

Ramchandra Vs. Ramgopal

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Court : Rajasthan

Decided On : Sep-07-1988

Reported in : 1988WLN(UC)288

Judge : Jasraj Chopra, J.

Appeal No. : S.B. Civil Review Petition No. 22 of 1986

Appellant : Ramchandra

Respondent : Ramgopal

Disposition : Petition allowed

Judgement :

Jasraj Chopra, J.

1. This review petition is directed against the judgment dated 17-4-1987 passed by the learned Single Judge of this Court in SB. Civil Second Appeal No. 458 of 1975: Ram Gopal v. Ram Chandra, whereby he has upheld the finding of the learned trial court that the ground taken by the plaintiff for ejectment of defendant from the suit premises on the basis of reasonable and bonafide necessity stands proved. As the question of comparative hardship was not gone into by both the courts below, the case was remanded back to the trial court for taking the evidence afresh and to record its finding on that issue and to remit the findings to this Court.

After receipt of the findings, the learned Single Judge held that the plaintiff would be put to greater hardship than the defendant if decree for ejectment in respect of the suit-shop is not passed in his favour. Even at the time, no contention was raised that the question of partial eviction has not been gone into by the learned lower courts. However, at the time of final decision of the case on 17-4-1986, the learned Single Judge felt that the same be remanded to the learned trial court for deciding the question as to whether the reasonable and bonafide requirement of the plaintiff-landlord will be substantially satisfied by evicting the tenant-defendant from a part only of shop situated in Tehsil Chowk Nagaur as contemplated in second part of Section 14(2) of the Act. This review petition has been filed against this very direction of the learned Single Judge.

2. While hearing the review petition earlier, initially, it was held that notice has been served on the non-petitioner and, therefore, the review petition was decided by me vide order dated 11-5-1987. While deciding the review petition, it was held that the case need not be remanded back for deciding the question as to whether partial eviction of the non-petitioner will satisfy the personal and bonafide requirement of the plaintiff-petitioner as envisaged by Section 14(2) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act'). It was further held that this case is of a single tenement and, therefore, the suit of the plaintiff against the defendant-respondent was decreed for his eviction from the suit-premises. Thereafter, the defendant-non-petitioner filed an application that he was not properly served in this petition. This Court vide its order dated 21-9-1987 allowed that application and it was ordered that the review petition be listed for rehearing and consequently, this review petition was re-heard on 28-8-1988.

3. It was contended by Mr. L R. Calla, learned Counsel appearing for the non-petitioner that in a case where a particular point is raised for the decision of the court and the court applies its mind to that point, no review can be entertained on that point because the review is not meant to re-decide the case. In such cases, if the parties are aggrieved by the judgment of the learned Single Judge, the proper course to be adopted by the parties is to file an appeal against that judgment because the remedy by way of review is entirely misconceived and if a learned Single Judge entertains the application for review then he totally exceeds his

jurisdiction in allowing the review, merely because he takes a different view on construction of the document. In this respect, reliance was placed on a decision of this Court in *Devaraju Pillai v. Sellayya Pillai* : AIR 1987 SC1160 . That was a case where the learned Single Judge of the High Court sitting in second appeal considered the document and held that it was a deed of settlement. He noticed that, apart from the deed being styled as a deed of settlement and registered as such, one of the recitals in the document was that the deposition was irrevocable. On an application being filed for review of the judgment of the learned Single Judge, another learned Single Judge of the High Court, the Judge who heard the second appeal not being available virtually sitting in judgment over the decision of the learned Judge who decided the second appeal construed the document differently and held that it was a will and not a deed of settlement. This is not the case here and, therefore it will not help Mr. Calla.

4. Mr. Calla has further placed reliance on a decision of the Orissa High Court in *Manu Pujhari v. State of Orissa* : AIR1965 Ori49 , wherein it has been observed:

Order 47, Rule 1. covers both cases of review on grounds of mistake or error of fact as well as of law provided it is apparent on the face of the record. If the Court applies its mind to a particular fact or law and then comes to a wrong conclusion after conscious reasoning, it can never be contended that the error is one apparent on the face of the record and can be corrected by it. Correction of such mistaken conclusion does not come within the ambit of purview of review.

But an error which does not require any extraneous matter to show its incorrectness is one apparent on the face of the record and, therefore, an error of fact or law justifying a review under Section 47, Rule 1 must, in all cases be an error of inadvertance.

In AIR Commentaries on the Code of Civil Procedure, 1908 (as amended by Act No. 104 of 1976), the learned Authors W.W. Chitaley and V.B. Bakhale have observed (Order 47, Rule 1, CPC No. 168 page 1091): that a review can be granted in a case where the Court has failed to consider important facts on record where the Court has failed to consider an important plea or issue.

5. In this case, the learned single Judge while deciding the second appeal held that the question of parties eviction has neither been raised nor determined by the courts below. Even no issue framed about it and, therefore the parties had no opportunity even to lead evidence on this question. Both the courts below have not considered the question that having regard to the nature of the business of plaintiff's son, whether the requirement of plaintiff can be made a ground for his partial eviction or not. An argument was raised before the Court that looking to the nature and dimension of the shop, the question of partial eviction does not arise and, therefore, it was submitted that it was not necessary to remand the case back to the learned lower court for deciding the question of partial eviction. In this respect, reliance was placed on a decision of this Court in *M/s Prem Tent House v. Prakash Chand Jain* 1983 RLR 438. The learned single Judge inspite of noticing the case did not decide the question raised by learned Counsel for the plaintiff-petitioner. In the review petition, it was contended that this Court has held in *Hanuman Das v. Sanwal Ram* 1982 RLR 916 that in a case of single tenament consisting of a single shop or a single room or apartment, the question of partial eviction cannot or does not arise. This decision, which was earlier in time, was not brought to the notice of the Court and no finding was given by the Court that looking to the dimension and nature of the shop, the question of partial eviction can be gone into or not. Mr. Parekh, the learned Counsel for the plaintiff-petitioner has cited *Hanuman Dass's* case (supra) in his review petition and it has been noticed by me earlier also when I decided the review petition in absence of the defendant-non-petitioner, in which, a learned single Judge of this Court has noticed the decision of their Lordships of the Supreme Court in *Rahman Jee Wangnee v. Ramchand and Ors.* : [1978]2SCR380 , where in it has been held that the provisions of Section 14(2) of the Act are mandatory and the Court has to decide whether partial eviction will serve the purpose or not? After noticing this decision, this Court in *Prem Tent House's* case (supra) has observed that the decision of their Lordships of the Supreme Court in *Rahman Jee Wangnee's* case (supra) does not apply to the single tenament consisting of a single shop or a single room or apartment.

6. Although, this decision was not cited before the learned Single Judge when he decided the appeal but a contention was raised before me when I decided the

review petition earlier and even today, that this Court is bound by the earlier Single Bench decisions of this Court and, therefore, it could not have remanded the case because admittedly the dimension of the shop are 10'x 7'. It is enclosed on three sides. That fact has been admitted by the defendant in his statement and on such an admission, no formal evidence is required to prove that fact. In this respect, reliance was placed on a decision of their Lordships of the Supreme Court in *Mahendra v. Sushila* : (1964)ILLJ38SC , wherein it has been observed that the Court can base its decision on admission of the parties.

7. Mr. Parekh submitted that when it has been admitted by the defendant that the shop is enclosed on three sides and its dimensions are 7' x 10' than the decision of this Court in *Hanumandass's case* (supra) was binding on the learned Single Judge. If he wanted to differ from it, he has to refer the matter to the larger Bench otherwise he has to follow that decision and in these circumstances, he could not have remanded the case for deciding this question when the matter stands concluded by a decision of this Court in *Hanumandass's case* (supra).

8. Mr. Parekh also referred to decision of this Court in *Rajendra Singh v. Suresh Chandra* 1984 RLR 785, where in the tenancy consisted of a number of rooms but looking to his requirement to start a hotel and to live in that premises, the Court held that looking to the nature and dimension of premises, the question of consideration of partial eviction does not arise. Here, in this case, this question was raised but it was not decided this way. Rather, the Court held that question was not raised earlier and the parties did not lead evidence and so, it did not decide this plea and remanded the case back to the learned lower court. When a plea is raised and it is not decided by inadvertance then it is a mistake apparent on the face of the record Even in not noticing the decision of this Court rendered earlier which conclusively decides the matter in question amounts to a mistake apparent on the face of the record because the settled law of this Court has been overlooked.

9. A similar question arose in *Prem Tent House's case* (supra), where the premises consisted of same rooms on a piece of land measuring 300 sq. yards. The plaintiff wanted to start his office in that portion and also to live in that

premises with himself, his wife and three children. He wanted a room for his clerk also. His daughters were reading in Saint Angela School and his son was reading in the Central School. It was held that in these circumstances, the question of partial eviction which was raised at the stage of second appeal does not arise and the case was not remanded to the learned lower court for deciding the issue of partial eviction as envisaged by Section 14(2) of the Act, keeping in view the nature and dimension of the suit premises. In this case, the plaintiff's bonafide requirement for opening a shop has been determined in his favour and that has been upheld by the learned Single Judge while rendering judgment on 17-4-1986. It has also been held in his favour that comparative hardship will be more to the plaintiff if eviction is not ordered. Keeping in view the nature and dimension of the shop and further keeping in view the ratio of Hanumandass's case (supra) I have no option but to accept this review petition.

10. I, therefore, accept this review. Petition, set aside the direction of this Court given in its judgment dated 17-4-1986 where the case was remanded back to the learned Civil Judge, Nagaur for deciding the question of partial eviction as envisaged by Section 14(2) of the Act, and held that the plaintiff-landlord (petitioner) is entitled to the decree of eviction against the defendant non-petitioner-tenant Ramgopal. The defendant-non-petitioner is granted one month's time to vacate the suit premises and to hand over vacant and peaceful possession of the suit premises to the plaintiff-petitioner, failing which, the plaintiff-petitioner will be at liberty to get the suit premises vacated through the process of the court. The plaintiff-petitioner is further made entitled to the arrears of rent and mesne profit till the vacant and peaceful possession of the suit premises is handed over to him.