
(1951) 11 PAT CK 0012
In the Patna High Court
Case No : Civil Revision No. 606 of 1951

P.C. Gangulee

APPELLANT

Vs

Sm. Kadhuri Devi

RESPONDENT

Date of Decision : 09-11-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, 10, 115, 151

Citation : AIR 1952 Patna 281

Hon'ble Judges : Narayan, J

Bench : Single Bench

Advocate : J.C. Sanyal, for the Appellant; Bhabnand Mukherji, for the Respondent

Final Decision : Allowed

Judgement

Narayan, J.—This application is directed against an order of Mr. C. B. Mitra Munsif, Patna, rejecting the prayer of the defendant in Money suit No. 10 of 1951 pending before the Learned Munsif, for staying the further proceeding in the case or in the alternative for deciding the issue regarding the maintainability of the suit as a preliminary issue in the case.

2. The facts relevant for our present purpose are that the defendant petitioner is occupying a flat in a house belonging to the opposite party as a tenant on the 10th of January 1951 he filed a petition before the Rent Controller for the fixation of fair rent for the portion of the building in his occupation. On the same date the opposite party instituted a suit for the recovery of arrears of rent with regard to the building in the occupation of the petitioner. A day before, that is, on 9-1-51 the opposite party had filed an application before the Controller for the eviction of the petitioner from the building and it has been pointed out that this petition for the eviction of the petitioner was filed after a notice had been served on the opposite party for the fixation of fair rent. It appears that a proceeding u/s 107 of the Code of Criminal Procedure has also been started against the opposite party and her husband at the instance of the petitioner and that proceeding is

still pending. The relations between the parties are strained and an allegation has been made in this petition that the husband of the opposite party tried to evict the petitioner by force.

3. The short points for determination in the case are whether a stay can be granted and in the alternative whether the issue regarding the maintainability of the suit can be tried as a preliminary issue in the case.

4. Mr. Sanyal who appeared for the petitioner before me could not seriously press the contention that the further proceeding of the suit should be stayed because a proceeding for the fixation of fair rent is pending before the Controller. I do not find any warrant for the proposition that because a proceeding for the fixation of fair rent is pending before the Controller the suit pending before the learned Munsif which is a suit for arrears of rent should be stayed. The learned Munsif was therefore perfectly, justified in rejecting the prayer of the petitioner for the stay of further proceeding in the suit.

5. But I am inclined to agree with Mr. Sanyal that the learned Munsif should have tried the issue regarding the maintainability of the suit as a preliminary issue in the case. Rule 2 of Order XIV is mandatory, though before trying an issue of law as a preliminary issue the Court has to be convinced that that is an issue on which the whole case be dismissed. The order of the learned Munsif in this case does not show that there is no issue in this case which can be decided as a preliminary issue and on the decision of which the fate of the suit may depend. On the other hand, the learned Munsif seems to be satisfied that there is an issue of law in this case which can be decided as a preliminary issue, and the only ground which he has given in his order for not acceding to the prayer of the petitioner for deciding the issue of law as a preliminary issue is that this Court "does not favour disposal of suits on decision of preliminary points." As a matter of fact, Mr. Sanyal has referred to certain provisions of the Bihar Buildings (Lease, Rent and Eviction) control Act 1947 (Bihar Act III of 1947) in support of his contention that there is a very important issue of law to be decided in this case, and he has discussed Sections 5 and 6 of the Act.

Sub-section (2) of Section 6 lays down that it should not be lawful for a landlord to let any building the fair rent of which has not been previously determined under the provisions of Sub-section (2) of Section 5 or Sub-section (1) of this section and the contention of the defendant-petitioner is that in view of these and certain other provisions in the Act the suit is not maintainable until the fair rent is determined. Evidently, when the learned Munsif framed the issue "Is the suit as framed maintainable?" he had in his mind this defence and his order clearly shows that the petitioner has seriously contended before him that the issue of law should be decided as a preliminary issue. Without expressing myself finally on the question which has been raised, by Mr. Sanyal, I am to point out that the learned Munsif should have complied with the provisions of Order XIV, Rule 2 if he was of opinion that there was a pure question of law to be decided in this case as a preliminary issue. This the learned Munsif failed to do and

therefore his order has to be interfered with. It was laid down by Courtney Terrell C. J. in "JANKI DAS v. KALU RAM" 162 Ind Cas 486 as follows:

"The fact is that some harmony has to be observed between the general principle that it is undesirable to try cases piecemeal and the specific and wholesome provision of Order XIV, Rule 2, CPC which is for the purpose of preventing the injustice of a party being able to force his opponent to go at great length into evidence when the simple decision on a point of law might render the investigation of the facts unnecessary."

In that case the Court below had not expressed the opinion that the case could not be disposed of on the question of law only, and in this case the order of the learned Munsif shows that he was satisfied that the case could be disposed of on the question of law alone. This decision of Courtney Terrell, C. J. was followed by a Division Bench of this Court in "C. R. Nos. 451 and 456 of 1949 (Pat)" and the judgment of the Bench was delivered by me. The "ratio decidendi" of these cases certainly is that the provisions of Order XIV, Rule 2 have to be strictly followed when it is found that there is an issue of law to be decided as a preliminary issue. The defendant-petitioner is very seriously urging in this case that in, view of certain provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, the suit for arrears off rent is not maintainable and I think the learned Munsif should decide this question as a preliminary issue in the case.

6. In the result this application is allowed in part and the Court below is directed to decide the issue regarding the maintainability of the suit as a preliminary issue in the case. There will be no order for the costs of this Civil revision application.