

Lakhiram Ramdas Vs. Vidyut Cable and Rubber Industries

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Court : Mumbai

Decided On : Mar-27-1963

Reported in : (1963)65BOMLR604; 1963MhLJ942

Judge : Patel and ;Shah, JJ.

Appeal No. : Civil Revision Application No. 1741 of 1962

Appellant : Lakhiram Ramdas

Respondent : Vidyut Cable and Rubber Industries

Judgement :

Patel, J.

1. His Lordship after setting out the facts, proceeded. The question that was mooted before Mr. Justice Chitale was whether the learned Judge was right in directing the plaintiff to deposit the court-fees in accordance with his decision. As the point was thought to be of some importance, it has been referred to a Bench.

2. Mr. Motwani argues that once the Court holds that it has no jurisdiction to try a suit, it cannot make any subsequent order in connection with the suit. Mr. Motwani is right only to an extent but not wholly. In cases where a Court without going into the merits holds that it has no jurisdiction to hear the suit, certainly its function ends and it cannot subsequently make any directions with regard to the suit and for this proposition, in our view, no authority is needed. In the present case, however, that is not what the Court has done. The Court followed the decision in *Jaswantlal v. Western Comp. India* : (1959)61BOMLR1087 . It was held there that whenever a licensor approaches the regular Court suing his licensee the Court has jurisdiction to decide and determine the suit in spite of the fact that the defendant may raise a contention that he is a tenant and, not a licensee. It was further held that the Court must give a finding whether the defendant is a licensee. If it comes to the conclusion that the defendant is a licensee and that the licence is terminated then it is bound to make a decree. If it comes to the conclusion that he is not a licensee then it must dismiss the suit. There is no question then of returning the plaint for presentation to another Court. In short the Court assumes jurisdiction and entertaining the suit decides the suit on merits and if the plaintiff fails in substantiating the suit on merits the suit is dismissed. What the learned Judge did in answering issue No. 1 in the way he did, was that, having found that the relationship was not that of a licensor and a licensee he held that he had no jurisdiction to grant the relief of possession. It does not amount to a finding that he had no jurisdiction to entertain the suit. The principle, therefore, enunciated by Mr. Motwani cannot apply to the present case.

3. It was then argued that it was not within the power of the learned Judge under the Court-fees Act to make the directions which he has made. Our attention has been invited to the Court-fees Act, Sections 12 and 40. According to the learned Counsel, Section 40 has no application inasmuch as it applies during the pendency of the suit. Under that section, the Court has not got any power to make an enquiry after the suit is disposed of. It seems that the learned advocate is correct in this submission. In our view, however, there is sufficient

power under Section 12 which enables the Court to make necessary orders directing payment of court-fees even after a suit has been, disposed of Section 12 was introduced for the first time in the new Act of 1959. It enables the State Government to appoint inspecting officers whose duty it is to examine the records and make a report to the Presiding Judge in suits either pending or disposed of if insufficient court-fee has been paid. By Section 4, power is given to the Presiding Officer to satisfy himself first prima facie that the report is correct and thereafter after giving notice to the party concerned, make an enquiry and call upon the party to pay the court-fees. It is argued by Mr. Motwani that the power of the Court to call upon a party to pay the deficit court-fees arises only on a report by an inspecting officer which is a sine qua non for the exercise of the jurisdiction. He says unless, there is a report and a preliminary enquiry and a finding, there is no question of the further enquiry against the plaintiff. In our view, however, if it could be done on the report of the inspecting officer, there should be no reason why it cannot be done suo motu. Under Section 14 it is the bounden duty of the Court to determine the question as to whether proper court-fee on a plaint or a memorandum has been paid. It is more so in a case where an issue has actually been raised at the trial. The learned Judge was, therefore, bound to have decided issue No. 2 which he did not decide merely because the defendants' advocate gave up the contention at the time of arguments. Having found that through mistake he had not decided that issue, we do not see why the learned Judge could not correct his mistake in accordance with law, more particularly when the decree had not been finally prepared and sealed.

4. Even assuming that the learned Judge had no such jurisdiction even so as the matter is now pending before us in revision, under Sub-section (2) of Section 14 of the Act, it is our duty to consider the question as to whether or not the plaint was erroneously admitted, and if we find that the plaint was admitted erroneously on payment of deficit court-fees, to call upon the plaintiff to make good the deficit. This sub-section provides whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided.

It is argued that the suit must come before a Court of appeal directly from the judgment against which an appeal, reference or revision is filed. It is not possible¹ to uphold this contention. This is a revision application and in this revision application the suit is before us and in our view, we are entitled to decide as to what court-fees the plaintiff ought to pay.

5. As we stated above, the plaintiff has asked for three reliefs : The first is a declaration of the relationship and of the fact that that relationship has come to an end and the two other reliefs are a mandatory injunction for their removal from the premises and a preventive injunction restraining them from re-entering or interfering with the plaintiff's possession. It is undoubtedly true, as has been often said, that no person is bound to so adjust his affairs as to pay the maximum taxes. Nonetheless, it is the duty of the Court to see that by clever wording of documents, legitimate duties are not avoided. In *Burjor Pestonji v. Nariman Minoo* (1952) 55 Bom. L.R. 418, Chagla C.J. said (p. 424): if in substance the plaintiff was not in possession, at the date of the institution of the suit, he cannot convert a suit for possession into a suit for a declaration and injunction merely by giving to the plaint the necessary form and inserting in it the necessary averments.

In *Radhabai Vasudeo v. Nandlal* (1956) 59 Bom. L.R. 127, Mr. Justice Tendolkar following this decision emphasized that the Court has to discover the true nature of the plaint. In that case, the learned Judge construed the reliefs asked for, which were practically the same as now asked for, to mean possession. He said:

The plaintiff cannot by merely so drafting his prayer as to exclude or include reliefs which can or cannot be granted by a Court, confer on the Court jurisdiction to try the suit. It is necessary to consider what the cause of action in the plaint is and what is the substantive relief which the plaintiff will be entitled to if he succeeds in the suit in order to determine whether the Court has jurisdiction, irrespective of what prayers the draftsman has thought fit to put in the plaint.

In our view the principles are well settled and do not admit of doubt. The Court has to see the substance of the plaint and not to go by the mere form. Now, the substance of the plaint though cleverly drafted is that the defendants should remove themselves from the premises and should not thereafter interfere with the plaintiff's possession either by entering or interfering with the same. This is merely putting in a very ingenious form the substantive prayer for possession and cannot be regarded as merely a prayer for injunction. The plaintiff being out of possession can only ask for possession and his being in constructive possession as a landlord or a mortgagor or an owner, where a trespasser is squatting on his property cannot avail. What, in effect, he wanted was removal of the defendants which amounts to eviction and actual possession which the defendants were not to be allowed to disturb. Mr. Motwani contended that a suit for injunction against a licensee, who is in exclusive possession, can lie and he relies upon *Bai Shirinbai Rahim v. Narayandas* (1952) 55 Bom. L.R. 481 decided by S.T. Desai J. sitting singly, where the learned Judge said (p. 484):

In a suit against a trespasser, and a licensee in occupation of the premises after the expiration of the period of the grant is no different than a trespasser in unlawful occupation, the proper relief to be asked for is by way of an injunction.

The proposition is not, with respect, wholly correct. It depends upon the nature of trespass. Where a trespasser does not hold possession of the property but commits sporadic acts of trespass, prayer for injunction is the proper relief. But if the trespasser is in physical occupation of the property then possession is the only proper remedy. He has also referred us to a single Judge's judgment in *Prabirendra Nath v. Narendra Nath* : AIR1958Cal179 , where the learned Judge observed:

The owner of an immoveable property can, on the termination of a licence, maintain a suit against his licensee for a mandatory injunction directing him to vacate the property.

Such a suit undoubtedly falls within the scope of Section 55 'and no relief can be given by other usual mode of proceeding' there being no prayer for a declaration of title and recovery of khas possession.

This case was followed in *Delhi Gate Service v. Caltex (India) Ltd.* , by Falshaw C.J. It is difficult to appreciate how an injunction could possibly be granted under Section 55 in the face of the prohibition in Section 56(i) of the Specific Relief Act which says that an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust. The test is not what relief has been asked, but what ought to be asked. In our view, where a licensee is in exclusive possession, the plaintiff must ask for possession and not injunction. It is the only efficacious relief which the licensor is entitled to.

6. In every case, therefore, the Court who is called upon to hear a suit must initially consider the relationship of the parties. It is not as if that in every case the licensor must ask for possession. There are a large number of cases where the licensor continues to remain in not only juridical possession, but in physical possession along with the licensee, and in such a case in terms of Section 63 of the Indian Basements Act it is sufficient if he asks for removal of the licensee and a permanent injunction against him restraining him from re-entering the premises, because in that case there is no question of his asking for 'equally efficacious relief'. But the same considerations cannot apply where he is not in physical possession of the property, but is in mere juridical possession as any other owner with subsisting title is. If the Court comes to the conclusion on reading the cause of action that the plaintiff has only asked for a mere injunction to which he is not entitled it must reject the plaint, or dismiss the suit as required by the provisions of the Civil Procedure Code. In some cases the Court may find that the prayer clause is cleverly worded as in the present case but in effect it amounts to a prayer for possession, in which case it is its duty to see that the requisite court-fees are paid, and if not, to call upon the plaintiff under the Court-Fees Act to pay the court-fees.

7. It is argued by Mr. Motwani that a relief for injunction as prayed for by him is much narrower than the relief for possession and is not the same as a relief for possession as the provisions of Order XXI, Rule 32, for execution of decrees granting injunctions and Order XXI, Rule 35 and others for execution of decrees for

possession would show. In our view, whether it falls a little short or not is not of much importance. We are concerned with the substance of the plaint and since we come to the conclusion that in substance he asks for possession, he must pay the court-fees as on a suit for possession.

8. Clause (j) requires that the subject-matter in dispute is not susceptible of monetary evaluation, the prayer must be a declaration with or without injunction or other consequential relief and that it should not otherwise be provided for by the Act. Since, as we have said, the plaintiff in effect asks for possession, for which there is provision in the Act, Clause (j) cannot apply. Similarly, the other clause on which reliance has been placed also cannot apply.

9. Mr. Dhanuka argued that this case clearly falls within the purview of Clause (d) of Section 6(iv) since it deals with a suit for declaration and also for a consequential relief by the proviso. It is not possible to sustain the contention raised. Clause (d) provides for suits seeking declaration of such rights in relation to immoveable property as those referred to in the section. When we asked Mr. Dhanuka to formulate the particular right of which declaration is sought in this suit, he said that it is in respect of a personal contract which has ended and, therefore, it fell within the provision. If it were merely a personal contract, then it does not fall within the provisions of Clause (d), but it must fall within the provisions of Clause (j). It seems to us that Clause (d) is certainly not applicable to suits of the present nature.

10. The question then is what is the quantum of the court-fees payable on the assumption that the suit is one for possession of the licensed premises? In *Ram Raj Tewari v. Girnandan Bhagat and Mussammat Barkatunnisa Begum v. Mussammat Kaniza Fatma* I.L.R. (1926) Pat. 631, the Courts held that it was a suit for possession of the premises, but the subject-matter was the right involved in dispute i.e. value of the right to the defendant and as there was no specific provision in the Court-fees Act fixed Court-fee was payable. In *Ratilal Manilal v. Chandulal Chhotalal* (1946) 49 Bom. L.R. 552, a similar question arose. Mr. Justice Weston while referring the case to a Bench said (p. 552): I do not myself understand how the right of a licensee to remain in a house is to be valued, and, if the suit falls under para. (v) of Section 7 of the Court-fees Act, as is held in the Patna case, notional valuation would seem out of place.

and observed that he was by no means satisfied that the distinction made by the Patna High Court between an ordinary suit in ejectment based on title and a suit in ejectment based on licence was really a distinction of substance. Mr. Justice Macklin who delivered the judgment of the Division Bench agreed with that view. The learned Judge pointed out several provisions of the Court-fees Act and came to the conclusion that the subject-matter involved was not a particular limited right, but the property in dispute, and held that the Court-fees ought to be paid on the market value of the property as provided by that clause. A similar view has since been taken in *Satish Kumar v. Sailabasini Devi* A.I.R. [1949] Cal. 621, *Manik Chand v. Sudhir Kumar* : AIR1960Cal420 and *Sisir Kumar v. Susil Kumar* : AIR1961Cal229 S.B. The last case was decided by a Special Bench of three Judges. The case decided by this High Court has been followed consistently for more than 12 years and has been the law. The Legislature is presumed to know the interpretation put by the Court upon an enactment passed by it and if it continued the same provision as before, it must be inferred that no change was intended. In our view, therefore, the plaintiff must pay ad valorem fees as in a suit for possession on the market value of the property.

Mr. Motwani has pressed before us that payment of such heavy court-fees by litigants in suits against licensees would involve great deal of hardship. In our view, as long as the Rent Restriction Act is in force, no hardship is involved. In most of the cases such licences are ingenious documents made in order to circumvent the Rent Act. In most of the cases licensors of premises charge very heavy occupation fee to the licensees and they have the unusual advantage of having the occupants thrown out at a moment's notice. If they are required to pay heavy court fees, we do not see any injustice in it. It is undoubtedly true that in some rare cases where genuine licences are granted, the licensors might suffer. But that cannot be helped and it is not for us to give relief where none is available under the statute.

11. In the result, we hold that the petitioner is bound to pay court fees on the value of the property as laid by him in the plaint at Rs. 20,000. A certificate accordingly to issue to the Collector under Section 12 of the Court Fees Act for recovery of the amount of the Court fees.

12. We direct the learned City Civil Court Judge to frame a decree in the case immediately within two days from the order reaching the learned Judge and supply a copy to the plaintiff petitioner as soon thereafter as could possibly be done. The decree will, be drawn up whether or not the plaintiff petitioner pays the court-fees in the trial Court. The petitioner will pay the costs of the Government Pleader but not of the defendants. The Government Pleader's costs to be taxed at Rs. 60.

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