

Parmeshwar Khanna and Others Vs. Smt. Bhagwati Devi and Others

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Court : Allahabad

Decided On : Feb-01-2000

Reported in : 2000(1)AWC699

Judge : D.K. Seth, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 7, Rules 10 and 10A; Provincial Small Causes Courts Act, 1887 - Sections 23 and 25; [Transfer of Property Act, 1882](#) - Sections 53A

Appeal No. : Civil Revision No. 13 of 2000

Appellant : Parmeshwar Khanna and Others

Respondent : Smt. Bhagwati Devi and Others

Advocate for Def. : Murli Dhar and ;Pankaj Mithal, Advs.

Advocate for Pet/Ap. : R.N. Bhalla, Adv.

Judgement :

D. K. Seth, J.

1. By an order dated 6th November, 1999, the learned Additional District Judge, XVIth Court. Meerut, being the Judge, Small Causes Court, had rejected the defendant's application under Order VII. Rule 10 of the Code of Civil Procedure for

return of the plaint in S.C.C. Suit No. 13 of 1995. The defendant had filed an application for review, which was also rejected by an order dated 17th November, 1999 passed in S.C.C. Suit No. 13 of 1999 by the same learned Judge. These two orders are under challenge in this revisional application under Section 25 of the Provincial Small Cause Court Act. Mr. R. N. Bhalla, learned counsel for the revisionists contends that by reason of an agreement produced in suit in terms of the pleadings pleaded in the written statement, It is abundantly clear and apparent on the face of the record that a question of title is Involved in the present suit, which is outside the scope and ambit of Section 23 of the Provincial Small Cause Courts Act. By reason of U. P. Amendment Act, though relationship between the landlord and tenant in respect of lease governed under the Transfer of Property Act can be taken cognizance by the Small Causes Court and the question of interest relating to immovable property confined to that extent may be cognizable by the Small Causes Court but as soon the question of ownership Independent of the tenancy and cessation of tenancy is apparent, in that event it cannot come within the purview of the Jurisdiction of the Small Causes Court since it involves an interest in immovable property outside the scope and ambit of Section 23 of the Provincial Small Causes Court. According to him though question of title relating to the issues raised within the relationship of landlord and tenant can be gone into in such a suit but when the relationship of landlord and tenant ceased and a new relationship emerges. It becomes an interest in an Immovable property outside the scope and ambit of Section 23 of the Provincial Small Cause Courts Act. In order to substantiate his contention, he had retted on Annexure-1 to the stay application which is an agreement for sale between the parties. This document has since been produced in suit on the basis of the pleadings pleaded in the written statement and that the tenancy had ceased and he had acquired an interest in the property by reason of Section 53A of the Transfer of Property Act, by reason whereof the plaintiffs are not entitled to assert any right in respect of the self same property and as such, the suit is hit by Order VII, Rule 10 of the Code so as to be returned to the appropriate court. He has also relied on various receipts evidencing part performance of the said agreement coupled with the fact that the revisionists had been continuing In possession by reason of such agreement fulfilling all the Ingredients of Section 53A of the Transfer of Property Act and by

reason thereof, they have an interest in immovable property outside the scope and ambit of Section 23 of the Provincial Small Cause Courts Act and as such it takes away the case from the Jurisdiction of the Small Causes Court. In support of his contention, Mr. Bhalla has relied on a Full Bench decision of the Calcutta High Court In the case of Piru Charon Pal and another v. Minor Sunilmoy Nemo and another, AIR 1973 Cal (FBI) as well as on a decision In the case of Wilfred Lovette v. Ganesh : AIR1988 Bom142 .

2. Mr. Murli Dhar, learned counsel for the respondents appearing with Mr. Mittal on the other hand contends that the alleged agreement has not yet been proved. He further contends that the alleged receipts are also denied by the plaintiffs. He also contends that the execution of the agreement was also denied by the plaintiffs. According to him. until the agreement is proved or the ingredients of Section 53A of the Transfer of Property Act is found to be present by the Court, the question of Involvement of interest in immovable property outside the purview of Section 23 of the Provincial Small Cause Courts Act could not be established so as to take away the jurisdiction of the Small Causes Court and bring the situation on the anvil of Order VII, Rule 10, C.P.C. According to him, the stage has not come. Though, however, on merit he sought to address the Court and pointed out that the alleged agreement and the receipts are all forged ones.

3. I have heard both the learned counsel at length.

4. Rule 10, Order VII provides for return of plaint in all cases where a Court is unable to entertain the suit for want of Jurisdiction. It can do so only when it is satisfied that It has no jurisdiction. In order to arrive at a satisfaction, it has to ascertain the question, if disputed, on the basis of materials, if necessary, after trial or decision on the issue so raised. Where the Court is satisfied that it has no jurisdiction, as was held in Athmanathaswami Devasthanam v. K Gopalaswami Ayyangar, AIR 1965 SC 338, it has to return the plaint. It can be done after hearing the preliminary issue as laid down in Lala Dhanpat Rai v. Sri Prem Sunder Bhargava : AIR1962 All572 .

5. At this stage, this Court cannot go into the merit of the case. Whether the agreement is genuine or not can be gone into by the Court at appropriate state. At

the moment in the plaint case that was made out admittedly comes within the purview of Section 23 of the Provincial Small Cause Courts Act. Whereas in the written statement, the case has been made out seeking to take away the jurisdiction of the Small Causes Court by an attempt to establish an independent right of ownership by virtue of Section 53A of the Transfer of Property Act relying on various clauses of the said agreement to insist that the tenancy ceased and that the principle of merger of two different interests is not necessary to be gone into. But then the pleadings made in the written statement would not be sufficient to return the plaint under Order VII, Rule 10, C.P.C. The question of return of plaint is to be decided on the basis of the pleadings made in the plaint itself. If the grounds taken in the written statement are proved, in that event, it will take away the jurisdiction of the Court. In that event, it would be open to the Court either to dismiss the suit for want of jurisdiction or to return the plaint under Rule 10A, as the case may be. But that stage would be available only when the matter proceeds to the trial stage and the agreement and the receipts are proved to the extent that the relationship of landlord and tenant had ceased. Unless it is proved that relationship of landlord and tenant had ceased, it cannot be said that the Small Causes Court has no Jurisdiction. But then if it is not pleaded that by reason of the subsequent agreement the relationship of landlord and tenant has ceased then again this is also a question to be gone into as to the fact whether there has really been any agreement before the suit was instituted. Admittedly, the said agreement is neither registered nor any deed of sale is alleged to have been executed in terms of the said agreement. In such circumstances, the entire question remains to be decided by the learned trial court at appropriate stage. It would be undesirable to make any observation with regard to the merits of the case in any manner whatsoever. Thus, though there might be some substance in the submission of Mr. Bhalla with regard to the proposition of acquisition of interest and cessation of relationship of landlord and tenant on the basis of such agreement having regard to the provisions contained in Section 53A of the Transfer of Property Act, the proposition whereof has been supported by the two decisions cited by him, yet those two decisions cannot help Mr. Bhalla at this stage so long the ingredients are not proved on record to establish the fact on which this proposition could be applied, relying on the ratio decided in the said two decisions.

Abstract proposition of law is one thing, its application is another. The application of law is dependent on the facts established. So long the facts are not established, the law cannot be applied. The basis of application of the law is yet to be ascertained.

6. Order VII, Rule 10 can be resorted to at any stage of the suit In view of the decision in Prabhakar Bhat v. Vishwambhar Pandit, (1884) 8 Bom 313 (FB) : Kunnuswamy Pillai v. Jagathambal, (1918) 41 Mad 701 : 46 IC 265. since been Incorporated in Rule 10. Order VII of the Code. The expression at any stage may include a stage after trial has begun and concluded. According to the High Court at Calcutta as expressed in Gopi Krishna v. Anil Bose. : AIR1965 Cal59 . the words 'at any stage' must In the context mean at any stage of the suit before Judgment therein is delivered. But this provision cannot be resorted to, as held by Allahabad High Court in Bisheshwar Prasad Pandey v. Raghubir : AIR1926 All58 ,unless the Court finds that it has noJurisdiction.

7. Rule 10 opening with the words 'subject to Rule 10A', after 1976 Amendment, supports the said view to the extent that even after the defendant appears, whenever the Court is of opinion that it had no Jurisdiction and the plaint should have been presented before a competent court of jurisdiction, it may adopt the procedure under Rule 10A when the plaintiff agrees. If the plaintiff does not agree, then the Court has option either to resort to Rule 10 or to dismiss the suit for want of Jurisdiction- In Kailash Chandra v. Subhash Chand Satish Chand. : AIR1981 All112 . this Court had held that lack of Jurisdiction when found after evidence is led. the proper order is to return the plaint and not to dismiss. Same view was taken In Kalka Prasad v. Jangi Singh : AIR1931 All664 and Arjun Rautara v. Maharaja Krishna Chandra Gajpati Narayan Deo, AIR 1942 Pat J (KB).

8. In case only on the basis of the pleadings made in the written statement and the case made out by the defence is taken into account at this stage, in that event it would be preposterous for the purpose of applying Order VII. Rule 10 of the Code. Inasmuch as even if it is returned and presented before any regular court and if the regular court finds that ingredients of Section 53A of the Transfer of Property Act has not been established or that the documents are not proved, in that event

the suit again is to come back to the Small Causes Court. The Court cannot be a party to a decision, which may move like a pendulum. The Court has to come to a definite finding that It has no jurisdiction after the parties go into trial. It Is not open to it to pass an order under Order VII, Rule 10 of the Code to the extent that the Court had no jurisdiction and It should be presented before a competent court. The question Is dependent on the materials that might be produced by the parties and the determination thereof by the Court in appropriate manner.

9. In Babu Khan v. Smt. Chahti Devi : AIR1990 All112 . this Court had held that In a suit for eviction the Small Causes Court cannot return the plaint on the footing that serious question of title is Involved when the tenant-defendant puts forward the plea that he himself is the landlord. Inasmuch as at any rate, the fate of the suit turns upon the question whether or not the relationship of landlord and tenant exists between the parties and in deciding the question the Court can incidentally enter into the question of title.

10. Mr. Bhalla has then contended that the learned Judge appears to have held that the document is not genuine by reason of an observation made in a decision between the parties in Civil Revision No. 298 of 1999 passed by this Court on 19th August, 1999. But on a reading of the said order, it does not appear that the said matter was decided by the said Court and that the Court was called upon to decide the said question between the parties.

11. Be that as It may. The said observation made was in aid of the decision in the said civil revision but did not Involve the question of genuineness or otherwise of the agreement or of the receipts, as the case may be. As such the observations therein may be obiter. Until the documents are proved, the said observations cannot have any impact. Therefore, the apprehension of Mr. Bhalla does not seem to be based on solid foundation. However, the learned trial court while deciding the questions shall not be influenced by the observation made in the order dated 19th August. 1999 in Civil Revision No. 298 of 1999. At the same time, it will also not be influenced by any observation made by it in the orders dated 6th November. 1999 and 17th November. 1999 respectively since been challenged in this revisional application. While deciding the issue, the Court will decide the same according to

its own wisdom and discretion without being influenced by any observations made either in the orders referred to above or in the present order disposing of this application. So far as the merits of the case is concerned, all questions raised by Mr. Bhalla shall remain open to be decided by the Court at appropriate stage in appropriate manner.

12. In the result, this revision fails and is accordingly dismissed. No costs.

13. Mr. Bhalla has made his submission on the question that J.S.C.C. Court has no jurisdiction because of question of title being involved. Even though the title may not be apparently proved but still then on the basis of the agreement, if the question is gone into, in that event the Court has to decide the question of title which takes away the suit out of Section 23 of Provincial Small Cause Courts Act. He relied upon the decision of the case of Sughera Begum (Smt.) v. XIIth Additional District Judge, Lucknow and others, 2000 (38) AIR 24, in addition to the citations he had cited earlier to point out that there in the present case question of title is involved as an issue therefore, it takes away the suit for the purview of the Provincial Small Cause Courts Act as has been held in the case of Sughera Begum, (supra). In his usual fairness, he has admitted that the agreement is not a registered one even then he contended that in view of the Section 53A of the Transfer of Property Act, the non-registration of the agreement is immaterial inasmuch as still then it is to be decided as to whether any title was created by reason of execution of the said agreement and on account of the payment of consideration which he had already made as is apparent from the record. Therefore, the plaint should be returned under Order VII, Rule 10 of the C.P.C. He has also pointed out various ingredients from the terms and condition of the contract in order to point out that the question involved a decision of title of immovable property, having regard to Section 53A of the Transfer of Property Act, which cannot be decided by a Small Cause Court.

14. Mr. Mithal further opposed the contention and contended that no question of title arise on the basis of unregistered agreement. Since in U. P. an agreement for sale is also required to be registered, unless it is so registered it cannot be treated to be an agreement for sale and cannot be an evidence for the purpose of coming

to a conclusion that it involved a question of title.

15. I have heard both the learned counsel at length,

16. In my view, this Court should not go into all these questions as to whether the agreement makes out a title or not. because of the reasons that this Court while sitting in revision is not deciding the issues involved. In fact, it is one of the issue which is to be decided in the Court below whether it involved a question of title or not, even in order to decide to return the plaint under Order VII. Rule 10. Therefore. I am not inclined to enter into those questions on merit on the issue sought to be raised by Mr. Bhalla.

17. The plaint can be returned under Order VII. Rule 10 even before the defendant had appeared. It can be returned under Rule 10A. after the defendant had appeared. This provision presupposes that it can be done even after an issue is raised by the defendant, if the Court is of the opinion that the plaint should be presented in a Court of competent jurisdiction since the Court itself is not competent to decide the same at any stage, i.e., at or after trial. Be that as it may. the seriousness with which the contentions and counter contentions are raised, it is desirable, that this question is to be decided as an issue in the suit itself along with all other issues since the suit is already at the stage of argument, it will be open to the Court as it may find either to dismiss the suit on the ground of jurisdiction or to resort to Order VII, Rule 10A if it has no jurisdiction to entertain the suit since question of title is involved. It will be open to Mr. Bhalla's client to raise the issue of maintainability on the ground of Involvement of question of title, which the Court will decide in accordance with law according to his own wisdom and discretion without being influenced by any observation made in this order. Since the question still remain open to take a decision either under Order VII, Rule 10A or otherwise, it is not desirable to intervene at this stage without having any material on which the matter could be decided since it requires certain amount of evidence on the ground that the document is not a registered one which is required to be proved through evidence about its execution or otherwise. Therefore, this is not the stage when Order VII, Rule 10 could be resorted to particularly when the parties had adduced evidence and the suit is at the stage of

argument. Therefore. after having heard counsel for the parties, I do not think that anything has been brought before this Court so as to reconsider the order dictated in open Court on 11th January, 2000, which, however, was not Signed since mentioned by Mr. Bhalla and whereupon by order dated 3.1.2000 passed in the order sheet, he was given leave to argue on some points on the basis of the decision of this Court, cited above. The order dated 11.1.2000 is, therefore, hereby signed today.

18. However, it is desirable that the learned trial court shall dispose of the suit as early as possible preferably within a period of three months.

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