

S.L. Gupta Vs. Ramesh Kumar

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Court : Delhi

Decided On : May-03-1996

Reported in : 1996RLR357

Judge : S.N. Kapoor, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 14, Rule 5

Appeal No. : Criminal Revision Appeal No. 56 of 1985

Appellant : S.L. Gupta

Respondent : Ramesh Kumar

Judgement :

S.N. Kapoor, J.

(1) This revision is directed against an order dated 22.10.84 dismissing an application under O. 14 R. 5, Civil Procedure Code moved by the plaintiff for framing several additional issues.

(2) Relevant facts : The wife of the petitioner had let out a portion on the first floor to the defendant respondent No. 1. An eviction petition was filed on the ground of subletting. It was decreed ex-parte. Thereafter dispute arose relating to enjoyment of the common passage on the ground floor, on the first floor and about the user of the terrace on the second floor. The learned Sub Judge Shri D.S. Bawa framed

only two following issues : (i) Whether the plaintiff is entitled to the injunction prayed for (ii) Relief.

(3) Feeling that other issues were necessary, an application was made for framing 11 additional issues....

(4) The application was rejected.

(5) In the present case, after going through the pleadings, it appears that the prayer was made for framing necessary and relevant as well as unnecessary and irrelevant issues. It appears that the learned Sub Judge by holding that proposed additional issues A, B & D to K were covered in issue relating to relief, had not debarred either of the parties from leading evidence on these points raised in the proposed issue. Thus, he has left the matter open and undecided.

(6) Besides, when learned Sub Judge has made the things clear, none of the parties can say they would be misled by not framing of the proposed additional issues, as the parties know as to what case they have set up in the pleadings and what case they have to prove by leading evidence. So even if there is any error or defect in the framing of issues, that is not likely to cause any prejudice to either of the parties, Smt. Vidya Vati vs. Hansraj Air 1993 Delhi, 137. As regards issue No. C, learned Sub Judge took the view that it was a suit for a permanent injunction and fixed valuation for the purpose of court fee and pecuniary jurisdiction has been mentioned as Rs. 130.00. As such, he felt that it was also not required to be framed.

(7) La respect of proposed issue No. C relating to payment of court fee and valuation, it appears that basically the plaintiff is seeking injunction for restraining the defts. from using any portion other than his tenanted premises and from disturbing the plaintiff in his enjoyment of his portion. In Sri Ratna vs . Vimla : [1961]3SCR1015 the debt. was not allowed to raise the plea of insufficient court fee in revision. Following observations of the Supreme Court are noteworthy :

'WE fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question, whether the

plaintiff has paid adequate court fee on his plaint. Whether proper court fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate.'

(8) Here the case is still worse. The plaintiff is agitating non-framing of an issue in this regard, despite the fact that it is nobody's case that the jurisdiction of the court is likely to be altered by specific decision in this case. See *Siddhartha vs . S.S.K. Sevashram*, : AIR1995 All52 .

(9) In this revision petition, another short question 'Whether refusal to frame additional issues amounts to a 'case which has been decided' u/S. 115 of the Civil Procedure Code . is also required to be considered.

(10) In this connection, it may be mentioned that for interference in revision, the impugned order must be 'a case decided'. The expression case decided has received a liberal approach and it could not be confined to final disposal of suit or appeal, for 'a case' includes even interlocutory civil proceeding though there is no general formula as to when an interlocutory order may amount to 'a case decided'. A case is deemed to have been decided when there is adjudication on the rights or obligations of the parties in controversy. Such adjudication may be in the nature of a decision expressly deciding those rights or obligations, or the adjudication may be such as to have the necessary effect of deciding those rights and obligations. It could mean each decision which had the effect of termination of even a part of controversy.

(11) In view of above legal position, by refusal to frame additional issues A, B & D to K as well as issue C, neither the rights nor the obligations of the parties are determined relating to any matter in controversy. It cannot be said to be deciding a case so as to attract the expression a 'case which has been decided'. This view finds support from *M/s. Udyog vs . United Bank* : AIR1990 All8 ; *Modi and W. Mills vs . Ladha Ram Co.*, : AIR1978 All260 . *Chamaru vs. Smt. Sudha Iir* 1973 Hp 394. In this case, Hon'ble Mr, Justice R.S. Pathak, Cj made following observations in para 5.

'...The court has always power to frame issues at any time before a decree is passed. That is clear from Order 14 Rule 5 of the CPC. It is clear that the impugned order does not constitute a case decided. Nothing has been decided between the parties. All that the trial court has done is to frame some issues on the substitution application. Under Section 115 Cpc, a case may be said to be decided if the court adjudicates for the purpose of the suit some right or obligation of the parties in controversy...'

(Emphasis applied)

(12) These observations also make it clear 'that revision is not maintainable.

(13) In view of the preponderance of the authority and the points mentioned in issues in A, B & D to K having been clarified to be covered in issues relating to relief for the purpose of allowing parties to lead evidence, I feel that it cannot be said to be a 'case decided' as rights have not been adjudicated upon. It may be a material irregularity in the exercise of jurisdiction. But that by itself would neither be sufficient to give any right to the plaintiff to file revision petition, nor confer jurisdiction u/S. 115 Civil Procedure Code on this court to interfere in the impugned order as the expression 'case decided' is not attracted to the point in issue....

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