

(2011) 07 CAL CK 0009
In the Calcutta High Court

Case No : S.A. No. 288 of 2000 with C.A.N. No. 8338 of 2009 with C.A.N. No. 9210 of 2002

Narayan Chandra Laha

APPELLANT

Vs

Ram Surat Singh

RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 15, 20, 21

Citation : (2011) 5 CHN 543

Hon'ble Judges : Tapan Kumar Dutt, J

Bench : Single Bench

Advocate : Probal Kr. Mukherjee, Rajdeep Bhattacharya, for the Appellant; Asish Ch. Bagchi, Falguni Majhi, for the Respondent

Judgement

Tapan Kumar Dutt, J.—This Court has heard the learned Advocates for the respective parties. The facts of the case, briefly, are as follows : The plaintiffs-respondents filed a Suit for Ejectment against the original defendant, Natabar Laha, under the Transfer of Property Act in respect of the suit property. The learned Trial Court decreed the said Suit and granted a decree for recovery of khas possession of the suit premises in favour of the plaintiffs by evicting the defendants-appellants therefrom. The defendants-appellants filed a Title Appeal challenging such decree of ejectment. The Title Appeal concerned was dismissed by the learned Lower Appellate Court and the defendants-appellants (since the original defendant died, the present defendants-appellants have been substituted) filed the present Second Appeal challenging the judgement and decree of the learned Lower Appellate Court.

2. It appears from a perusal of the learned Trial Court's decree that the learned Trial Court found that the notice contemplated under the said Act was served upon the defendants-appellants and it was a valid notice. Since the defendants-appellants had filed a joint written statement which included a counter claim to the effect that the defendant No. 1(a) is a tenant in respect of the suit property

independently and not as a successor to the original defendant, the learned Trial Court had to decide such issue and the learned Trial Court came to the finding that the claim made by the defendants that the defendant No. 1(a) was inducted as a tenant in respect of the suit property cannot be accepted and, thus, the defendants failed to get any relief with regard to the counter claim. The learned Lower Appellate Court affirmed the judgement and decree passed by the learned Trial Court.

3. The following two substantial questions of law were formulated for the purpose of hearing the appeal : i) "Whether or not the learned Lower Appellate Court erred in not coming to a finding that since the defendants/appellants had taken the objection with regard to the territorial jurisdiction of the learned Trial Court at the very initial stage of filing of the written statement, the learned Trial Court should have framed a specific issue in this regard and the learned Trial Court erred in not deciding such issue with regard to the territorial jurisdiction. ii) Whether or not the learned Court below committed any error in not holding that the suit property had vested in the State of West Bengal."

4. With regard to the aforesaid ground No. (ii), the learned Advocate for the defendants-appellants has submitted that the defendants-appellants have filed an application being C.A.N. 9210 of 2002 whereby copies of the deeds have been annexed to the said application to show that after the vesting of the land in question in the State of West Bengal, the State of the West Bengal had settled the property in favour of the two sons of said Natabar Laha. The learned Advocate for the defendants-appellants submitted that the defendants-appellants should be permitted to adduce the aforesaid deeds of settlement by way of additional evidence. The learned Advocate for the defendants-appellants submitted that the settlement was done during the pendency of the instant appeal and as such this Court can take note of such subsequent events and allow the defendants-appellants to adduce additional evidence, as stated above.

5. Learned Advocate appearing on behalf of the plaintiffs-respondents has submitted that it will appear from the learned Trial Court's judgement itself that the pointing of vesting was raised before the learned Trial Court and the defendants-appellants had ample opportunity to adduce appropriate evidence in support of such alleged vesting but the defendants appellants did not do so and as such they are not entitled at this stage to be permitted to adduce such additional evidence. He cited a judgement reported at AIR 1967 Calcutta 10, Kazi Kohammad Hossain vs. Sibram Bondopadhyaya and referred to Paragraph - 18 of the said reports. His Lordship the Hon"ble Justice P. B. Mukharji, as his Lordship then was, in Paragraph - 18 of the said reports observed that "Mr. Ghosh has fairly conceded that there is no other merit in this second appeal and the only point for the appellant is that I should remand the case back to the lower Courts to reconsider the case in the light of the subsequent record of rights. What will the Courts reconsider? The courts have already fairly considered and investigated the evidence at the time when there was no record of rights. The parties had full

opportunities to produce all evidence and they availed of such opportunities. The Court came to a decision on the facts whether the plaintiff had taken settlement from different co-sharers or not and found in favour of the plaintiff. On that point how is a record of rights made? A record of rights would be made on no larger evidence and facts on which the court had acted. The Court acted on all relevant evidence available on the point which was brought before the court. Therefore, there would be no point now to remit the case back to the trial court to consider this additional evidence of the subsequent record of rights prepared contrary to the decree of the Civil Court".

6. The said learned Advocate cited another decision reported at Shanti Sharma and Others Vs. Ved Prabha and Others, where it appears that the Delhi Rent Control Act was the subject matter of consideration. Reference was made to paragraph -- 14 of the said reports. In paragraph - 14 of the said reports, the Hon"ble Supreme Court was pleased to observe that the word "owner" has not been defined in the said "Delhi Rent Control Act" and the word "owner has also not been defined in the Transfer of Property Act. The Hon"ble Supreme Court in the said paragraph was also pleased to observe as follows :-

But at the same time it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. In this context, the phrase "owner thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction, the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term "owner" is vis-a-vis the tenant i.e. the owner should be something more than the tenant. Admittedly, in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure. So far as the land is concerned he holds a long lease and in this view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term "owner" as is contemplated under this section.

7. Citing the aforesaid decision, the learned Advocate for the plaintiffs-respondents submitted that even if it is assumed for the sake of argument that the land in question had vested in the State and it was subsequently settled in favour of the settlee, the plaintiff remained to be the owner of the structure and the plaintiff is entitled to get a decree for eviction.

8. It appears from the materials on record that the point of vesting was taken before the learned Trial Court itself and at that stage itself the defendants-appellants had ample opportunity to adduce evidence in support of the allegation of vesting but the defendants-appellants did not do so.

9. Taking into consideration the decision reported at AIR 1967 Calcutta 10 (supra), this Court is of the view that the application made by the defendants-appellants for adducing additional evidence is without any merit. Accordingly, the application for adducing additional evidence being C.A.N. 9210 of 2002 is dismissed. Apart from this, the principle of law enunciated in AIR 1987 Supreme Court 2028 (supra) will also have to be borne in mind.

10. The other point raised on behalf of the defendants-appellants is with regard to the territorial jurisdiction of the learned Trial Court. It is true that in the written statement the defendants-appellants stated that the learned Trial Court has no territorial jurisdiction to try the suit as the police station in respect of the suit premises is within P.S. Asansol (North) but it is also true that the defendants-appellants not only denied the material allegations made in the plaint but also filed a counter claim before the very same Court and such counter-claim was included in the written statement itself and, thus, the defendants-appellants clearly submitted to the jurisdiction of the learned Trial Court. In this regard the learned Advocate for the defendants appellants cited a decision reported at Makhan Lal Bangal Vs. Manas Bhunia and Others, and referred to paragraph - 19 of the said reports in support of his contention that an omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission and it is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues.

11. In this case it appears from the judgement passed by the learned Trial Court that after framing of issues the learned Trial Court had framed additional issue. If the defendants-appellants were really serious about such objection with regard to the territorial jurisdiction, the defendants-appellants could have suggested to the learned Trial Court that an appropriate issue be framed in this regard. That apart it appears from the Annexures to the application being C.A.N. 9210 of 2002 that while describing the plot number involved in the suit property, the police station has been shown to be "Barabani". Thus, even long after the filing of the suit, P.S. Barabani appears on record.

12. The learned Advocate appearing on behalf of the defendants-appellants submitted that if the Police Station concerned is Barabani, then the Transfer of Property Act will apply but if the Police Station is Asansol (North), then the West Bengal Premises Tenancy Act will apply.

13. According to the appellants' own documents it appears that the Police Station concerned has remained to be Barabani.

14. The learned Advocate appearing on behalf of the plaintiffs-respondents has cited a decision reported at AIR 1966 Supreme Court 634 (Bahrein Petroleum Co. Ltd. vs. P. J. Pappu & Anr.) and reference was made to paragraphs 2 and 3 of the said reports where the Hon"ble Supreme Court was pleased to observe as a general rule, neither consent nor waiver nor acquiescence can confer jurisdiction upon a Court, otherwise incompetent to try the suit, but section 21 of the CPC

provides an exception, and a defect as to the place of suing, that is to say, the local venue for suits cognizable by the Courts under the Code may be waived under this section. The Hon"ble Supreme Court was further pleased to observe that the waiver u/s 21 of the CPC is limited to objections in the appellate and revision Courts. But section 21 of the Code is a statutory recognition of the principle that the defect as to the place of suing under sections 15 to 20 of the said CPC may be waived. The Hon"ble Supreme Court was further pleased to observe that independently of this section, the defendant may waive the objection and may be subsequently precluded from taking it.

15. In the present case it is true that in the written statement the defendants-appellants took such point with regard to the territorial jurisdiction but the conduct of the defendants-appellants thereafter shows that they have waived such point. At this stage, this Court is not inclined to allow the defendants-appellants to agitate such point with regard to the territorial jurisdiction.

16. In view of the discussions made above, this Court does not find any merit in the second appeal which is accordingly dismissed.

17. There will, however, be no order as to costs.

18. In view of the judgement passed above, the application being C.A.N. 8338 of 2009 stands disposed of.

19. The lower Court records be sent down to the learned Court concerned immediately. Urgent certified xerox copy of this judgement, if applied for, be given to the parties on compliance of all necessary formalities.