
(2015) 04 AHC CK 0181
In the Allahabad High Court
Case No : Second Appeal No. 534 of 1983

Prakash

APPELLANT

Vs

Hari Das and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Transfer of Property Act, 1882 — Section 106

Citation : (2015) 5 ADJ 167 : (2015) 111 ALR 205 : (2015) 4 AWC 3506

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : M.C. Misra, A.K. Rai, M.M. Lal Srivastava, R.C. Srivastava, R.K. Khanna and V.K. Singh, for the Appellant; Hari Nath Tripathi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pankaj Mithal, J—Is it not a travesty of justice that a lis which had originated between the parties sometime in the year 1971 and was adjudicated by the Courts below in 1979-82 is coming up for decision before this Court in the year 2015 after having remained pending here for more than 32 years? This inordinate journey of the lis has virtually killed the civil litigation and has compelled the litigating parties to take shelter to other means or to recourse to writ jurisdiction directly.

2. The plaintiff lost the suit for the eviction and recovery of possession and for rent and damages for use and occupation of the suit land in the Courts below.

3. The suit was filed on the allegation that defendants No. 2 to 6 and one Basudev sold the land in dispute on 2.8.1968 to him and his two brothers. The two brothers of the plaintiff on 5.10.1970 and 14.10.1970 transferred their rights in the property in favour of the plaintiff, making him the exclusive owner of the same. The defendant No. 1 was a tenant of the said land @ Rs. 15/- per month from the times of the previous owners. He defaulted in the payment of rent from

March, 1968. His tenancy was terminated vide notice dated 19.2.1971 under section 106 of the Transfer of Property Act, 1882 making him liable for eviction from the disputed property and for payment of arrears of rent/damages for its use and occupation.

4. The defendant No. 1 contested the suit denying the relation of landlord and tenant between the parties and by setting up his own title in the suit land on the basis of an unregistered sale-deed dated 5.1.1938 executed by one Dhorai in his favour.

5. In the suit two crucial issues were formulated for adjudication namely as to whether there existed any relationship of landlord and tenant between the parties and whether the plaintiff is the owner of the suit land entitle to its possession.

6. The second issue relating to the title of the plaintiff after objection by the defendant No. 1 was deleted and the said order was allowed to attain finality. The parties confined the dispute in the suit with regard to eviction of defendant No. 1 and for payment of rent/damages on the basis of the relationship of landlord and tenant.

7. The Courts below concurrently held that the plaintiff failed to prove the existence of any relationship of landlord and tenant between him and the defendant No. 1. Therefore, defendant No. 1 is not liable for eviction or for payment of any rent/damages for its use and occupation to the plaintiff.

8. The question of title of the plaintiff though held to be foreign to the suit but still it was held that plaintiff failed to prove his title over it and is not entitle to recovery of its possession.

9. It is in this background that the plaintiff has preferred this second appeal.

10. I have heard Sri Vishnu Singh, learned Counsel for the plaintiff appellant and Sri H.N. Tripathi, learned Counsel appearing for the contesting defendant respondent No. 1. The other defendants respondents are simply formal parties.

11. Counsel for the above parties agreed for the final disposal of the appeal only on the address made on behalf of the plaintiff appellant and defendant respondent No. 1.

12. The appeal was admitted and a substantial question of law was framed. The said substantial question of law is transcribed in hand on the back of the second page of the memo of appeal. The said page has crumbled and is partly torn making it difficult to read the exact order or the substantial question of law so framed.

13. The careful and minute reading of the above order however, reveals that the substantial question formulated is more or less is as under:-

"The substantial question of law in this case is whether the finding that the

plaintiff has not established his title to the property or that the relationship of landlord and tenant between him and the contesting defendant was not established, was vitiated by placing undue healthy burden of proof on plaintiff."

14. In other words the substantial question of law appears to be that whether the Courts below were justified in placing undue healthy burden of proof upon plaintiff as to the title of the property and the relation of landlord and tenant between them.

15. The above question may not strictly be a substantial question of law in view of Rama Shankar and Another Vs. Om Prakash Likhdhari and Others, (2013) 6 ADJ 119 : (2013) 98 ALR 514 : (2013) 5 AWC 4853 : (2013) 120 RD 589 nonetheless as the appeal is an admitted appeal and is pending for over 30 years, I gave opportunity to the parties to argue the matter thread bear so that the lis may come an end finally.

16. On arguments, again two points as referred to above were raised:

(i) Whether the relationship of landlord and tenant exist between plaintiff and defendant No. 1? and

(ii) Whether the plaintiff can succeed to recover possession of the land in dispute on the strength of his title?

17. In connection with the title of the property, I considered it material to go through the plaint from the original record.

18. A bare perusal of the plaint reveals that the entire cause of action therein is based upon the relationship of landlord and tenant rather than on title. The suit appears to be simply for the eviction of the tenant from the land in dispute on the ground of default in payment of rent on determination of tenancy. There are no pleadings or disclosure of any cause of action to recover possession of the disputed land on the basis of title.

19. It is in this view of the matter that the Court of first instance after having framed the issue regarding title of the plaintiff subsequently ordered for its deletion. I find nothing wrong on part of the Court of first instance in deleting the said issue and confining the suit strictly as per pleadings on the relationship of landlord and tenant between the parties.

20. It is settled in law that the Courts below are enjoined upon to decide the issues which arise between the parties rather than to go beyond the dispute and adjudicate something which is completely alien and not in issue between the parties.

21. In view of above, I confine myself to the controversy regarding relationship of landlord and tenant between the parties and to the relief to which the plaintiff is entitle in law if any.

22. The plaintiff appellant has filed an application for additional evidence in the

second appeal under Order XLI, Rule 27, C.P.C. to bring on record revenue entries in order to prove his title over the land in dispute.

23. I am afraid this additional evidence cannot be permitted to be adduced at this stage as the essential conditions permitting additional evidence have not been fulfilled.

24. It has not been established that the plaintiff appellant could not produce the said documentary evidence despite exercise of due diligence in the Court below. Moreover, this Court does not feel that any evidence is essential to prove the title of the plaintiff appellant over the suit land for the purposes of adjudication of the controversy arising therein which is based not on title but on relationship of landlord and tenant. This report, revenue entries are not in shape of documentary evidence as to title and are rather fiscal in nature to enable realisation of revenue. The title of the plaintiff does not stand proved by the said revenue document even if admitted in evidence.

25. In regard to the relationship of landlord and tenant between the parties it is the plaintiff appellant who is alleging that the suit land was let out to the defendant No. 1 and that he was in occupation of it as tenant from the time of the previous owner. Therefore, the burden to prove the same is squarely upon him.

26. The sale-deed by which the plaintiff and his brothers purchased the suit land from defendants No. 2 to 6 and Basudev is completely silent and does not anywhere states that in any portion of the land transferred by them defendant No. 1 is a sitting tenant.

27. Thus, the entire story that defendant No. 1 was a tenant from the times of the previous owner stands completely falsified.

28. It is admitted on record that the plaintiff on its purchase had never asked the defendant No. 1 to pay rent of the suit land to him. No rent receipt was produced and no evidence was adduced to prove as to when exactly the tenancy commenced. Nor agreement of tenancy or any rent note was produced in evidence to prove the said relationship.

29. In brief no evidence was produced to show that the defendant No. 1 is in occupation of the suit land as a tenant.

30. Sri Vishnu Singh, learned Counsel for the plaintiff appellant has laid much emphasis on the entries of the Bahi Khata maintained by the plaintiff in order to prove that he used to realise rent from defendant No. 1.

31. First of all the aforesaid Bahi Khata is the plaintiff's own document which may have been manufactured and produced for the purposes of this case. Secondly, it is settled in law that the evidence cannot go beyond the pleadings. The plaintiff in the plaint has nowhere averred or pleaded that he ever realised rent from defendant No. 1. In the absence of any such pleading he cannot

adduce evidence to show that he had realised rent.

32. The Courts below on these reasonings have rightly returned a finding of fact that the plaintiff has failed to prove relationship of landlord and tenant between him and defendant No-1 which may entitle him to a decree of eviction against defendant No. 1 and for arrears of rent or damages for its use and occupation.

33. The findings on the above issue are pure findings of fact and the Courts below have not erred in placing the burden to prove the said relationship upon the plaintiff who has come up with the said case. There appears to be no perversity in the findings recorded by the Courts below in this regard.

34. In view of the aforesaid facts and circumstances, I am of the view that this appeal stands concluded by concurrent findings of fact recorded by the two Courts below and does not give rise to any substantial question of law not even the one which has been formulated by the Court and that the question of title of the parties over the suit land was not an issue in the suit in the absence of pleadings any cause of action on that ground. Accordingly, the appeal is dismissed as devoid of merit with liberty to the plaintiff to get his title adjudicated or declared from the Competent Court or to institute a suit for recovery of possession on the basis of his title, if necessary, which would be decided uninfluenced by any finding of title recorded herein this suit.