
(2005) 03 UK CK 0039
In the Uttarakhand High Court
Case No : Civil Revision No. 06 of 2005

Smt. Chandra Kanta Jain

APPELLANT

Vs

Sri Hari Chand Gupta and Others

RESPONDENT

Date of Decision : 15-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 11 Rule 2(2), Order 23 Rule 1, 115

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (2005) 03 UK CK 0039

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : S.K. Jain, for the Appellant; B.P. Nautiyal, for the Respondent

Final Decision : Allowed

Judgement

B.S. Verma, J.—This revision is directed against the order dated 15-02-2005 passed by the judge, Small Cause court/Addl. District Judge, F.T.C. VII Dehradun (For short the J.S.C.C.) in S.C.C. Suit No. 27 of 2003, Harichand Gupta v. Kamal Kumar Jain and Others, whereby Learned J.S.S.C. rejected the application, paper No. 85-C, moved by the revisionist for her impleadment as party to the suit.

2. Initially the revisionist has come up before this Court by way of Revision u/s 115 of the Code of Civil Procedure, but subsequently, the revisionist moved application for treating the same to be Revision u/s 25 of the Provisional Small Cause Courts Act, (for the short the Act) which was allowed vide order dated 10-3-2005 passed by this Court. This revision is treated to be u/s 25 of the Act.

3. Brief facts giving rise to the present revision are that according to the revisionist, Plaintiff-Respondent No. 1 is the owner and landlord of House No. 3, situate at 3 Adarsh Nagar, Rishikesh, Dehradun wherein Respondent No. 2 is a tenant of the entire first floor of the house at amonthly rental of Rs. 1600/- while the revisionist is a tenant @ Rs. 500/- per month as rent in one portion consisting of one reem Verandah, open Chok, Latrine and bathroom since 1991

and the Respondent No. 3 is a tenant @ Rs. 1400/- p.m. in the rest part of the second floor consisting of two rooms, kitchen, bathroom, latrine, etc., that the landlord Harichand Gupta filed a suit against Kamla Kumar Jain and Raghunath (Respondent Nos. 2 and 3) for eviction and recovery of rent on the ground of sub-tenancy of the entire first floor and second floor without impleading the revisionist as party to the suit; that on 20-09-2004, the Respondent No. 2 filed his written statement; that on 31-01-2005, the revisionist moved application under Order 1, Rule 10 CPC for her impleadment as party to the suit and the Learned J.S.C.C. after hearing both the parties rejected the said application, hence the revisionist has come up before this Court.

4. The Learned Counsel for the revisionist vehemently submitted that the Learned J.S.C.C. committed manifest error by rejecting the application under Order 1, Rule 10 CPC as the right of the revisionist were adversely affected causing prejudice to her because she is a necessary party and by the impugned order the case stands finally decided against her. On the other hand, the Learned Counsel for the Respondent-landlord supported the impugned order and submitted that the revisionist Chandra Kanta had filed a suit registered as Original Suit No. 835 of 2001 against the landlord Harichand Gupta, wherein the parties entered into a compromise. As per the said compromise, the husband of the revisionist, Kamal Kumar Jain, admitted that he is tenant of the entire accommodation of front portion of first floor comprising 3 rooms, kitchen, bathroom, Verandah and one room in the second floor @ Rs. 2,100/- per month and it was agreed between both the parties that there is two room set in front portion the second floor, which is lying vacant and the same has been let out by the landlord-Respondent to Sri Kamal Kumar Jain and the said entire accommodation and the two room accommodation situated in the second floor of 3, Adarsh Nagar, Rishikesh (herein called the total accommodation) is given to the husband of the revisionist and the rent is enhanced to Rs. 3500/- per month w.e.f. 1-10-2002 onwards. He further argued that on the said date of compromise, the revisionist filed an application in O.S. No. 835 of 200, Chandrakanta Jain v. Harichand Jain and Ors. that her suit be dismissed in view of the compromise, which was filed along with the application. The certified copy of application dated 17-10-2002 along with the copy of alleged compromise between Hari Chand Gupta and Kamal Kumar Jain has been filed along with the Counter Affidavit as C.A.11.

5. In this case, Counter and Rejoinder Affidavits between the parties were exchanged and the Learned Counsel for both the parties submitted that the revision petition may be disposed of at the admission stage.

6. Learned Counsel for the revisionist firstly argued that the alleged compromise dated 17-10-2002 was between Kamal Kumar Jain (husband of the revisionist) and the landlord referring to the suit between those parties bearing S.C.C. Suit Mo. 23 of 1999, which was pending on that date and which was subsequently dismissed on 9-12-2002 in default of both of the parties. Secondly, the main

ground of challenge in this revision is two fold. According to the revisionist, the finding of the Learned J.S.C.C. has been given in para 7 of the impugned order is totally perverse, because the trial court gave a categorical finding that Smt. Chandra Kanta moved an application 61-C for withdrawal of her suit and it was also mentioned by the court below that on the basis of the alleged compromise paper No. 61-C/2, the suit was withdrawn. The trial court observed that Smt. Chandra Kanta has filed any other document in her favour to prove her tenancy and ultimately, the application 85-C was rejected. The said application has been filed by the Respondent-landlord, i.e. 16-Ka in S.C.C. Suit No. 835 of 2001, Chandra Kanta Jain v. Hari Chand Gupta and Anr. and 16-Ka/2-3 is the alleged compromise between Kamal Kumar Jain (husband of the revisionist) and the landlord Sri Hari Chand Gupta. From a bare reading of paragraph No. 2 of the terms of the alleged compromise, it reveals that the said compromise was with reference to earlier S.C.C. Suit No. 23 of 1999, which was pending between Hari Chand Gupta and Kamal Kumar Jain.

7. The Learned Counsel for the revisionist next argued that on 20-01-2005, the trial court in S.C.C. Suit No. 27 of 2003 has framed as many as 8 issues and as pacific Issue No. "Cha" has been framed to the effect "Whether Smt. Chandra Kant Jain is a tenant @ Rs. 500/- per month over the property described in Schedule Kha of the written statement?" The Learned Trial Court committed a manifest error in not considering this aspect at the time of deciding the application 85-C and totally ignored the averment made by Kamal Kumar Jain in his written statement. The finding is totally perverse against the record and the trial court dismissed the application 85-C only on the ground that Chandra Kanta Jain moved the application in Suit No. 835 of 2001 for withdrawal of the suit pending before the Court. S.C.C. Suit No. 835 of 2001 was for declaration of tenancy and for injunction that she may not be ejected without due course of law.

8. In support of his arguments with regard to impleadment of the revisionist in the suit, the Learned Counsel for the revisionist has relied upon the judgment of the Allahabad High Court in the case of Chaturbhuj Agrawai v. Arun Bhatia and Ors. [2001(42) ALR 10]. There was a case u/s 21(1)(a) of the U.P. Act No. 13 of 1972 and during the pendency of the application u/s 21(1)(a) of the said Act, a third party filed application to implead himself in the case claiming to be a tenant and the High Court held that he be impleaded as a party and it should be decided as to whether he is tenant or not.

9. Learned Counsel further relied upon the case of Smt. Saroj Goyal and Ors. v. Munshilal and others [2003 (51) ALR 367]. In that case, the impleadment application was allowed by the Trial Court. The matter was challenged in revision before the District Judge, who dismissed revision. The Petitioner went up before the High Court. While dealing with Order 1, Rule 10 Code of Civil Procedure, the High Court observed that interest of substantial justice would be served if all the concerned parties are heard with regard to the disputed rights-No prejudice would be caused to the Plaintiff of the suit- Prevention would occasion injustice.

The High Court further observed that duty of the court is to do justice and prevent injustice. The Learned Counsel also relied upon the case of "Anurag Sharma v. X Additional District Judge, Moradabad and others"(1991, A.W.C., page 232). In that case the Allahabad High Court while dealing with Order 1, Rule 10 of the CPC held that a person necessary or proper party in suit should not be refused impleadment on the ground that he has an alternative remedy of a suit.

10. Learned Counsel for the Respondent-landlord placed reliance on the pronouncement of the Allahabad High Court in the case of Prakash Chandra Mishra and Anr. v. Rajendra Prasad Gupta and others, [2004 (S5)ALR 282] in which it was held that withdrawal of suit is unilateral act of the Plaintiff-after moving an application for "withdrawal of suit, Plaintiff cannot move an application for withdrawing application for withdrawal of suit. Application moved was one of abandonment of suit and it was complete as soon as application was filed. Similar view was taken in the case of "Smt. Raisa Sultata Begum and Ors. v. Abdul Quadir and Ors. (AIR, 1966, Allahabad, page 318 (D.B.). In the instant case also, the revisionist Smt. Chandra Kanta Jain also filed the application to withdraw the earlier application, which was moved for withdrawal of the suit. The facts of the case are similar to that of the case of Prakash Chandra Mishra (Supra). The Learned Counsel also relied upon the case of Shiv Prasad v. Durga Prasad and Anr. (AIR, 197S, Supreme Court, 957) wherein it was held that "Every Applicant has a right to unconditionally withdraw his application and his unilateral act in that behalf is sufficient. No order of the Court is necessary permitting him to withdraw the application.....The act of withdrawal is complete as soon as the Applicant intimates the Court that he withdraws the application".

11. Learned Counsel for the Respondent-landlord submitted that the Plaintiff-landlord submitted that the Plaintiff-landlord Hari Chand Gupta claimed no relief against the Applicant Chandra kanta Jain in the present suit, therefore, if she has any independent tenancy right therein as alleged, the same can be resisted by her in execution of decree to protect her possession. In support of his contention, the Learned Counsel placed reliance upon the judgment of the Allahabad High Court in the case of Furkan Ahmad v. Sayeed Ahmad Raza and Ors. (1995 (25) ALR 349). In that case, application for impleadment under Order 1, Rule 10 CPC was filed and rejected and the Allahabad High Court held that the application to implead as Defendant was moved but the Plaintiff claimed no relief against the Applicant. If he has any independent tenancy right therein as alleged, he can resist execution of decree to protect his possession and it was held that the application was rightly rejected. The ratio of this case cannot be disputed. In the instant case, the Learned Trial Court on the written statement of the Defendant Kamal Kumar Jain framed a specific issue whether Smt. Chandra Kanta Jain (the Applicant) was a tenant at the monthly rent of Rs. 500/- over the property described in Schedule Kha of the written statement. The Applicant is none other but the wife of the Defendant Kamal Kumar Jain himself. Therefore, the case before the Allahabad High Court is distinguishable.

12. So far as the law regarding withdrawal of suit or abandonment of part of claim under Order 23, Rule, 1 of the CPC laid down in the cases, referred to above, is concerned, I am in full agreement with the view taken in Prakash Chandra Mishra case (Supra). The effect of the application moved by Smt. Chandra Kanta Jain in S.C.C. Suit No. 835 of 2001 for withdrawal of the suit will be that she cannot file a fresh suit on the same cause of action. The important aspect of the instant case is that the Learned J.S.C.C, while deciding the application 85-C filed by the revisionist for" impleadment, gave a categorical finding that the suit was withdrawn by the basis of the compromise, but, in fact, as has been admitted by both the parties and as is apparent from a perusal of the Counter Affidavit and rejoinder Affidavit of the parties, the Suit No. 835 of 2001, Smt. Chandra Kanta Jsain v. Hari Chand Gupta and another is pending. According to the Respondent-landlord, it will be deemed withdrawn since the application was moved by the revisionist, but the Learned J.S.C.C. has not given such a finding. The trial court went up saying the at the suit has been finally withdrawn and that the revisionist has not filed any other prima facie evidence, hence she is not a necessary or proper party. Following the ratio of the law laid down under Order 23, Rule 1 CPC in Prakash Chandra Mishra case (Supra), after filing of the application to withdraw the suit by the revisionist-Applicant, the effect of the application will be that she cannot file a fresh suit on the same cause of action and the fresh suit will be barred by the provisions of Order 11, Rule 2 (2) of the Code of Civil Procedure.

13. The finding of the Trial Court is based on the application for withdrawal of the suit and the alleged compromise, which was mentioned by the trial court, i.e. between the husband of the revisionist and Respondent No. 1 regarding earlier suit, which was pending before the Court, perhaps S.C.C. Suit No. 23 of 1999, Hari Chand Gupta v. Kamal Kumar Jain.

14. While deciding the application under Order 1, Rule 10 Code of Civil Procedure, the trial court did not consider this aspect that the Trial Court has already framed an issue on the basis of the written statement filed by Kamal Kumar Jain, husband of the revisionist, and when specific Issue has been framed to the effect "Whether Smt. Chandra Kanta Jain is a tenant @ Rs. 500/- per month over the property deccribed in Schedure Kha of the written statement? Therefore, the Trial court ought to have considered this aspect at the time of deciding the application under Order 1 Rule 10 CPC The finding of the Learned J.S.C.C. recorded in paragraph No. 7 of the impugned order is perverse. Considering the entire material placed on record, I am of the view that the revisionist is a proper party to the suit and it is fit case to allow the application under Order 1, Rule 10 CPC moved by the revisionist before the court below.

15. In view of the foregoing reasons and discussion, the revision Petition is allowed and the impugned order dated 15-02-2005 is set aside. The Learned J.S.C.C. is directed to direct the Plaintiff-Respondent to implead the revisionist, beina a Drooer party to the suit. No order as to costs.