
(1986) 08 MP CK 0031

In the Madhya Pradesh High Court

Case No : S. A No. 416 of 1981 in C. A. No. 30-A of 1979;

Saguna Bai (Smt.)

APPELLANT

Vs

Dhanprasad

RESPONDENT

Date of Decision : 08-08-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1986) 08 MP CK 0031

Hon'ble Judges : B.M. Lal, J

Bench : Single Bench

Advocate : R.K. Samaiya, for the Appellant; R.P. Verma, for the Respondent

Judgement

B.M. Lal, J.—This second appeal u/s 100 C. P. C. presented by the appellant/defendant against the judgment and decree passed by the Additional District Judge, Sagar in favour of the respondent/plaintiff, raises the following substantial question of law :

Whether the Court below committed any error in not looking to the documents Ex. P. 1 and Ex. P. 3 in arriving at the conclusion reached by it ?

for decision by his Court.

2. The facts of the case in narrow compass are as follows : The respondent/plaintiff brought a suit for possession, declaration and damages against the appellant/defendant on the allegations that one Munnalal Gupta had taken some piece of land bearing Khasra No. 142 and 143 on rent from the Mohatmimkar of the idol of Shri Deo Janki-Raman Mandir, Madiya Kubule, Vitthal Nagar, Sagar and had raised a hutment over it.

3. The said Munnalal Gupta during his life time sold the house in question for a consideration of Rs. 1500/- to this plaintiff. However, the deed of registration was executed on 27-1-1977 by Ramnarain Gupta after the death of his father (Munnalal Gupta).

4. However, in between, Shrimati Bhuri Bai Mohatmimkar of the idol of Shri Deo Janki-Raman Mandir instituted Civil Suit No. 11-A/67 against the plaintiff/respondent and his vendee for possession of the land over which the said hutment was erected. But, the proceedings of Civil Suit No. 11-A/67 ended in compromise. According to the terms of the compromise decree dated 2-2-68, it was settled between the parties that the land over which the hutment was erected, the title of the land would continue in favour of the idol Shri Deo Janki-Raman Mandir, but the super structure standing over it, shall be that of the plaintiff and as such the rent of the land alone was fixed at Rs 4/- per month. By this compromise decree the plaintiff became the owner of the house whereas the land over which the super structure was erected, remained in possession of the trust.

5. On the aforesaid facts, the plaintiff/respondent pleaded that late Bhagwandas, the husband of the defendant/appellant was his tenant of the northern portion of the house which has been alienated in the plaint map and shown in red colour. After the death of Bhagwandas, by operation of law, his widow i. e., the present defendant Smt. Saguna Bai became the tenant of the plaintiff who acknowledged the same by executing a rent deed in favour of the defendant.

6. The plaint averments also go to show that on an earlier occasion, the plaintiff had brought a suit (Civil Suit No. 30-A/75) claiming relief for eviction from the suit house on the ground inter alia that the plaintiff required the suit premises for his bona fide need. The suit was decreed by the trial Court on 19-1-85 but in appeal preferred by Smt. Suguna Bai, the present defendant, the decree was reversed and the plaintiff was non-suited on the ground that there being a dispute between the parties relating to title, no decree for eviction in respect of the suit house could be granted. This judgment has created shadow over the title of the plaintiff to the suit house.

7. To get over this shadow as to the plaintiff's title, the present suit has been filed for possession, declaration and damages on the basis of title.

8. The appellant/defendant denying the averments of the plaint, emerged with a plea that her husband Bhagwandas (deceased) had taken the suit premises on rent at Rs 7/ per month from deceased Munnalal Gupta and subsequently, on 31-10-67 an agreement was arrived at between Munnalal Gupta and Bhagwandas relating to the sale of the suit house in favour of her husband late Bhagwandas for a consideration of Rs. 600/- and in consequence thereof, Rs. 25/- as earnest money, were also paid to Munnalal Gupta. It is further averred that Bhagwandas while remaining in possession, was ready and willing to perform his part of the contract, but because of the pendency of the civil suit instituted on behalf of the idol Shri Deo Janki-Raman Mandir against Munnalal Gupta, the sale-deed could not be executed and registered. However, the defendant Smt. Saguna Bai has been throughout ready and willing to perform her part of the contract with the heirs of late Munnalal Gupta. She also pleaded that neither she was the tenant nor was the plaintiff owner of the suit house,

therefore, plea of estoppel was also raised by her against the plaintiff.

9. On the aforesaid pleadings of the parties the trial Court dismissed the suit, but in appeal while reversing the judgment and decree of the trial Court, the lower appellate Court decreed the suit, as prayed, for possession, declaration and mesne profits, against which the present second appeal has been filed by the defendant.

10. This Court, while admitting the appeal for hearing parties framed a substantial question of law, as referred to in the opening paragraph of this judgment.

11. Shri R. P. Verma, learned counsel appearing for the respondent-plaintiff at the very outset raised a preliminary objection that the substantial question of law, as has been framed, does not involve any ingredient of "substantial question of law" within the meaning of section 100, C. P. C. and therefore, on this short ground alone, this appeal be disposed of without going into the merits of the case.

12. While dealing with the preliminary objection, "substantial question of law" as envisaged u/s 100, C. P. C. denotes that "substantial question of law" means question of law of importance to the parties involved in the case and not merely a question of general importance. (See Deputy Commr., Hardoi, in charge Court of Wards, Bharawan Estate Vs. Rama Krishna Narain and Others,

13. In this context if the provisions of Section 100 and Order 41 C P.C. are looked into, it is clear that the jurisdiction to dismiss the second appeal is conferred upon the Court only under Order 41, Rule 11 C. P. C, i. e., at the stage when the appeal is not admitted for hearing parties; but once the appeal is admitted, then without hearing it on merits there is no provision under Order 41 or even u/s 100, C, P. C. to dismiss the appeal, except on the ground of non-prosecution or on the ground of abatement of the appeal, but it could not be dismissed on the ground that no substantial question of law arises in the appeal within the meaning of sub-section (5) of Section 100 C. P. C. which only envisages that the respondent may raise a question that the case does not involve any substantial question of law. While hearing this objection, it is incumbent upon the Court to dispose of the question so framed after giving due consideration to the merits of the case. (See Jhanda Singh) and others v. Gram Sabha of village Umri and others [2].

14. The proviso to sub-section (5) of Section 100 C. P. C. is emphatic which envisages that the appeal can be disposed of on any other substantial question of law, even if it is not formulated at the time of admitting the appeal, but all this depends upon the satisfaction of the Court that the case involves such substantial question of law. Hence, if the entire provision including the proviso of sub-section (5) of Section 100 is read along with Order 41 Rule 11, C. P. C, then the net result would be that once the appeal is admitted it cannot be dismissed on the sole ground that the question so formulated, does not amount to

substantial question of law.

15. Thus, once the appeal is admitted for hearing parties and even if the ground as posed by Shri Verma in this appeal, is raised, the High Court must not dispose of the appeal without considering/hearing the case on merits; but at the same time while dealing with the objections so raised, it is incumbent upon the High Court to deal with the substantial question so formulated on the merits of the case and may on the facts of the case hold that the case does not involve any substantial question of law. For the reasons stated aforesaid, the submission of Shri R P. Verma, raising preliminary objection, is hereby repelled.

16. Now, in the light of the above discussion, the scope of second appeal u/s 100, C.P.C. is to be seen. Under the given circumstances of the instant case, misinterpretation or mis-construction of the document, no doubt, can be opened in second appeal, provided that the documents in question relates to title. (See *Deity Pattabhiramaswatny v. Hanymayya and others* AIR 1959 SC 57, and *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, . But, where such interpretations of incidental and ancillary documents is involved, which are not actually documents of title, then the same cannot be looked into. In the instant case the documents referred to are Ex. P. 1 and Ex. P. 3 which are not the documents pertaining to title but are incidental and ancillary documents. Therefore, question of interpretation of these two documents attracting any substantial question of law within the meaning of Section 100 C. P C, does not arise, despite the fact that these two documents have been fully considered by the lower appellate Court.

17. Shri R. K. Samaiya, appearing for the appellant argued that the documents Ex. P-1 and Ex. P-3 have not been taken into consideration by the lower appellate Court while reversing the judgment and decree passed by the trial Court.

18. The word "consideration" connotes discussion about the matter in its right perspective taking into consideration the pros and cons of the subject-matter in issue Therefore on consideration the conclusion reached by the Court, if does not suit or favour the party concerned, on that basis the aggrieved party cannot say that the documents have not been considered. In the light of this interpretation of the word "consideration" if Ex. P-1 and Ex-P-3 are seen, it demonstrates that Ex. P-1 relates to decree passed in Civil Suit 11-A of 1967, as a result of compromise arrived at between the appellant and the trustee by which this plaintiff had become the owner of super-structure and Ex. P-3 relates to the so-called agreement by which the defendant is alleged to have purchased the suit house. A perusal of the impugned judgment demonstrates that these two documents have been taken into account while reaching the conclusion by the lower appellate Court. Ex. p-2 and Ex-p-4 by which the plaintiff has acquired the title establish the case of the plaintiff relating to his title of the super-structure, as setforth by him. Thus, the lower appellate Court at length has considered the documents Ex. P-1 and Ex-P-3 and there is no room left to the arguments of the

learned counsel that these two documents have not been considered.

19. Consequently, from the discussion aforesaid, this appeal fails and is hereby dismissed. However, under the facts and circumstances of the case and taking into consideration the widowhood of the appellant, it is directed that the parties shall bear their own costs including counsel fee, as incurred throughout.