

Rafat Umar Vs. Vikas Khurana

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Court : Allahabad

Decided On : Aug-29-2001

Reported in : 2001(4)AWC2769

Judge : Janardan Sahai, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 2, Rules 3, 3(2) and 4; Transfer of Property Act - Sections 20(2) and (4) and 106; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21; Bihar Buildings (Lease, Rent and Eviction) Act; Code of Civil Procedure (CPC), 1882 - Sections 44 and 45

Appeal No. : Civil Revision No. 467 of 1999

Appellant : Rafat Umar

Respondent : Vikas Khurana

Advocate for Def. : K.M. Garg and ;Anil Sharma, Adv.

Advocate for Pet/Ap. : Deo Raj, Adv.

Disposition : Revision accordingly dismissed

Judgement :

Janardan Sahai, J.

1. This revision is directed against the order of the Judge Small Causes Court, Bijnor dated 9.9.1999 rejecting the application of the defendant-applicant that the suit suffers from mis-joinder of causes of action and that the Court had no Jurisdiction to hear the case. The facts giving rise to this revision are that SCC Suit No. 6/1998 was filed by the plaintiff opposite party in the Court of Judge, Small Causes for ejectment, arrears of rent and damages for use and occupation with regard to shop Nos. 15 and 16 after terminating the tenancy by two separate notices dated 1.1.1998. It is alleged that U. P. Act No. 13 of 1972 is not applicable to the shops in dispute as both shops were constructed in February, 1987. The rent of each shop was alleged to be Rs. 600 per month and it was stated that the tenant had defaulted in paying the rent in respect of both the shops since 1.5.1997. A written statement was filed in which one of the pleas taken was that suit was bad for mis-joinder of cause of action inasmuch as there were two separate tenancies which had started on different dates, separate payment of rent had been made and separate receipts for rent were being given and as such, the causes of action were different. It was pleaded that the building was subject to U. P. Act 13 of 1972. The trial court by its impugned order dated 9.9.1999 held that there was no mis-joinder of causes of action and that a single suit was maintainable.

2. Heard Shri Deoraj Singh counsel for the applicant and Sri K. M. Garg counsel for the opposite party.

3. The contention of Shri Deo Raj Singh, learned counsel for the applicant is that the causes of action in the two suits are different, and the suit is bad for multifariousness. He relies on the provisions of Order II, Rule 4, C.P.C. and contends that the suit for rent and ejectment is a suit for immovable property and the causes of action being distinct cannot be joined in the same suit.

4. The term 'cause of action' has not been defined in the C.P.C. but has been the subject of a series of judicial decisions. Courts have followed the classic definition of that term in Reed v. Brown. (1889) 22 QBD 128, wherein cause of action has been defined to mean every fact which it would be necessary for the plaintiff to prove. If traversed, in order to support his right to the Judgment. In Mohammad

Khalil Khan and Ors. v. Mahbub Ali Miyan and Ors AIR 1940 PC 78, the Privy Council approved this definition and further held that one of the tests for determining whether the causes of action are same or not is whether evidence to support the claim is the same or different and if the evidence to support the claims is different, then the causes of action are also different.

5. In the present suit the facts. which the plaintiff would be required to prove in order to get an ejectment decree would be whether U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972 (Act 13 of 1972) is or is not applicable to the building in dispute as the two shops are alleged to have been constructed in February, 1987. In case the plaintiff is able to prove this fact, then he would be further called upon to prove the service of notice under Section 106 of the Transfer of Property Act said to have been given on 1.1.1998 in respect of both shops and its validity. If he proves these facts, the suit for ejectment is liable to be decreed. In case the plaintiff is unable to prove that Act 13 of 1972 is not applicable to the shops in dispute and it is rather found that the Act is applicable, then the plaintiff would have to prove default in payment of rent from 1.5.1997 or at least for four months in respect of the two shops. He may also have to prove that the partition wall between the two shops has been removed by the defendant. which would amount to material alteration and that the requirements of Section 20(2)(c) of the Act have been fulfilled. For securing a decree for rent or damages, the plaintiff would have to prove that the rent was not paid from 1.5.1997.

6. The time of construction of the two shops is alleged to be the same. The notice to quit, though separate, was given in respect of both the shops on the same date. The date from which the tenant defaulted in payment of rent is the same. The ground of material alteration by removal of partition wall is also the same. The nature of the averments referred to here-in-above show that they are the same in respect of both the shops and it would be expected that the evidence to prove them would be the same. Admittedly, the plaintiff is the landlord of both the shops while the defendant is the tenant of both the shops. In these circumstances, the cause of action set out in respect of the two shops appears at this stage to be the same. The matter can be finally determined after evidence is led. In *Kishan Lal Singhania v. District Judge, Kanpur Nagar and Anr* : AIR1991 All13 , where the

same plaintiff had let out two flats to the same defendant in the same building, it was held that the tenancy would be composite and landlord would be entitled to composite rent even if it is paid on different dates by different cheques. The Court took the view that a single suit was maintainable.

7. Shri Deo Raj relied upon a decision in the case of Ram Chandrav. Judge, Small Causes Court, Farrukhabad and Ors. 1983 AWC 955, which was a case in which the tenancies started from separate dates under separate agreements and the suit was based on default. The provisions of Act No. 13 of 1972 were applicable. Hon'ble R. M. Sahai, J., took the view that a single suit in respect of the two tenements was not maintainable. The reason given was that the tenant in case there were two suits could have made a deposit under Section 20 (4) on the first date of hearing or on service of notice terminating tenancy in respect of one of the tenancies if not for both and thus, could have saved himself from ejectment in respect of that tenancy which option he would be deprived of in a single suit where arrears of rent had been clubbed. This decision was considered in the case of Smt. Samudri Devi and Ors. v. Nand Kishore Marwah and Ors. etc., 1987 All LJ 255 and was distinguished as having been given on its peculiar facts.

8. Even it is assumed that the cause of action in respect of the two shops is different, a single suit would be maintainable in view of the provisions of Order II. Rule 3, C.P.C. Under that provision, a plaintiff may unite in the same suit several causes of action against the same defendants. In Smt. Samudri Devi and Ors. v. Nand Kishore Marwah and Ors. (supra), reliance was placed upon this provision and it was held that a single suit was maintainable.

9. In Padam Singh Jain v. Chandra Brothers and Ors : AIR1990 Pat95 . which was a case under the Bihar Buildings (Lease. Rent and Eviction) Act. eviction was sought for personal necessity in respect of two separate portions one on the ground floor and the other in the second floor and it was held taking aid of Order II, Rule 3. C.P.C. that requirement being same, a single suit was maintainable. In Ratan Marwari v. Illrd Additional Sessions Judge, Moradabad and Ors. 1989 (2) ARC 371, a single release application under Section 21 of U.P. Act 13 of 1972 against tenants of two shops in one premises was held maintainable. In

Ramdavee v. Dhanraj Kochar and Ors. : AIR1972 Cal313 , a single suit for recovery of possession against a tenant in respect of one portion and for possession of another portion against the same tenant as well as against a trespasser was held to be maintainable and not bad for multifariousness. In Abdul Aziz v. Mt. Mariyam Bibi and Anr : AIR1926 All710 , causes of action for claiming possession of own property of the plaintiff on the one hand and claiming pre-emption of the vendor's property on the other hand, although found to be separate and distinct, were allowed to be combined in a single suit. In Inder Bahadur Singh v. Sita Ram and Ors : AIR1941 All209 , where the karta of a Hindu Undivided Family made a number of alienations, a single suit to set aside the alienations was held to be maintainable on the basis that the defendants had a community of interest and they obtained transfer from the same person, the karta. and the suit was not bad for mis-joinder of causes of action.

10. It has been urged by Shri Deo Raj, learned counsel for the applicant that provisions of Order II. Rule 3 of C.P.C. are subject to those of Order II, Rule 4. C.P.C. and as a suit for ejectment and recovery of rent is a suit for recovery of immovable property, a single suit in respect of the two shops was not maintainable. I do not agree. The object of the rule is to avoid joinder of claims of a character dissimilar to a claim for recovery of immovable property vide Nisar Husain v. Nisar Ali. (1906) 3 ALJ 123. That was a case in which a declaration in respect of different items of property and for a further declaration that two sale deeds in respect of different portion of the property were void, was sought. It was contended that the suit offended Section 44 of the Code of Civil Procedure. 1882. Section 44 of the said Code was similar to the present Order II, Rule 4, C.P.C. It was held that the provision prohibited the joinder with the suit for recovery of immovable property of a cause of action of a different nature. When both the causes of action said to have been wrongly joined related to immovable property and were not causes of action of a different nature from that relating to immovable property, the Court negatived the application of bar of Section 44 but applied Section 45 of the Code. Section 45 of the C.P.C.. 1882 is similar to Order II. Rule 3, C.P.C. For its decision, the Court relied upon the decisions in the case of Chidambar v. Ramasamt, (1882) ILR 5 Mad 161 ; Ambika Dat v. Ram Udit, 11895) ILR 17 All 274 and Raghubar Dayaki v. Jwala Singh, (1993) ILR 25 All 229. The

principle laid down in these decisions, though under the Code of 1882. would be applicable, as the provision of Sections 44 and 45 of the Code of 1882 were similar though not identical to the provisions of Order II, Rule 4 and Order II, Rule 3, respectively.

11. In the present case, the plaintiff is seeking ejectment of the tenant from two adjoining shops and for recovery of rent. The causes of action, even if assumed to be separate, relate to a character involving claim for immovable property and are not dissimilar to a claim for immovable property. As such, there is nothing in the Order II, Rule 4, C.P.C. which may prohibit combining the cause of action in respect of the two shops in a single suit even assuming that the causes of action were different.

12. Order II, Rule 3 further provides that where causes of action are united, the Jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit. As such, a single suit by valuing the suit in the manner provided by Order II. Rule 3 (2), as has been done in the present suit, is maintainable.

13. In the result, the revision fails and is accordingly dismissed.