

Mohammad Vs. Nemichand and anr.

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Court : Madhya Pradesh

Decided On : Nov-08-1985

Reported in : AIR1986MP155

Judge : Ram Pal Singh, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11

Appeal No. : Second Appeal No. 211 of 1983

Appellant : Mohammad

Respondent : Nemichand and anr.

Advocate for Def. : R.C. Lahoti, Adv.

Advocate for Pet/Ap. : R.D. Jain, Adv.

Disposition : Appeal allowed

Judgement :

Ram Pal Singh, J.

1. The appellant-tenant has challenged the judgment and decree passed by the Fifth Additional Judge to the Court of District Judge, Gwalior, in Civil Appeal No. 25A of 1979 dated 13-10-1983 in this civil second appeal.

2. Respondent No. 1 plaintiff, the landlord of the non-residential suit premises, filed a suit on 4-9-1974 for-eviction against the appellant-tenant and respondent No. 2, in the Court of Civil Judge Class II, Gwalior, According to the plaint of the respondent-landlord, appellant-defendant No. 1 is the tenant of non-residential accommodation, house No, 100 in Ward. No. 30 of Gwalior' City, on a monthly rent of Rs. 100/-. The suit premises were given to defendant No. 1 for doing the business of laundry on 1-7-1967 and a contract (Ext. P. 1-C) was entered into by the Parties, according to which the defendant undertook that he shall neither sub-let the premises nor do the business of laundry in partnership. According to the plaintiff, the appellant-defendant has contravened the terms of the said contract by entering into partnership business of dry cleaning with one Malhotra, new garment business with one Ramlal, and then he started dry-cleaning business with one S.K. Chawla. Defendant No. 1 is, thus, not only guilty of sub-letting the premises, inconsistent user, but also is doing different businesses in it. The plaintiff further averred that he bona fide requires the said accommodation for starting his own business of flour-mill and he has no other reasonably suitable non-residential accommodation of his own in his occupation in the city of Gwalior.

3. The appellant-defendant No. 1 and respondent-defendant No. 2 filed separate written statements. Appellant-defendant No. 1 denied the contents of the plaint and repudiated the allegations of sub-letting the premises to sub-tenants and also doing the business in partnership with others. According to appellant-defendant No. 1, respondent No. 2 is his business manager. He further repelled the contention of the landlord that he bonafide needs the suit premises for starting his own business of flour-mill. He, inter alia, contended that the landlord had two flour-mills in Mochi OH area of the city of Gwalior and is doing profitable business. He alleged that the landlord insisted to increase the amount of rent and was demanding rent at the rate of Rs. 200/-per month, but, by a compromise, he is at present charging Rs. 110/-per month. He further denied that the tenancy has been validly terminated and claimed that by an oral consent of the landlord he has carried out repair work of Rs. 800/- which has not been adjusted.

4. Respondent No. 2 claimed to be in employment of appellant-defendant No. 1 and looking after his tailoring business. I need not burden this judgment with

further facts, as they are given in great details in the impugned judgment.

5. The trial Court after framing the issues and recording the evidence of the parties, answered the issues as given below : --

(i) The appellant-defendant is a statutorytenant of the plaintiff-landlord even after 31-5-1968. '

(ii) The appellant-defendant has sub-let the suit premises to respondent No. 2 without the consent or permission of die landlord.

(iii) The appellant-defendant was given the premises for doing the business of laundry, but now the sub-tenant-respondent No. 2 is using the premises for tailoring business.

(iv) In view of the binding nature of the judgment in civil suit No. 23-A of 1973, it is not necessary to decide as to whether appellant defendant No. 1 sub-let the premises and did partnership business with Malhotra Dyers and Dry Cleaners and New Garments of S. K. Chawla without the consent pf the landlord.

(v) The landlord needs bona fide the premises for starting the business of flour mill and he has no other reasonably suitable non-residential accommodation of his own in his occupation in the city of Gwalior.

. (vi) The plaintiff is not entitled to any dues from appellant-defendant No. 1.

(vii) Respondent No. 2 defendant No. 2 was not the manager of the appellant-defendant.

(viii) The previous judgment in case No. 23A of 1973 does not operate as res judicata,

'(ix) Appellant-defendant No. 1 is a defaulter, etc. etc..

Thus, the trial Court decreed the suit of the plaintiff with costs and held that the plaintiff is not only entitled to a decree of eviction but also entitled to recover an amount of Rs. 2,020/- as back rent. Thus, a decree was passed under the

provisions of Section 12(l)(b), (c) and (f) of the M.P. Accommodation Control Act, 1961 (for short, hereinafter referred to as 'the Act').

6. The appellant preferred an appeal challenging the judgment and decree of the trial Court. Needless to say, the first appellate Court confirmed the judgment and decree passed by the trial Court and dismissed the appeal. It has also set aside, in absence of a cross-objection, the finding of the trial Court with regard to the ground mentioned under Section 12(l)(f) of the Act, which was given against the respondent-plaintiff. But during the pendency of the appeal, the first appellate Court by its order dated 13-3-1982 framed an additional issue (No. 14) under the provisions of Order 41 Rule 25, Civil P.C. remitted the case to the trial Court with a direction that after recording the evidence of the parties and after appreciating all the evidence, fresh findings be recorded on issues No. 5(a) & (b) and issue No. 14, and then the case be sent back to it. The Trial Court complied with these directions, and, on 5-2-1983 decided the said issues with findings that it is not proved that the plaintiff requires bona fide the suit premises for starting the business of flour-mill and oil mill. Thus, the ground under Section 12(l)(f) of the Act was not found to be proved.

7. This appeal was admitted on the following substantial questions of law : --

(1) Whether the courts below fell in error in not giving the proper weight to the judgment (Ext. D-1) in civil appeal No. 21-A of 1973, which has effect of res judicata?

(2) Whether the lower appellate Court was right in reversing the finding on genuine requirement, remitted by the trial Court without any objections being submitted under Order 41 Rule 26 C.P.C.?

(3) Whether the courts below were right in holding that the change of business amounts to inconsistent purpose?

(4) Whether the documents (Exts. P-22 and D-2 to D-5) nullify the ground of subtenancy?

8. The first appellate Court in its judgment re-grouped the issues framed by the trial Court and recorded the findings whose summary is being given below :

(A) Respondent-defendant No. 2 is in possession of the suit premises, in which he carries on the business of tailoring. Appellant-defendant No. 1 has sub-let the premises to respondent-defendant No. 2, and he himself is doing the business of laundry elsewhere. Thus, the ground for eviction mentioned in Section 12(l)(b) of the Act is available to the plaintiff.

(B) Respondent-plaintiff requires bona fide the suit premises for the purpose of starting his business and has no other reasonably suitable nonresidential accommodation of his own in his occupation in the city of Gwalior. Hence the ground for eviction mentioned in Section 12(1)(f) of the Act is also available to the plaintiff, and the finding of the trial Court on this issue is set aside.

(C) The appellant-defendant No. 1 has done an act which is inconsistent with the purpose for which he was admitted to the tenancy of the suit accommodation. Thus, the ground of eviction under Section 12(l)(c) of the Act is also available to the respondent-plaintiff.

(D) In the result the appeal fails and the judgment and decree passed by the trial Court dated 5th Dec. 1979 is confirmed and the appellant is liable to be ejected from the suit premises on the grounds mentioned in Section 12(l)(b), (c)& (f) of the Act.

9. I shall now deal with the said substantial questions of law, as framed ad seriatim.

10. The appellant-defendant No. 1 in his written statement raised a plea that the respondent-plaintiff filed civil suit No. 23A/1973 for his eviction and the eviction of one Markari Dry Cleaners, from the suit Premises, In the Court of 2nd Civil Judge Class II, Gwalior, which was decided on 3-5-1971, against which the appellant-defendant No. 1 filed appeal in the court of Additional District Judge, Gwalior, which was registered as Civil Appeal No. 21-A of 1973, and the plaintiff also preferred an appeal (No. 23-A of 1973) against the same judgment and

decree. Those appeals were decided on 22-12-1973 and the suit of the plaintiff-respondent No. 1 was dismissed. Hence, the present suit, filed on the same ground and between the same parties, is not maintainable in law, because it bars the subsequent suit on the principles of res judicata. The judgment of the Additional District Judge, Gwalior in Civil Appeal No. 21A/1973 and Civil Appeal No. 23-A/1973 dated 22nd Dec. 1973 was marked as Ext. D-I and no appeal seems to have been preferred against that judgment and decree. Thus, the judgment (Ext. D-I) became final. In paragraph 5 of this judgment, the case of respondent-plaintiff is elaborately described. In the previous suit also, respondent plaintiff mentioned the same grounds which were taken by him in the present suit, that is, that the appellant-defendant No. 1 has sub-let the premises and he requires the suit premises bona fide for starting his business. The previous suit differs from the present one only in one respect, i.e., in the former, defendant No. 2 was one Mercury Dry Cleaners, and in the present suit, defendant No. 2 is Prakash. The appellant-defendant No. 1 contested the previous suit. In the former suit, what were the issues between the parties are described in para 9 of Ext. D-I. In Ext. D-I the findings of the trial Court were set aside, and it was held in a very lengthy judgment that --

(1) the suit premises were not sub-let by appellant-defendant No. 1 to defendant No. 2 and the use of the suit premises was not inconsistent with the purpose for which he was admitted to the tenancy of the accommodation;

(2) the plaintiff does not require bona fide the suit premises, and

(3) the grounds of eviction mentioned in Section 12(l)(b), (c) and (f) of the Act are not available to the plaintiff.

11. The trial Court in the present case, no doubt, framed an issue (No. 10) as to whether Exhibit D-I operates as res judicata in the present case or not, and has also tried to discuss it in a passing way in paras. 37 and 38 of its judgment : yet it completely failed to discuss the legality and propriety of applying the principles of res judicata. When the issues in Ext. D-1 and in the present suit were similar, so far as the plaintiff and defendant No. 1 are concerned, then it was essential for the trial Court to give sound, legal and cogent reasonings for its conclusion. As

observed hereinabove, when the issues in both (the suits were alike and the parties were the same, except defendant No. 2, who did not contest the suit, then it was essential for the trial Court to give a clear finding as to whether the issues in Ext. 13-1 and the present case were directly and substantially the same or not; whether it was between the same parties or not; whether they were litigating under the same title or not, and whether in the previous suit the issues of the present suit have been heard and finally decided by a competent Court or not. Admittedly, the former suit (Ext. D-I) was finally adjudicated on 22nd Dec. 1973, while the present and subsequent suit was instituted on 7-9-1974, just after 8 months. The competence of the Court, which handed over the judgment (Ext. D-I) in the previous suit, is neither challenged nor can be challenged. The reliefs claimed in the former suit are similar to that in the latter. All these aspects should have been discussed properly and decided judicially, when the plea of res judicata was raised from the very initial stage of the litigation. It is well settled that the decision on an issue of law or on an issue of mixed question of law and fact by a competent Court between the same parties operates as res judicata. A wrong decision by a Court having jurisdiction is as binding as a right one. The previous decision on a matter in issue alone is res judicata. Had all these rudimentary principles of law been kept in view by the trial Court, then it would not have given the like finding as mentioned in para 38 of its judgment. What the trial Court wants to say in this paragraph is, unfortunately, telegraphic and non-speaking and that too in only four or five lines. A sweeping finding denuded of 'garmented' reasoning is no finding at all. This neglect and abdication of duty by the trial Court has resulted in unnecessary harassment of the parties in a Court of law.

12. In the memorandum of appeal before the first appellate Court, the appellant raised a ground that the trial Court has not properly dealt with the plea of res judicata, but, strangely, in the impugned judgment, the first appellate Court framed all other questions and answered all of them except the question of res judicata. There is neither a judgment nor a decree from the first appellate Court on the point of res judicata. The learned first appellate Court failed to deal with the plea of res judicata in the impugned judgment. The learned first appellate Court being the last Court of facts, a very heavy duty is cast upon it to scrutinise the judgment and decree under appeal very closely and evaluate every piece of evidence, whether

legal or factual. Though the learned first appellate Court has done so only with regard to the grounds mentioned in Section 12(l)(b), (c) and (f) of the Act, it completely became oblivious of the factum of res judicata. At least, it should have caught the telegraphic non-speaking finding given by the trial Court in para. 38 of its judgment and threshed it out on the anvil! of fact and law judicially. Therefore, the first substantial question of law will have to be answered that both the Courts below fell into an error in not giving proper weight to the judgment (Ext. D 1) which raised effectively and forcefully the question of res judicata.

13. The doctrine of res judicata rests on sound principle of public policy; its importance cannot be minimised or short-circuited by a Court of law. This golden rule acquires magnified dimensions in the present day context of the administration of justice. One litigation, which is required to jump over several Courts room hierarchy hurdles, is sufficient and has to like a life, come to an end somewhere. The doctrine of res judicata, therefore, has to be interpreted and applied liberally. The application of this rule should be influenced by no technical consideration or form, but by matter of substance within the limits allowed by law. The Court has to go into a plea of res judicata as any other plea of law, and then to decide whether the issue or the claim is barred or not. The principle of res judicata is also important because it bars retrial of a case and confirms the rule, of conclusiveness of a judgment. A judgment, therefore, which either fails to deal with the plea of res judicata or deals it in an ineffective and erroneous manner, does not, in law, deserve to be maintained.. Shri R.D. Jain, learned counsel for the appellant, and Shri R.C. Lahoti, learned counsel for the respondent-plaintiff, have not only argued extensively on all possible aspects of the case, but also very ably supported their learned arguments with plethora of case' laws. But, if I deal with them and give my reasons on them, then both the parties are likely to be prejudiced,when both the Courts below are asked to deal with the point of res judicata and then record their findings on other issues. Prejudice is the spider of mind; it is the womb of injustice. I have, therefore, chosen the lesser evil of remanding the case than to cause prejudice to the parties of this legal battle of landlord and tenant. I would not have chosen the path of remand, but when the Courts below ignored the demands of law, their judgments and decrees lose the jurisdictional propriety. I am alive to the fact that the landlord had the advantage of

concurrent findings of fact in his favour, but those findings are vitiated in law, because they were not dressed with garmented legality.

14. After deciding the first substantial question of law, I would cautiously refrain - from giving my thoughts to substantial questions of law (Nos. 2,3and 4), because any observation by this Court is not only likely to cause prejudice to the parties but also may embarrass both the Courts below when they sit to write their judgments. Caution to a better part of wisdom and, hence, I hold back my pen here.

15. Therefore, for the reasons stated hereinabove, I allow this appeal and set aside the judgments and decrees of both the Courts, below. The case is remanded to the trial Court with the direction to record first a proper and legal finding on the point of resjudicata, and then, in the light of that finding, answer rest of the issues. Costs would depend upon the last milestone of this litigation.

16. Before parting, I express my pious hope that the trial Court shall, in spite of its heavy calendar, expedite disposal of this old case at the earliest.

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