

Usman Vs. Sita Ram

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Court : Rajasthan

Decided On : Dec-21-1990

Reported in : 1990WLN(UC)314

Judge : R.S. Verma, J.

Appeal No. : S.B. Civil Revision Petition No. 288 of 1988

Appellant : Usman

Respondent : Sita Ram

Disposition : Petition dismissed

Judgement :

R.S. Verma, J.

1. This is a landlord-tenant marathon. It has a chequered history. Defendants are the revision-petitioners before me. Landlords are plaintiff non-petitioners. Initially the plaintiffs brought Civil Original Suit No. 60/71 before the trial court for ejectment and recovery of arrears of rent. The tenancy was not in dispute. The plaintiffs claimed that the suit shop had been letout at Rs. 9/- p.m. They claimed that no notice for determination of tenancy had been served. They pleaded that the rent was excessive and standard rent was liable to be fixed at Rs. 3/- p.m. The trial court found that the shop had been letout on 11-2-48 at a rental Rs. 3/- p.m. It,

however, found that notice for determination of tenancy had not been served. Upon these premises, the trial court dismissed the suit regarding ejectment but fixed the standard rent at Rs. 3/- p.m. with effect from 5-7-72.

2. An appeal was filed by the plaintiffs before the learned District Judge, Jodhpur against the dismissal of the suit regarding ejectment. There was no appeal against fixation of standard rent. This appeal was dismissed by the learned District Judge on 19-3-75, the appeal being Civil First Appeal No. 135/74.

3. The plaintiffs filed a second appeal before this Court, being Civil Second Appeal No. 260/75;. This appeal was eventually withdrawn and a compromise was arrived at between the parties. By this compromise, the parties inter alia agreed that the rent would be payable at the rate of Rs. 9/- p.m. It was stipulated that either side could bring a suit for fixation of standard rent under the new Act. It was further stipulated that judgments of the courts-below would remain intact but the parties will bear their own costs through out. This Court accepted the compromise and inter alia stated 'the compromise is legal and is hereby recorded. In view of the compromise, the appeal is dismissed as having withdrawn.' This closes Chapter No. 1 of the first round of litigation between the parties.

4. Now open Chapter No. 2, whereby the present plaintiff-non-petitioners instituted a fresh suit for fixation of standard rent. It was pleaded that the father of the defendant Mohammed was tenant in the suit shop and the rent on 1-1-62 was Rs. 9/-p.m. and that was the basic rent. It was pleaded that this rent was very low. It was plead that the suit shop was situated on the main road of a busy market in the city of Jodhpur. It was prayed that the standard rent be fixed at Rs. 22.50 with effect from 3-9-76.

5. The defendant-revision petitioners contended the suit before the trial court and pleaded that the standard rent had been earlier fixed at Rs. 3/- per month. It was pleaded that the rent of Rs. 9/- was highly excessive. It was denied that basic rent on 1-1-62 was Rs. 9/- p.m. According to them the basis rent was Rs. 3/- p.m. They relied upon the earlier judgment of the trial court referred to above. In the alternative, they pleaded that at best the rent could have been revised to Rs. 7.50 p.m. They pleaded that the excess rent already paid after 8-3-76 be adjusted in

the light of such standard rent which may be fixed by the court. They also claimed special costs to the tune of Rs. 500/-.

6. The trial court arrived at the conclusion that the standard rent had been determined at Rs. 3/- p.m. in the earlier suit vide judgment 31-5-74. it further held that any agreement to pay higher rent was void being in contravention of the provisions of Section 8(2) of the Rajasthan Premises (Control of Rent and Eviction), Act (hereinafter to be referred as the Act). Upon such premises it accepted the basis rent to be at Rs. 3/- p.m. and fixed the standard rent at Rs. 7.50 p.m. with effect from the date the suit had been filed.

7. The plaintiff-non-petitioners went in appeal against this judgment and decree. The appeal was decided by the learned District Judge on 24-5-88, whereby it was observed that the compromise arrived at between the parties, which was recorded by this Court was valid and lawful and, therefore, the basis rent would be Rs. 91-p.m. and as such the rent was liable to be fixed at Rs. 22.50. Upon such premises it accepted the appeal and decreed the plaintiffs' suit fixing the standard rent at Rs. 22.50 with effect from 4-7-77. It held plaintiff-petitioners entitled to recover rent at the aforesaid rate. Aggrieved defendants while to recover rent at the aforesaid rate. Aggrieved, defendants which were respondents before the courts-below have come in revision.

8. Learned Counsel for revision--petitioners submits that even though a compromise had been recorded by this Court in S.B. Civil Second Appeal No. 260/75, yet, since the landlords had withdrawn their appeal, the judgment of the learned trial court survived in law, whereby standard rent had been fixed at Rs. 3/- p.m. The learned District Judge did not correctly appreciate this position and further did not correctly appreciate the provisions of Section 8(2) of the Act and, therefore fall in error in fixing standard rent at Rs. 22.50. According to him this was an illegality apparent on the record. In this connection he relied upon that portion of the compromise which recited that the appeal was being withdrawn and the judgment of the courts below would remain intact. It was submitted that the learned trial court was right in fixing standard rent at Rs. 7.50 p.m. Reliance was placed in this connection upon Prem Rai v. the D.L.F. Housing and Construction

(Private) Ltd. and Anr. AIR 1968 SC 1355. It was submitted that the judgment of the learned first appellate court was without jurisdiction and at any rate the learned first Appellate Judge had committed illegality or material irregularity in the exercise of its jurisdiction in decreeing the suit of the plaintiff-non-petitioners. The learned Counsel for the plaintiff-non-petitioners opposes the revision petition and submits that, however, erroneous the judgment of the first appellate court may be, since it had jurisdiction to decide the appeal in the manner it did, the judgment does not suffer from any want of jurisdiction. It is further submitted that there was no illegality or material irregularity in exercise of jurisdiction and hence this Court could not, under its revisional jurisdiction, interfere with the judgment of the learned first appellate court.

9. I have considered the rival contentions and have carefully perused the judgment and the record of the courts below.

10. The scope of revisional jurisdiction of the High Court Under Section 115 of the Civil Procedure Code was considered in She/Singh (dead) through LRS. v. Joint Director of Consolidation and Ors. AIR 1968 SC 1341 In this case it was observed as follows.

the position that emerges from these decision is that Section 115 of the Civil Procedure Code empowers the High Court to satisfy itself on three matters:(a) that the order of the subordinate court is within its jurisdiction (b) that the case is one in which the court ought to have exercised jurisdiction; or (c) that in exercising jurisdiction that Court has not acted illegally, that is, in breach of some provisions of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. And if the High Court is satisfied that there is no error in regard to any of these three matters. It has no power to interfere merely because it differs from the conclusions of the subordinate court on question of fact of law. A distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said courts and questions of jurisdiction of the relation or connection. An erroneous decision on a question of fact or of law reached by the

subordinate court which has no relation to question of jurisdiction of that court cannot be corrected by the High Court Under Section 115.

The same position was stated earlier in the Managing Director (MIG) Hindustan Aeronautics Ltd., Balanagar, Hyderabad and Anr. v. Ajit Prasad Tarawa, Manager (Purchase and Stores) Hindustan Aeronautics Ltd. Balanagar, Hyderabad : (1972)ILLJ170SC . It was aid in that case:

In our opinion the High Court had no jurisdiction to interfere with the order of the first appellate court. It is not the conclusion of the High Court that the first appellate court had no jurisdiction to make the order that it made. The order of the first appellate court may be right or wrong; may be in accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction Under Section 115 of the Civil Procedure Code.

Hence, before this Court could invoke its jurisdiction, it shall have to satisfy itself if the learned first appellate court did not have jurisdiction to decide matter or in exercising the jurisdiction the court acted illegally, i.e. in breach of some provisions of law, or with material irregularity by committing some error of procedure in the course of the trial which was material in that, it may have affected the ultimate decision.

11. In the present case, the learned first appellate court did have jurisdiction to fix the standard rent in exercise of its appellate powers. Hence, it cannot be said that it had no jurisdiction to arrive at the decision, at which it arrived. Now it is to be seen if it acted in contravention of some provisions of law or it exercised jurisdiction with material irregularity.

12. The narration of the facts given by me makes it abundantly clear that the parties had arrived at a compromise determining rent for the suit shop. The compromise had been found to be legal by the High Court deciding the second appeal. The compromise was binding between the parties though it is extremely doubtful if such a compromise could operate as res judicata. In Baldevadas Shivilal

and Anr. v. Filmistan Distributors (India) Pvt. Ltd. and Ors. : [1970]1SCR435 , following proposition of law was laid down:

A consent decree according to the decisions of this Court, does not operate as res-judicata, because a consent decree is merely the record of a contract between the parties to a suit, to which is superadded the seal of the Court. A matter in contest in a suit may operate as res judicata only if there is an adjudication by the Court, the term of Section 11 of the Code leave no scope for a contrary view.

So far as the statement of law is concerned, no fault can be found with it, the same being binding on this Court. But in the present case, there is an additional feature viz. that this Court while recording the compromise arrived at a finding that the compromise is legal'. Now, on there being an adjudication in respect of the legality of the contract between the subsequent proceedings, even though it had emanated from a compromise between the parties. This finding necessarily implies that this Court arrived at a finding of law that the compromise did not contravene any provision of law including provisions of Section 8 of the Act. Had this Court not arrived at a finding that the agreement between the parties was legal, the first appellate court would have been under an obligation to examine if the agreement was legal. Since, the legality of the compromise had been settled by this Court, the legality could not have been challenged in a subsequent suit. To my mind, it did not contravene the provisions of Section 8 of the Act at all. True, this section declares that tenant is not liable to pay rent in excess of the standard rent. But in my opinion, the learned first appellate court did not commit any illegality in accepting the former adjudication of this Court on the question of legality of the agreement as binding upon the parties.

13. Once this adjudication was made, the observation in the compromise deed that the judgment of the courts below remained intact was of no consequence and it was not open for the tenants to rely upon the aforesaid observation and say that the trial court and the first appellate court were bound to re-examine the question of legality or otherwise of the contract fixing rent at Rs. 9/- p.m.

14. The learned Counsel for the revision-petitioners relied upon Prem Raj's case (supra), wherein the question was whether in the alternative the plaintiffs were

entitled to ask for relief for specific performance of the contract in question. The trial court decided the question in favour of the plaintiffs. It may be stated that suit in that case was for declaration that certain contract was void and inoperative having been obtained by undue influence. It was urged before the trial court that the plaintiffs having claimed that the agreement was void and inoperative, cannot in the same suit pray for specific performance of the same agreement. The preliminary objection of the defendant was rejected by the trial court but the Circuit Bench of the Punjab High Court at Delhi allowed the revision application holding that the appellant having sued for a declaration that the agreement was void, cannot in the alternative be permitted to sue for specific performance of the agreement and, therefore, the suit must fail so far as the relief for specific performance was concerned. It was against this order that Special Leave was filed by the plaintiff. It was in this context that the Apex Court observed:

It is manifest that in holding that the appellant was entitled in the alternative to ask for the relief of specific performance, the trial court had committed an error of law and so had acted with material irregularity or illegality in the exercise of its jurisdiction within the meaning of Section 115 (c) of the Civil Procedure Code. It was therefore competent to the High Court to interfere, in revision with the order of the trial court on this point. To put it differently the decision of the trial court on this question was not a decision on a mere question of law but it was a decision on a question of law upon which the jurisdiction of the trial court to grant the particular relief depended. The question was therefore one which involved the jurisdiction of the trial court the trial court could not, by an erroneous finding upon that question, confer upon itself a jurisdiction which it did not possess and its order was therefore liable to be set aside by the High Court in revision.

Now these observation have absolutely no bearing on the present case. As already pointed out there was an earlier adjudication of this Court on the question of legality or otherwise of the agreement arrived at between the parties. To this extent, the adjudication of this Court was binding upon the courts below and, therefore, to my mind the learned first appellate court did not commit any illegality intaking basic rent at Rs. 9/- p.m. When it was so, it could have fixed the standard rent at Rs. 22.50 and, therefore, the judgment of the learned first appellate court

cannot be faulted on this ground.

15. Now something in parenthesis. There is a mushroom growth of landlord-tenant litigation. The legislature in its anxiety to protect the tenants chose to freeze the rent. Explanation to section 6 of the Act lays down that the basic rent of any premises shall mean the rent at which the premises were let on the first day of January, 1962 and, if not let on that day, the rent at which they were first let after that day. Much water has flown in the Ganges since this Act was brought on the statute book. Law to command respectability has to be dynamic and must keep pace with changing times. This is true that the tenants deserve to be protected from exploitation but it is equally true that landlords should be assured a fair return for the value of their property. Freezing rents as no first day of January, 1962 has resulted in much of the tenant-landlord litigation. It is for the State Government to see if the situation can be remedied. Linking rent revision with price index could be one safe guideline. However, it is not for me to advise the State Government or the legislature in this matter. It is for the powers that be to see that the law does not become static and thereby lose its potency and respectability.

16. In the aforesaid Premises I find no force in this revision petition and dismiss the same. In the circumstances of the case the costs shall be made easy.

17. A copy of this order may be sent to the Chief Secretary, State of Rajasthan for such action as is deemed proper by the Government.