
(2013) 12 AHC CK 0002
In the Allahabad High Court
Case No : S.C.C. Revision No. 563 of 2013

M/s. Keshav Das Mukund Lal Gote Wale and Another	APPELLANT
Vs	
Shyam Ji Agarwal	RESPONDENT

Date of Decision : 19-12-2013

Acts Referred:

Citation : (2014) 2 ADJ 272

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Judgement

Manoj Misra, J.—The instant revision application has been filed against the order dated 27.11.2013 passed by the Additional District Judge, Court No. 12, Varanasi in Misc. Case No. 16 of 2009 by which the application of the defendant-revisionists, under Order 9 Rule 13 C.P.C., for setting aside the ex parte decree dated 21.5.2009 passed in J.S.C.C. Suit No. 15 of 2007, has been rejected on the ground that the revisionists had not complied with the requirement of the proviso to Section 17 of the Provincial Small Cause Courts Act, 1887. The submission of the learned counsel for the defendant-revisionists is that under the decree dated 21.5.2009 the revisionists were required to deposit arrears amounting to Rs. 46,815/- and, thereafter, to pay damages at the rate of Rs. 1,325/- per month, with effect from the date of the institution of the suit up to the delivery of possession to the plaintiff-respondent. It has been submitted that a sum of Rs. 54,600/- was deposited by the defendant-revisionists, at the time of presenting the application under Order, 9 Rule 13 C.P.C., to comply with the requirement of the proviso to Section 17 of the Provincial Small Cause Courts Act. But the Court below refused to entertain the application, under Order 9 Rule 13 C.P.C., on the ground that the defendant-revisionists had not deposited the mesne profits/damages payable under the decree with effect from the date of the institution of the suit up to the date of filing of the application, under 9 Rule 13 C.P.C.

2. Sri Ajit Kumar, learned counsel for the defendant-revisionists, has drawn the

attention of the Court to the provisions of Section 11 of the Court Fees Act, 1870, which provides as follows:

11. Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.-In suits for mesne profits or for immoveable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

[Where a decree directs an inquiry as to mesne profits which have accrued in respect of the property during a period prior to the institution of the suit, if the profits ascertained on such inquiry exceed the profits claimed, no final decree shall be passed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If such difference is not paid within such time as the Court shall fix, the claim for the excess shall be dismissed, unless the Court, for sufficient cause, extends the time for payment.

Where a decree directs an inquiry as to mesne profits from the institution of the suit, and a final decree is passed in accordance with the result of such inquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been instituted therefor].

3. Attention of the Court was further drawn to the averments made in para 7 of the affidavit wherein it has been stated that the suit was valued at Rs. 15,900/- and the Court fee paid by the plaintiff-respondent was only Rs. 1,607/-. It has, thus, been submitted that, as admittedly, the decree has not been put to execution and the Court fee has not been deposited for realizing the mesne profits, which have been decreed by the Court below, the mesne profits/damages cannot be said to be due under the decree and payable by the defendant-revisionists so as to hold that by non-payment of such amount the revisionists had not fully complied with the requirement of the proviso to Section 17 of the Provincial Small Cause Courts Act.

4. Sri Ajit Kumar, learned counsel for the defendant-revisionists, further submitted that his client is prepared to pay a sum of Rs. 1,00,000/- today itself to the learned counsel for the plaintiff-respondent. Accordingly, with the leave of the Court, without prejudice to the rights of the parties, two banker cheques of Rs. 50,000/- each have been handed over to Sri P.K. Ganguli, learned counsel for the plaintiff-respondent, during the Court proceedings, which have been accepted by Sri P.K. Ganguli, learned counsel for the plaintiff-respondent, without prejudice to his right.

5. The matter requires deeper scrutiny.

6. Sri P.K. Ganguli, who has accepted notice on behalf of the plaintiff-respondent, prays for and is allowed two weeks time to file counter-affidavit. Rejoinder-affidavit, if any, may be filed within two weeks, thereafter.

7. List this revision on 10.2.2014 alongwith the record of Civil Revision Defective No. 137 of 2013. Till the next date of listing, the revisionists shall not be evicted from the premises in dispute pursuant to the ex parte decree dated 21.5.2009 provided he deposits the balance decretal amount payable under the decree before the Court below by 31.1.2014 and continue to pay monthly damages at the rate provided in the decree dated 21.5.2009, failing which, this interim protection shall stand automatically vacated.