

Narayan Vishwanath Vs. Malappa Kasappa

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Court : Mumbai

Decided On : Sep-30-1955

Reported in : AIR1956Bom246

Judge : Gajendragadkar, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 41, Rules 23, 25 and 33 - Order 42, Rule 1; Rent Act - Sections 11

Appeal No. : Civil Revn. Appln. Nos. 801 and 802 to 804 of 1954

Appellant : Narayan Vishwanath

Respondent : Malappa Kasappa

Advocate for Def. : S.B. and ;K.B. Sukthankar, Advs.

Advocate for Pet/Ap. : V.D. Tulzapurkar, Adv.

Judgement :

1. The order of remand against which the present revisional application has been preferred is wrong in form and unjustified in substance. This order came to be passed in these circumstances. The property in suit is Municipal House No. 267. This house was reconstruct-ed by the beginning of 1940 and it was let out to Madhavji Pragji. Thereafter Rambhau Dattoba became the tenant of this house and on 1-9-1940 he was paying Rs. 550/- per annum as rent for this house.

Rambhau vacated the premises and the present defendant then became the tenant of the house from 1945-46 onwards. The rent which the defendant agreed to pay was Rs. 450/- per year. It appears that in Civil Suit No. 12 of 1948 the present petitioner obtained a decree against the opponent for arrears of rent at the rate of Rs. 450/- per year upto 31-7-1949.

Thereafter the tenant did not pay the rent and the present suit was filed on 9-7-1951 for recovery of rent. Pending this suit, an application was made by the tenant for fixation of standard rent (Misc. Application No. 116 of 1951). The tenant alleged that the standard rent should be Rs. 228/- whereas the landlord claimed Rs. 1,075-12-0 at the rate of Rs. 450/- per year for the period from 1-8-1949 to 31-10-1951.

The learned trial Judge held that the standard rent of these premises was Rs. 450/- per annum. The appellate Court took the view that a very simple matter had been unnecessarily complicated by a misunderstanding of the law on the part of the learned trial Judge. That is why he set aside the decree passed by the learned trial Judge and remanded the case to his Court for disposal in accordance with law.

In passing this order of remand, the lower appellate Court himself has failed to take notice of the real position of his powers as an appellate Judge under Order 41. This Court has on several occasions in the past decided that an order of remand can normally be passed under Order 41, Rule 23, or under Order 41, Rule 25.

Rule 23 can be invoked where the suit has been decided on a preliminary point and the appellate Court reverses the conclusion of the trial Judge on a preliminary point. In such a case, the decree passed by the trial Court has to be reversed and the case sent back to his Court for disposal in accordance with law. That was not the position in the present case.

Therefore, there was no Justification for reversing the decree and remanding the suit for disposal in accordance with law as though the provisions of Rule 23 were applicable to the case. If the learned appellate Judge took the view that some

issues had not been properly framed or that issues which were framed had not been properly tried, the only course to adopt would be to make an order of remand under Order 41, Rule 25. This course the learned Judge has not adopted. Therefore, Mr. Tulzapurkar's grievance that in form the order of remand is against the provisions of Order 41 must be accepted.

It is true that a Court of appeal may, in a proper case, exercise its inherent jurisdiction under Section 151 and make an order of remand. But this course can and must be adopted only in special cases. Otherwise the procedure prescribed by Rule 25 would be rendered superfluous.

2. The point of substance which has been urged against this order of remand is also well-founded. The lower appellate Court has blamed, the learned trial Judge for considering some matters which were Irrelevant. I do not propose to express any opinion on this part of the criticism made by the lower appellate Court. But Mr. Tulzapurkar contends that the lower appellate Court himself has gone wrong in directing that evidence should be allowed to be adduced on the record in regard to the rent which Madhavji Pragji was paying.

According to Mr. Tulzapurkar, the material date is 1-9-1940, and if it is irrelevant to consider what rent was paid subsequent to this date, so would it be irrelevant to consider what rent was paid prior to this date. That is one aspect of the criticism which has been made by Mr. Tulzapurkar against the order of remand on the merits. But apart from this criticism, on which I wish to express no opinion, it seems to me unreasonable to allow parties an opportunity to raise additional issues and to seek for permission to lead additional evidence when they were not prevented from leading all the evidence they wanted to lead in the trial Court.

If the tenant thought that for pleas which he can make under Section 11 of the Rent Act, it was necessary to lead evidence about the rent paid by Madhavji, it was clearly his duty to have led that evidence at the trial. I do not think the appellate Court was Justified in himself introducing a complication in the proceedings by allowing the parties to lead additional evidence and thereby increasing the sphere of controversy, though on the pleadings issues appear to have been properly framed and no grievance was raised in the trial Court that any

other issue remained to be framed or that the trial Court did not allow any evidence to be led.

3. I would, therefore, set aside the order of remand passed by the lower appellate Court and direct that the lower appellate Court should deal with the appeal on the merits according to law, confining himself to the evidence led by the parties at the trial.

4. The revisional application accordingly is allowed, the orders under revision are set aside and the appeal is sent down to the District Court for disposal in accordance with law in the light of this judgment. Costs of this revisional application will be costs in the appeal.

5. Revision allowed.

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