

ishwar Dutt Vs. Gyan Chand

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Court : Rajasthan

Decided On : Mar-10-1997

Reported in : AIR1998Raj302

Judge : Arun Madan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 114, 115 and 151 - Order 47, Rule 1

Appeal No. : Civil Review Petn. No. 42 of 1996

Appellant : ishwar Dutt

Respondent : Gyan Chand

Advocate for Def. : Kamla Jain, Adv.

Advocate for Pet/Ap. : S.K. Jain, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Arun Madan, J.

1. This review petition has been preferred before this Court under Sections 114 and 151, C. P. C. against the order D/- 6-5-1996, passed by this Court in S. B.

2. The grievance of the petitioner in short is that the petitioner is the owner of the disputed premises in question and has been in its possession since the year 1943. Earlier the father of the petitioner was the absolute owner and after his demise the petitioner is in possession of the property as absolute owner. The property is being used for the residence of the petitioner for the past 50 years.

3. It has further been contended that in the year 1992 due to heavy and constant rains, the backside wall (North side) (As marked in Commissioner's report D/- 11-9-94) collapsed suddenly with the result that the house became unsafe for dwelling. As a result of the fall of the back wall (North side), the kitchen of the petitioner as well as the W. C. and living room were substantially damaged.

4. It has further been contended that from the year 1993, the petitioner started re-construction of the wall as well as the damaged portion of the premises in question and he almost finished there-construction work in the year 1994 except the completion of the back wall, plastering work of both the side walls and on the roof etc. was to be done.

5. It has further been stated that on 1-2-1994, the respondent-plaintiff filed a suit for permanent injunction against the petitioner-defendant with a prayer to the trial Court to restrain the petitioner from completing the remaining construction work and from causing damage to the disputed property in question. It was pleaded in the suit that the petitioner was the tenant of the respondent on the monthly rent of Rs. 20 and it was further alleged that specific damage has been caused to the property as a result of the re-construction work and that the petitioner should, therefore, be restrained from carrying-out any further construction in the suit premises. The respondents also claimed ownership over the disputed house on the basis of the sale deed allegedly executed by the parties to the suit.

6. Neither the original sale deed nor any documentary evidence to prove the ownership of the respondent was placed on the record by the plaintiff nor the defendant-petitioner placed any document to establish the relationship of landlord and tenant.

7. The claim of the respondent was contested by the petitioner on the grounds that there existed no relationship between the parties as landlord and tenant and that the petitioner was the owner of the premises in question and hence the question of taking any consent of the respondent or from anyone else for doing the construction work did not arise.

8. The learned Civil Judge vide his order dt. 4th August, 1994 dismissed the plaintiff's application for grant of interim injunction under Order 39, Rules 1 and 2, C.P.C. on the grounds that since the plaintiff had failed to establish his ownership over the premises in question nor (sic) the relationship of landlord and tenant has been established he was not entitled to any relief but however, directed the petitioner to file an undertaking to the effect that in case the suit is decided in favour of the respondent, then the petitioner will remove the construction at his own expense.

9. Being dissatisfied with the aforesaid order of the learned Civil Judge, the respondents preferred an appeal before the learned District Judge, Bundi vide Civil Misc. Appeal No. 4/94. The learned District Judge assigned the said appeal to the Civil Judge (1st Class), Bundi and the said appeal was finally decided by the said Court vide its impugned order dt. 19-10-1995. The learned Civil Judge (1st Class), Bundi reversed the findings of the trial Court by recording a specific finding to the effect that since the respondent-plaintiff had asserted his possession in the suit premises w.e.f. the year 1943 and had also carried-out substantial construction in the premises in question, the appellate Court directed the parties to maintain status quo during the pendency of the suit subject to the condition that in case the appellant succeeds finally in the appeal, the petitioner shall get the construction carried-out by him demolished at his own cost and expense.

10. Being aggrieved by the aforesaid order of the learned Civil Judge, the petitioner preferred the aforesaid revision petition before this Court, which was heard and finally decided by this Court on 6-5-1996. This Court while disposing of the revision petition had specifically observed that there is no illegality, impropriety or jurisdictional error in the impugned order dt. 19-10-1995, passed by the trial Court and the revision petition being devoid of merit was accordingly dismissed

with a further direction to the trial Court to expeditiously deal with and decide the suit.

11. During the course of hearing, Mr. S.K. Jain, learned counsel for the petitioner has contended at the bar that while deciding the aforesaid revision petition, this Court has overlooked certain material aspects of the case and, therefore, the impugned order dt. 6-5-1996 deserves to be recalled and reviewed by this Court.

12. Learned counsel for the petitioner has sought the review on the grounds inter alia that from the very beginning, the case of the petitioner was that there existed no relationship of landlord and tenant between the parties and he had claimed himself to be the owner of the premises in question. This fact is borne-out from the pleadings of the petitioner on the record, wherein the petitioner has specifically contended that he is not the tenant of the premises in question, therefore, the question of payment of any rent to the respondent-plaintiff would not arise.

13. In support of his contention, he has further stated that no documentary evidence to prove the factum of relationship of landlord and tenant was placed on the record by the plaintiff and in absence of which it cannot be established that the petitioner was the tenant of the respondent.

14. With regard to the alleged sale deed i.e. (Patta) in question, which was executed on 14-4-1948, it has been contended by the petitioner that this is simply a letter exchanged between the parties and from this document the ownership of the plaintiff with regard to the premises in question cannot be proved or established since it is not even a registered document to establish the title of the plaintiff. It has further been contended that since the property is alleged to have been purchased in the year 1946, the aforesaid Patta could not be executed in the year 1945 and hence the document is suspicious and does not establish the title of the plaintiff.

15. Learned counsel for the petitioner has further contended that the best evidence, which the respondent could place on the record of the trial Court was the rent receipt, which could establish the relationship of landlord and tenant between the parties and since even this exercise has not been done by the

respondent, no prima facie conclusion can be drawn by this Court regarding the relationship of landlord and tenant between the parties nor this Court can arrive at any conclusion that the respondent was the owner of the premises in question.

16. The aforesaid contentions advanced by the learned counsel for the petitioner have been controverted by Mrs. Kamla Jain, learned counsel for the respondent on the grounds inter alia that all the aforesaid aspects, which were relevant to be looked into have already been examined in detail by the learned Civil Judge, Bundi and who has recorded the well reasoned findings in his order by which the said Court had reversed the findings of the trial Court which were not open to challenge before this Court in S.B. Civil Revision Petition No. 49/96, which was decided by this Court vide its impugned order as referred to above and since the revision petition has already been dismissed, the question of review or recalling the said order would not arise. Learned counsel for the respondent has further contended at the Bar that the review petition even otherwise is not maintainable in its present form in view of the specific provision, which has been envisaged by the legislature and incorporated as Order 47, Rule 1, C.P.C. It is even otherwise not open to the petitioner to have preferred the review petition before this Court under Sections 114 & 151 of the C.P.C. Learned counsel for the respondent has further contended that review petition preferred against the interlocutory order, passed by the learned Civil Judge deciding the aforesaid appeal is not even maintainable on merits because the suit is yet to be heard and finally decided and the rights of the parties are yet to be finally determined on the basis of the evidence, which they may lead before the said Court and the power of review is not an inherent power but a statutory power, which is covered by the specific provisions of Order 47, Rule 1, C.P.C. as referred to above and the same cannot be exercised by having resort to Sections 114 & 151 of C.P.C. as has been done by the petitioner in the instant case.

17. I have heard learned counsel for the parties and examined the impugned order dated 6-5-1996 as referred to above as well as the legal position on the subject.

18. Prima facie, I am of the view that the petitioner has no case for interference by this Court since even the revision petition before this Court was not even

maintainable on merits keeping in view the fact that the learned Civil Judge, Bundi had passed an interlocutory order directing the parties to maintain status-quo during the pendency of the suit and the rights of the parties had yet to be determined by the said Court.

19. In my view the petitioner was in utmost hurry and instead of getting the suit decided by the trial Court as directed by this Court vide it's order dt. 6-5-1996 had earlier preferred the revision petition and subsequently preferred the review petition against the interlocutory order of the learned Civil Judge, Bundi which has been heard and being decided finally by this order.

20. At this stage, I would like to state that the scope of the review is very limited and is confined only to the following cases :--

(1) Any person considering himself aggrieved;

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal

is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

21. In this case, none of the above grounds exist which would justify this Court to recall or review it's order dated 6-5-1996 by which the Revision Petition No. 49/96 was heard and finally disposed off.

22. I am fortified in my observations from the judgments of the Apex Court in the matters of Chandrakant v. Shripad reported in AIR 1989 Bom 91, P.N. Thakershi v. Pradyuman Singh reported in AIR 1970 SC 1273, Amerjeet Singh v. Bhagwana Kaur reported in 1977 WLN (UC) I, Ram Mehar v. Union of India reported in AIR 1987 Delhi 130, Shiv Deo Singh v. State of Punjab reported in AIR 1963 SC 1909, Manohar Lal v. State reported in AIR 1970 Madh Pra 131. Meera Bhanja v. Nirmala Kumari Choudhary reported in AIR 1995 SC 455.

23. I am further of the review that the scope of the power of review as envisaged under Order 47, Rule 1, C.P.C. is very limited and the review must be confined strictly only to the errors apparent on the face of record. Re-appraisal of the evidence on the record for finding out the error would amount to exercise of appellate jurisdiction, which is not permissible by the statute. The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, C.P.C. The scope for exercise of power by this Court while dealing with and deciding a review petition is very limited confined within the four-corners of the statute as referred to above.

24. Keeping in view the facts and circumstances of the case I am of the opinion that this is not a case, which calls for any interference by this Court in exercise of it's either the inherent powers under Sections 114 & 151, CPC or within the ambit of the powers conferred on this Court by the Statute under Order 47, Rule 1, C.P.C.

25. As a result, I find no merit in the review petition and the same is dismissed and the order dt. 6-5-1996, passed by this Court in S.B. Civil Revision are directed to appear before the learned trial Court, Bundi on 2-4-1997. The parties are further directed to fully co-operate with the trial Court for expeditious disposal of the suit.

26. The trial Court is directed to deal with and decide the suit as expeditiously as possible in accordance with law and in any case not later than six months w.e.f. 2-4-1997 i.e. when the parties will appear before the said Court.

27. It shall however be open to the petitioner to move an appropriate application before the Civil Judge, Bundi with regard to the completion of the unfinished tasks

of the remaining construction which has already been carried on by the petitioner in the suit premises in question and which could not be completed due to pendency of these proceedings, aS and when the said application is moved, the trial Court shall deal with and decide the same by giving such directions as may be appropriate as just as per the facts and circumstances of the case.

28. The Review Petition is accordingly disposed off.

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