

(2015) 08 AHC CK 0095
In the Allahabad High Court
Case No : First Appeal No. 287 of 2005

Ravi Singhal and Others

APPELLANT

Vs

Rajeev Goyal and Others

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9, 96

Citation : (2015) 8 ADJ 283 : (2016) 114 ALR 64 : (2015) 6 AWC 6231

Hon'ble Judges : Sudhir Agarwal, J;B.K. Srivastava-II, J

Bench : Division Bench

Advocate : Shailendra Kumar Johri and Kshitij Shailendra, for the Appellant

Final Decision : Partly Allowed

Judgement

1. Heard Sri Kshitij Shailendra, learned counsel for appellant and perused the record. None appeared on behalf of respondents, though the case has been called in revised. In the circumstances, we proceed ex-parte to decide the appeal. This appeal under Section 96 of Code of Civil Procedure has arisen from judgment and decree dated 31.1.2005 passed by Sri Dharam Singh, Additional District Judge, Court No. 3, Moradabad in Original Suit No. 617 of 2003.

2. The only point for determination for adjudicating this appeal is whether the Court below, when decided issue regarding jurisdiction holding that it has no jurisdiction to try the suit, whether could have proceeded to adjudicate other issues on merits and after deciding the same on merits, can pass a judgment and decree of dismissal of suit.

3. Brief facts giving rise to the present dispute are as under.

4. Plaintiffs-appellants instituted the aforesaid suit seeking a permanent injunction against defendants restraining them from interfering into possession of plaintiffs in respect to property in dispute, detailed and described in para 1, 2 and 6 of the plaint, on the basis of proceeding of P.A. Case No. 7 of 2001 (Kusum Lata v. Doris) and Execution Case No. 15 of 2001 before the Trial Court.

Following 11 issues were formulated:

"(1) Whether the defendant Smt. Doris Herald Meyer executed statement on 29.1.88 in favour of Abdul Haq and Abdul Haq on the basis of the said statement executed sale-deed on 2.8.2003 in respect of the constructions standing thereon and the land of 358.42 sq. M. In favour of plaintiffs, as alleged in the plaint?

(2) Whether the plaintiffs are leasee of 1453.60 sq. M. Land through registered lease deed dated 2.8.2003?

(3) Whether the ex-parte order passed in petition No. 7 of 2001 of U.P. Act No. 13/72 is illegal and void, which is passed in favour of defendants No. 1 to 3 being in favour of defendants No. 1 to 3 being the heir of Sanjay Goyal and defendants want to evict the plaintiffs in Execution Case No. 15/01 on the basis of the said order, who are bona fide purchasers for the value?

(4) Whether late Chunna had let out the property on 31.5.1920 detailed in para 10 of W.S. to late A.D. Meyer for 10 years for raising constructions thereon, which later on extended on 2.6.1933 upto the year 1943 and it was agreed that after termination of tenancy constructions shall be removed otherwise on the basis of the written statement of Smt. Doris Herald Meyer dated 3.4.1937 and according to the provision of T.P. Act and Section 29/A of U.P. Act 13, 72, lessor/ owner shall become the owner of the constructions also?

(5) Whether there is no any compound of Ram Kumar Singhal and Abdul Haq defendant has got unauthorized possession of the land of defendants No. 1 to 3, as alleged in para 11 of the W.S. and the suit is bad for non-joinder of Ram Kumar Singhal and Jamila Khatoon?

(6) Whether there is any power of attorney in favour of Abdul Haq and in the title of suit, Abdul Haq defendant is wrongly shown the power of attorney holder?

(7) Whether the statement in favour of Abdul Haq is not registered nor it bears signatures of Smt. Doris Herald Meyer nor it has any signatures of the witnesses and the seal of the Notary is forged because Government of Switzerland uses Monogram of Notary?

(8) Whether Abdul Haq is not the Proprietor of the Alpex Traders and unauthorized has shown him as proprietor of the Alpex Traders?

(9) Whether the suit is time barred?

(10) Whether the Civil Court has no jurisdiction to try the suit?

(11) To what relief, if any, are the plaintiffs entitled?

5. As noted above, Issue No. 10 relates to very jurisdiction of the Civil Court to try the aforesaid suit. This issue has been decided by the Court below alongwith Issue No. 3 holding that Civil Court has no jurisdiction to try the suit and proceedings under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") and any order passed therein

or in execution on account of the order passed therein, cannot be challenged in Civil Court. Having said so, Court below then proceeded further to decide other issues on merits and thereafter dismissed suit vide impugned judgment and decree.

6. Learned counsel for appellants submitted that once the Court finds that it has no jurisdiction to try the suit, it should have returned plaint and had no jurisdiction to dismiss the suit or proceed to decide the suit on merits and to that extent, judgment of Court below is nullity and without jurisdiction. He placed reliance on Supreme Court decision in *R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd.*, AIR 1993 SC 2094 : (1993) 1 JT 617 : (1993) 1 SCALE 262 : (1993) 3 SCC 518 Supp : (1993) 2 SCC 130 , a Single Judge judgment of this Court in *Ram Swaroop v. Kalicharan*, 1995 (2) ARC 370 and *Shreyans Industries Vs. State of U.P. and Others*, (2004) 1 MhLj 51 : (2004) 1 MhLj 50 .

7. The Apex Court in *R.S.D.V. Finance Co. Pvt. Ltd. v. Shree Vallabh Glass Works Ltd.* (supra) has observed in para 7 as under:

"The Division Bench was totally wrong in passing an order of dismissal of the suit itself when it had arrived at the conclusion that the High Court had no jurisdiction to try the suit. The only course to be adopted in such circumstances was to return the plaint for presentation to the proper Court and not to dismiss the suit."

8. Similarly, in *Ram Swaroop v. Kalicharan* (supra), the Court held:

"Obviously, once it is found by the appellate Court that the trial Court lacked jurisdiction to entertain the suit any further adjudication upon merit of other issues by it would be without jurisdiction and nullity.

The lower appellate Court has categorically found that the revenue Court alone had jurisdiction to take cognizance of the suit and it was not cognizable by the trial Court, namely, the Court of Munsif. After this finding and conclusion, only course open to the lower appellate Court was to direct, after setting aside the decree and judgment of the trial Court, the return of the plaint for presentation to the revenue Court. It acted illegally in adjudicating upon other issues on merit and dismissing the suit."

(emphasis added)

9. Similar view was taken in *Shreyans Industries v. State of U.P.* (supra), observing:

"Once the Court comes to the conclusion that it has no jurisdiction to entertain the suit, the only course open to the Court is to return the plaint to the plaintiff to be presented in the competent Court and any finding recorded on merits of the matter would be of no consequence. If plaint is returned for want of jurisdiction and the same Court also records findings on merits, such findings are without jurisdiction and null and void."

10. In view of above exposition of law and considering the fact that Court below

has correctly come to the conclusion that in respect to orders passed under the provisions of Act, 1972, Civil Court in a suit under Section 9 C.P.C., has no jurisdiction to declare orders passed by competent authority under Act, 1972 illegal, it had not authority to proceed to decide other issues on merits. In our view, the Court below has rightly held that it had no jurisdiction to try the suit. In these circumstances, the only way open to it was to return the plaint instead of proceeding to decide other issues on merits and dismiss the suit.

11. In view of above, the appeal is allowed partly. The findings of Trial Court on issues, other than Issue No. 3 and 10, are hereby set aside. The impugned judgment and decree dated 31.1.2005 is modified to the extent that since original Suit No. 617 of 2003, in view of the finding recorded on issues No. 3 and 10, was not triable by Civil Court, the plaint shall be returned to plaintiffs for being presented in the Court of competent jurisdiction. There shall be no order as to costs.