

Wahid Vs. Mohd. Anwar

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Court : Allahabad

Decided On : Apr-09-2009

Reported in : 2009(3)AWC2121

Judge : Yatindra Singh, J.

Appellant : Wahid

Respondent : Mohd. Anwar

Disposition : Appeal dismissed

Judgement :

Yatindra Singh, J.

1. The only question involved in this appeal at this stage is,

Whether an appeal or a revision is maintainable against the order passed in execution of ejectment decree passed by the court of Small Causes on the objection filed by a third party.

It arises on the following facts.

THE FACTS

2. The pedigree of Wahid (the Appellant), without the unnecessary names, is as follows:

Chunni|-----| | |Ahmed Rahim Bux Mst.
Sakko|-----| | |Mohd. Umar Nabi Bux Other
heirs| -----| | |Bulle Rasool Other heirs| (the
Judgment debtor)Wahid(the Appellant)

3. Nabi Bux and other heirs of Rahim Bux filed O.S. No. 118 of 1983 for declaration that they alongwith Mohd. Umar (who was also arrayed as defendant in this suit) were owners of the property in dispute. In this suit the other defendants were, Ahmed son of Chunni, Sita Ram, Ram Jiwan Lal Mishra, and Mohd. Anwar. This suit was dismissed for non-prosecution on 12.2.1999. No proceeding for recalling this order or any further proceeding were taken in this suit.

4. Mohd. Anwar, (the defendant in O.S. 118 of 1983) (the plaintiff-respondent) filed J.S.C.C. Suit No. 6 of 2000 against Rasool son of Mohd. Umar (the judgment debtor) with the following allegations:

(i) The plaintiff is the owner and landlord of the property in dispute on the basis of the sale-deed dated 26.11.1980 executed by Ram Jiwan Lal Misra (one of the defendants in O.S. No. 118 of 1983);

(ii) Ahmad son of Chunni (one of the defendants in O.S. No. 118 of 1983) was tenant and he has illegally sub-let the premises to Rasool.

On these allegations, he claimed decree for ejectment.

5. J.S.C.C. Suit No. 6 of 2000 was decreed ex parte on 30.4.2001. The plaintiff-respondent filed an application to execute the decree. It was numbered as Execution Case No. 13 of 2001. In this Execution Nabi Bux (one of the plaintiff in O.S. No. 118 of 1983) filed objection in 2003. During pendency of this objection, Nabi Bux also filed O.S. No. 406 of 2003 for declaration that he is owner of the property in dispute. This suit is still pending.

6. The executing court dismissed the objection filed by Nabi Bux on 19.10.2004. Nabi Bux filed W.P. No. 49116 of 2004 before this Court. It was dismissed on 24.5.2006. Against this order, he filed S.L.P. No. 14477 of 2006 before the Supreme Court. It was also dismissed on 24.9.2007.

7. The execution case of the plaintiff-respondent was numbered as Execution Case No. 13 of 2001. Wahid (the Appellant) was not party in J.S.C.C. Suit No. 6 of 2000 but he is grandson of Mohd. Umar. It is relevant to point out that Mohd. Umar was the defendant in O.S. No. 118 of 1983, however, relief was also claimed in his favour in the suit. He filed objection in the execution case claiming himself to be owner of the property in dispute. It was numbered as Misc. Case No. 27 of 2006. The execution case as well as Misc. case on the objection of the appellant were transferred to the present court by the District Judge on 17.12.2007. The objection filed by the appellant was rejected on 11.1.2008, hence the present appeal.

THE POINTS FOR DETERMINATION

8. I have heard Sri Manoj Misra for the appellant and Sri A.N. Bhargava for the plaintiff-respondent. In order to answer the question involved in this appeal (mentioned in paragraph 1 of the judgement), it is necessary to resolve the following points:

(i) Whether the decree for ejectment can be executed by the Court of Small Causes.

(ii) Whether the impugned order has been passed by the Court of Small Causes or the regular court.

(iii) Whether Order XXI, Rule 103 or any other provision of the Civil Procedure Code (C.P.C.) provides for an appeal against the impugned order.

FIRST POINT : EJECTMENT CAN BE EXECUTED

9. Section 9 of the C.P.C. declares that the Courts have jurisdiction to try all suits of civil nature except the suits that are either expressly or impliedly barred. The Provincial Small Cause Courts Act, 1887 (the P.S.C.C. Act) is one such Act that provides special procedure for certain suits. Section 15 of the P.S.C.C. Act provides that the Court of Small Causes has jurisdiction to try all cases of civil nature (except those mentioned in the Second Schedule) of the value which does not exceed Rs. 500. Section 17 of the P.S.C.C. Act provides for the procedure to be adopted by the Court of Small Causes : the C.P.C. is applicable unless

excluded by the C.P.C. or the P.S.C.C. Act.

10. Second Schedule describes the suits that cannot be tried by the Court of Small Causes. Article 4 and Article 11 provided that the suit for possession for immovable property or for recovery of an interest or for determination or enforcement of any other right to or interest in the immovable property cannot be tried by the Court of Small Causes. However, in our State Article 4 was amended by U. P. Act No. 37 of 1972. Now the Court of Small Causes can try suit of any value by a lessor for the eviction of a lessee from a building after determination of lease and for the recovery of compensation for the use and occupation of that building after such determination. Prior to this amendment, such suits were tried on the regular side.

11. Section 7 and Order L of the C.P.C. exclude the applicability of some provisions of the C.P.C. in proceeding before the Court of Small Causes. Amongst the others, it excludes the provisions of the C.P.C. regarding execution of a decree against immovable property. Now after 1972, a decree for ejectment of a lessee after determination of lease can be passed by the J.S.C.C. A question arose,

Whether, in view of prohibition under Section 7 and Order L of the C.P.C, a decree for ejectment from the building can be executed by the J.S.C.C. or it has to be sent to the regular court for execution.

12. Initially, in view of Section 7 and Order L of the C.P.C, the Court had held that:

- (i) The J.S.C.C. has no jurisdiction to execute a decree of ejectment; and
- (ii) The decree has to be sent to regular court for execution.

However our Court in a Full Bench decision in Shakti Dhar v. D.D. Upadhyay 1986 ALR 65 has held that the Court of Small Causes has power to execute the decree for ejectment.

SECOND POINT : IMPUGNED

ORDER-BY THE J.S.C.C.

13. The plaintiff-respondent has filed execution case in the Court that had passed the decree namely the Court of Small Causes, It is numbered as Execution Case No. 13 of 2001. In these proceedings, the appellant has filed his objection under Order XXI, Rule 97. It was numbered as Misc. Case No. 27 of 2006. The appellant had filed his objection before he was dispossessed from the property in dispute. However, this is permissible in view of the Supreme Court decisions in Babulal v. Raj Kumar : AIR 1996 SC 2050 and Tanzeem-e-Sufia v. Bibi Haliman : AIR 2002 SC 3083 : 2002 (4) AWC 3266 (SC).

14. The execution case as well as the misc. case registered on the objection of the appellant were transferred by the District Judge on 17.12.2007 to the present court that has rejected the objection. The decree is by Court of Small Causes that is being executed. The District Judge has transferred the proceeding from the Court of Small Causes. There is nothing to indicate that the proceeding have been transferred to the regular side. The impugned order will be deemed to be the order of the Court of Small Causes and not of the regular court. This is also the intention of Section 24 of the C.P.C. as well as Full Bench decision of our Court in Bhagwati v. Badri : AIR 1931 All 574.

THIRD POINT : NO APPEAL

15. The appellant had filed his objection under Order XXI, Rule 97. In this objection he claimed himself to be the owner of the property in dispute. The counsel for the Appellant submitted that:

- (i) All questions arising between the parties are to be decided in this proceedings under Order XXI, Rule 101 and not by a separate suit;
- (ii) The question of title cannot be decided by the Court of Small Causes;
- (iii) The order has the same force and subject to same condition as it were a decree; and
- (iv) As an appeal lies against the decree under the C.P.C, the present appeal is maintainable.

16. Order XXI, Rule 101 clearly states that all questions arising between the parties to a proceeding under Order XXI, Rule 97 or Rule 98 or their representatives shall be determined by the Court dealing with the proceeding and not by a suit. It further declares that the Court shall be deemed to have jurisdiction to decide such question. It cannot be said that the Court of Small Causes cannot decide the question of title in case it so arises in these proceedings. The question, even of title, can be gone into in these proceedings.

17. The effect of Order XXI, Rule 103 is that such an order is to be treated as a decree. It does not provide for any appeal against the order. In case an appeal lies against such a decree only then appeal can be filed. Needless to say appeal is creature of a statute. It can only be filed only if there is provision for the same.

18. Section 17 of the P.S.C.C. Act provides that the C.P.C. applies to the Court of Small Causes subject to the exclusion made by it or by the C.P.C. First appeal and second appeal against a decree are provided under Section 96 and under Section 100 of the C.P.C. Application of these sections to the Court of Small Causes have been excluded by Section 7 of the CPC and as such no appeal can be filed under these sections.

19. Section 25 of the P.S.C.C. Act provides for further proceeding against a decree and the orders passed by the Court of Small Causes. It provides for a revision against the same. While discussing the 2nd point, I have already held that the impugned order is the order passed by the Court of Small Causes: this order is to be treated as a decree by the Court of Small Causes. If this is so, then appeal cannot be filed under Section 96 read with Order XXI, Rule 103 of C.P.C. Only a revision can be filed under Section 25 of the P.S.C.C. Act read with Order XXI, Rule 103 of the C.P.C.

20. The counsel for the appellant has brought to my notice Smt. Sabira Begum v. District Judge, Rampur 1993 (1) ARC 371 : 1992 AWC Supp 147 (the Sabira Begum case) to support his submission that an appeal lies.

21. In the Sabira Begum case, the suit was filed on the regular side. It was numbered as O.S. No. 475 of 1970. It was decreed. This was done at a time when

the P.S.C.C. Act was not amended and jurisdiction to try the suit for eviction of a lessee was with the regular courts. It is for this reason it was held that the such order is appellable and not revisable. This case is distinguishable.

CONCLUSION

22. My conclusions are as follows:

(a) After amendment in the Provincial Small Causes Court Act, not only a decree for ejectment can be passed by the Court of Small Causes but such a decree can be executed by it.

(b) In the present case, the impugned order has been passed by the Court of Small Causes.

(c) A revision, under Section 25 of the Provincial Small Causes Court Act read with Order XXI, Rule 103 of the C.P.C., rather than appeal under Section 96 read with Order XXI, Rule 103 of the C.P.C. is maintainable.

In view of my conclusions, the appeal is not maintainable and is dismissed.