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Mohd. Umar Vs. Inshalla Bi.

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Court : Delhi

Decided On : Dec-15-1966

Reported in : AIR1968Delhi5; 3(1968)DLT13

Judge : D. Dua, A.C.J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 100 and 101

Appeal No. : Second Appeal No.119-D of 1966, from decree of Addl. Senior Sub. J., Delhi, D/- 4-4-1966

Appellant : Mohd. Umar

Respondent : inshalla Bi.

Advocate for Def. : Avadh Behari, Adv.

Advocate for Pet/Ap. : Keshav Dayal, Adv

Judgement :

1. This regular second appeal is concluded by a finding of fact and must, thereforee, be dismissed with costs.

2. Mst. Inshalla Bi instituted a suit for the possession of the premises in question and the defense raised was that the defendant Mohammad Umar was a tenant in respect of such premises. The true position, as disclosed in the pleadings, is that the plaintiff claimed to be the owner of a piece of property alleging that the

defendant was a tenant of the ground floor only. A short time prior to the institution of the suit, round about the second week of May, 1964, the defendant was alleged to have occupied the first floor illegally without any right and it was for the eviction of the defendant from this part of the premises that the suit was instituted Mohammad Umar as observed earlier, pleaded that he was a tenant of the first floor as well. The trial Court came to the conclusion that Mohammad Umar was a tenant of the entire building and on this finding, the court also proceeded to hold that it had no jurisdiction to grant a decree for possession. Such a decree apparently could on be granted by the Rent Controller under the Delhi Rent Control Act.

3. On appeal, the learned Additional Senior Subordinate Judge on a consideration of the material on the record reversed the conclusion of the Court of first instance and held that Mohammad Umar had nto established his tenancy over the portion on the first floor of the building Having so held the Court granted a decree for possession to the plaintiff.

4. On second appeal, the learned counsel for the appellant has, to begin with, questioned the legality of the order of the lower Appellate Court on the ground that he has given no finding on the issue relating to the jurisdiction of the Civil Courts. The Court of first instance having held against the jurisdiction of the civil Courts, without expressly and in terms reversing this conclusion, according to Shri Keshav Dayal, the learned Additional Senior Subordinate Judge has acted illegally in setting aside the decree of the Court of first instance.

5. The contention does sound attractive and convincing as put, but on a deeper probe it betrays only surface plausibility Normally, of course, without holding in favor of jurisdiction of civil Courts, the Court of appeal could nto be expected to grant a decree to the plaintiff when the Court of first instance had positively held against such jurisdiction. In the case in hand, however, I do nto think this rule can be usefully applied This rule does seem to me to admit of exceptions, though rare The trial Court ruled out the jurisdiction of the civil Courts on the sole ground that the relationship between the parties was of landlord and tenant. When this conclusion was set aside by the Court of Appeal, obviously objection to the

jurisdiction of the civil Courts must also disappear It would certainly have been more appropriate for the learned Additional Senior Subordinate Judge to have added in his judgment that in view of his decision on issue No.1, the decision on issue No.2 must also automatically stand reversed But this technical omission, however, inappropriate, would nto constitute a justification for this Court on second appeal to set aside the decree of the Court below and remand the case back to it for the purpose of inserting in its judgment the additional conclusion to the effect just mentioned. If the conclusion of the lower Appellate Court on the first issue is sustained then the appeal fails on the real point of substance and it would serve no useful purpose to remit the case for recording a decision under issue No.2 which is almost automatic The error committed by the lower Court in omitting to add in its judgment what has just been stated neither affects its jurisdiction nor does it touch the merits of the decision of the controversy. This Court on second appeal would thus be unjustified in reversing on this ground the decree appealed from.

6. After going through the evidence on issue No.2 I do nto find any cogent reason for interference on second appeal The conclusion of the Court below is clearly based on legal evidence. The appellant's learned counsel has tried to take me through the evidence for its evaluation, but that is nto the function of the Court of Second Appeal, as findings of fact based on appreciation o f evidence including the relevant attending circumstances are binding on this Court by virtue of section 100, Civil Procedure Code. It is nto possible to hold that the findings in this case are nto based on any legal evidence. It is argued that the lower Appellate Court has nto specifically referred to the evidence of D.W. 5, according to whom there was a subsequent lease between the parties under which the rent per month was increased from Rs.25 to Rs.35 and the first floor was also added to the leased premises. This part of the story it may be stated, has been disbelieved by the lower Appellate Court Having disbelieved the story, I do nto think it was necessary for that Court to mention specifically; all the witnesses who have deposed on the point in issue. A finding of fact., like the one given by the lower Appellate Court in this case cannto be held to be vitiated merely for the reason of omission to name one witness or more in the judgment, or to specifically repeat their testimony Incidentally, it may be pointed out that the defendant appellant has, as his own

witness expressly stated that he never paid the enhanced rent which, according to his case as argued before me, he should certainly have paid under the subsequent lease under which he claims the extension of the leased premises The finding of fact based on relevant attending circumstances, it may be pointed out, is also immune from attack on second appeal and it is nto possible to reopen the same.

7. This appeal, as already observed, fails and is dismissed with costs

EK/VPP/G.G.M

8. Appeals Dismissed

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