently decided the issue in this regard which require no interference. The substantial question of law, in this regard, is also decided against the appellants.

20. For the foregoing reasons and discussions, I find no merit in both the second appeals, which are, accordingly, dismissed In the facts and circumstances, there would be no order as to costs.