

Asharam Vs. Ramlal

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Court : Rajasthan

Decided On : Sep-23-1977

Reported in : 1977WLN(UC)401

Judge : R.L. Gupta, J.

Appeal No. : S.B. Civil Revision No. 11 of 1974

Appellant : Asharam

Respondent : Ramlal

Disposition : Petition allowed

Judgement :

R.L. Gupta, J.

1. The plaintiff-non-petitioner filed a suit against the petitioner-defendant, who is the son of the plaintiff, alleging that the plaintiff non-petitioner had given the petitioner-defendant a licence to occupy the suit portion of the house and that he had revoked the licence. Therefore, the petitioner-defendant be asked to vacate the house. The petitioner-defendant contested the suit and maintained that he had the right to stay on in the house as he has got a share in the whole of the house because the house is a joint Hindu family property and the petitioner is occupying the flat in his own right as the son and he cannot be dispossessed. In the Income-

tax Department also the non-petitioner has shown the whole property as the joint Hindu family property and the non-petitioner's contention to this effect was upheld at the appellate stage.

2. The issues were framed in the case. On 16.11.72 the petitioner gave notice to the Advocate of the non-petitioner to produce sale-deed and 'patta' of the house, applications and plans approved by the Municipality Jodhpur for raising construction, judgment and grounds of appeal before the Assistant Commissioner of Income-tax Jodhpur Range, Jodhpur in cases Nos. 394 to 398/63-64 and registered mortgage-deeds. The non-petitioner, in his reply to the notice, said that sale-deed and 'patta', though they were in his possession, were not relevant; the rest of the documents were not in his possession & were also not relevant. The Learned Munsif City Jodhpur, in whose court the suit was pending rejected the application of the plaintiff vide his order dated 19.1.73 on the ground that there was no such issue and as such the documents asked for by the petitioner were not relevant. Thereafter the petitioner moved an application under Order 14 Rule 5 C.P.C. on 17.2.73 for framing some additional issues suggested in that application. Six new issues were suggested therein. The court vide its order dated 2.4.73 partly allowed this application. As for issues Nos. 1 and 2 as suggested, it was held that the question whether the property is the HUF cannot be finally decided here & that fact can be taken only in rebuttal to issue No. 1 framed by the court which is regarding licence. Issue No. 1 as framed by the court on 12.10.72 is as follows:

Whether the defendant had been occupying the suit flat as licensee of the plaintiff with effect from 1.10.68 and whether the defendant had agreed to vacate the flat whenever demanded by the plaintiff?

The issue No. 1 suggested by the non-petitioner in his application dated 17.2.73 was to the effect whether the property mentioned in para 2 of the plaint is a Hindu undivided property in which the defendant has his right and share and the defendant is in possession as owner. In view of the order of the trial court dated 2-4-1973 this contention of the defendant that he is in possession of the suit property in his own right being a member of the joint Hindu family and the property being

the property of the joint Hindu family was to be proved by the defendant in rebuttal.

3. After the aforesaid order dated 2.4.73 the petitioner again moved an application on 4.9.73 under Order 11 Rule 14 C.P.C. for the production of documents referred to above. The non-petitioner opposed the application on the same ground previously taken by him and also on an additional ground that the present application was barred by the principle of res judicata. The learned Munsif rejected the petitioner's application by his impugned order dated 3.11.73 holding that the previous application has been disposed of on merits and hence fresh order cannot be given. It is against this order that the present revision petition has been preferred by the petitioner defendant.

4. I have heard the arguments of the learned Counsel for the parties and have gone through the record.

5. The case of the plaintiff-non-petitioner is that the petitioner is a licensee of the portion of the house in his possession while the case of the petitioner-defendant is that the whole of the house including the portion that the petitioner is occupying is a joint Hindu family property and the petitioner is occupying the flat in dispute in his own right and as such he cannot be dispossessed. The plaintiff has, therefore, to prove as to whether the petitioner was given a licence to occupy the house and he had revoked the licence and therefore entitled to get the house vacated by the defendant-petitioner. The defendant-petitioner in rebuttal has to show that he is not a licensee but he is occupying the house in dispute in his own right. The petitioner, therefore, required certain documents to be produced by the plaintiff-non petitioner. It cannot be disputed that these documents are not relevant to the question raised by the defendant-petitioner but the learned Munsif vide his order dated 19.1.73 rejected the application of the plaintiff in this regard on the ground that there was no issue on the point whether the property in dispute is a joint Hindu family property and the defendant-petitioner is residing therein in his own right. The petitioner, therefore, subsequently filed an application under Order 14 Rule 5 C.P.C on 17.2.73 for framing some additional issue regarding this point was also suggested. The learned Munsif vide his order dated 2.4.73, ordered that this point whether the property being the property of the joint Hindu family and the

defendant was living in his own right being a member of the joint Hindu family can be proved by the defendant petitioner in rebuttal. Under these circumstances, the documents which the petitioner sought to be produced by the plaintiff became clearly relevant to the case of the defendant. The petitioner therefore, again moved an application under Order 11 Rule 14 C.P.C. on 4.9.73 for the production of the documents referred to in his application. The learned Munsif failed to decide this, application on the merit but by his impugned order dated 3.11.73 held that the previous application in this regard was already disposed of and as such this application does not require any fresh order.

6. It cannot be denied that the documents which are sought to be summoned & produced are relevant to the plea taken by the defendant petitioner in his written statement. Formely the application was rejected by the learned Munsif on the ground that there was no issue on the point raised by the defendant in his defence but subsequently on an application moved for amendment of the issues the learned Munsif has held that this point raised by the defendant that he is living in his own right in the suit flat beings member of the joint Hindu family can be proved by the defendant-petitioner in rebuttal to issue No. 1 In these changed circumstances the learned Munsif should have considered the fresh application filed under Order 11 Rule 14 C.P.C. on 4.9.73. He was therefore not right in refusing to exercise his jurisdiction in this respect.

7. The revision petition is therefore allowed, the order of the learned Munsif dated 3.11.73 is set aside and it is ordered that the learned Munsif would decide the application filed by the petitioner on 4.9.73 under Order 11 Rule 14 C.P.C. on merits keeping in view the changed circumstances. No order as to costs.