

Mana Ram Vs. Raichand

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SooperKanoon Citation : sooperkanoon.com/768234

Court : Rajasthan

Decided On : Jul-30-2003

Reported in : RLW2004(3)Raj1483; 2004(1)WLC181

Judge : Prakash Tatia, J.

Acts : Code of Civil Procedure (CPC) - Order 41, Rule 33

Appeal No. : S.B.C. Sec. Appeal No. 161 of 2003

Appellant : Mana Ram

Respondent : Raichand

Advocate for Pet/Ap. : B.K. Bhatnagar, Adv.

Disposition : Appeal dismissed

Judgement :

Prakash Tatia, J.

1. Heard learned counsel for the appellant.

2. Brief facts of the case are that the plaintiff respondent filed the suit for eviction against the defendant appellant in the trial court on the ground of second default committed by the defendant tenant. The defendant tenant submitted written statement denying the default upon which issues were framed by the trial court. It

appears that during pendency of suit parties settled their dispute and therefore, a written compromise was submitted in trial court on 31.01.02 wherein defendant admitted that he has committed default in payment of rent second time, therefore, decree for eviction may be passed in favour of the plaintiff and as matter has been settled, defendant be permitted to remain in possession till 31.10.02 and defendant will pay entire arrears of rent within two months. On 31.01.2002, statements of both plaintiff and defendant were recorded in trial court wherein defendant again admitted his second default.

3. However, it appears from the judgment dated 31.01.02 recorded in the order sheet itself that the trial court after verifying the compromise between the plaintiff and defendant merely ordered that, accordingly suit of the plaintiff is decreed as per the compromise on the ground of second default. The trial court specifically ordered that decree to be prepared in accordance with compromise.

4. This compromise decree was challenged by the defendant by filing appeal on the ground that the decree of the trial court dated 31.01.02 may be set aside as it is null as the trial court merely incorporated paras of the compromise dated 31.01.02 in the decree and has not passed the decree (in court's own language making it as order of court) and the trial court did not determine interim rent.

5. The First Appellate Court found that suit was filed for eviction on the ground of second default of the tenant-defendant- appellant. Both, plaintiff and defendant admitted in evidence that the defendant has committed second default in payment of rent of the premises in dispute. The trial court after verifying compromise between the trial parties, passed the decree. However, the First Appellate Court held that the trial court has committed certain procedural irregularities by not writing down the compromise in the judgment to make it as a decree of the court. The First Appellate Court, therefore, modified the decree of the trial court and passed the decree in consonance with the compromise of the parties. The appellant tenant is still aggrieved against the above judgment and decrees of the courts below and preferred this second appeal.

6. Learned counsel for the appellant vehemently submitted that the decree of the trial court is not in consonance with the judgment dated 31.01.02. It is submitted

that the trial court has not delivered the judgment in terms of the compromise which is clear from the judgment dated 31.01.02. The trial court should have recorded the finding even on the basis of the compromise about the issues involved or should have recorded the reason for passing decree and thereafter, should have followed the procedure provided, under Order 20 for writing judgment, making the operative part of the judgment distinct and separate for preparation of decree. Since paras of compromise are not incorporated in the judgment, therefore, writing down of paras of the compromise dated 31.01.02 is illegal. It is also submitted by the learned counsel for the appellant that the First Appellate Court has to consider the challenge to the decree against the appellant tenant and, therefore, the Appellate court itself had no jurisdiction to re-cast or re-frame the decree. Learned counsel for the appellant relies upon the judgment of the Hon'ble Apex Court delivered in case of Laxmi Ram Bhuyan v. Hari Prasad Bhuyan and Ors. (1).

7. First of all it is necessary to look into the facts of the case which was before Hon'ble Supreme Court and which is relied upon by the learned counsel for the appellant. It appears from the facts of the above case that a title suit was filed which was seriously contested by the parties and the trial court dismissed the suit. The dismissal of the suit was challenged by filing first appeal, that too was dismissed. The plaintiff preferred second appeal which was heard by the learned Single Judge of the High Court and High Court allowed the appeal by judgment dated 18.5.95. The operative part of the judgment of the High Court dated 18.5.95 was reproduced in the above judgment, which is as under:

'From my above discussion the appeal is allowed. Respondents are directed to pay Rs. 500/- as cost to the appellants. The case is sent back to the original court for preparation of the decree accordingly. In the result the appeal is allowed.'

8. It is clear from the above order that though the High Court itself allowed the appeal of the plaintiff against the dismissal of the suit, but directed the trial court to prepare the decree. The Hon'ble Apex Court held that no such procedure is provided in the Civil Procedure Code by which the decrees may be passed by the Appellate Court and direction can be issued to trial court to frame the decree. It

has been held that in such a situation the court which passed the decree is required to prepare the decree and not the trial court. In these circumstances, the Hon'ble Supreme Court directed the High Court to draw a decree. It will be worthwhile to mention here that the Hon'ble Apex Court observed that a reading of the judgment of the High Court shows that in its opinion the plaintiffs were found entitled to succeed in the suit and there is an accidental slip or omission in manifesting the 'intention of the court by couching the reliefs to which the plaintiffs were entitled in the event of their succeeding in the suit. The Hon'ble Apex Court further held that Section 152 enables the court to vary its judgment so as to give affect to its meaning and intention. The Hon'ble Supreme Court also referred the decision delivered in the case of *Re. Swire; Melloor v. Swire* (2), and concluded the observations which are worthwhile to re produce here :

'subject to the only limitation that the amendment can be made without injustice or on terms which preclude injustice. Lindley L.J observed that if the order of the court, though drawn up, did not express the order as intended to be made then' there is no such magic in passing and entering an order as to deprive the court of jurisdiction to make its own records true, and if an order as passed and entered does not express the real order of the court, it would, as it appears to me, be shocking to say that the party aggrieved cannot come here to have the record set right, but must go to House of Lords by way of appeal.'

9. In view of the judgment relied upon by the learned counsel for the appellant, . it is clear that if it is found that the plaintiffs are entitled for the reliefs claimed and, if there happens some mistakes in making the intention of the court clear, then that can be corrected. Question before the Hon'ble Supreme Court was that who can correct the mistake and question before the Hon'ble Apex Court was that whether the Appellate court, while passing decree, can direct the trial court to draw the decree? The Hon'ble Apex Court held that the correction may be made by that court, which committed the mistake and the Appellate Court cannot direct trial court to draw the decree in consonance with the decision of the Appellate Court and the Appellate Court itself should draw and can draw the decree in accordance with decision. Contrary to it, here in this case, the First Appellate Court did not direct the trial court to frame the decree as per the decision of the First Appellate

Court. Therefore, judgment cited by the learned counsel for the appellant has no application to the facts of the case. Rather it supports the view that intention of the court must be made clear whenever it is brought to the notice of the court.

10. The next question arises is whether the First Appellate Court committed illegality in modifying the decree of the trial court and passing decree by including the compromise in the operative part of the judgment of the Appellate Court which was not the part of the decree of the trial court? and, whether it is essential for the Appellate Court to set aside the decree only for rewriting judgment and for drawing the decree against without changing the result of the decision given by the trial court despite the fact that all material is available before the First Appellate Court itself to pass appropriate decree?

11. The Appellate court, when seized of the matter of challenge to the decree of the trial court, the Appellate court possesses all the powers which were with the trial court. The Order 41 Rule 33 C.P.C., specifically provides that the Appellate Court shall have power to pass any decree and make any order or decree which ought to have been passed by the trial court. The Order 41 Rule 33 further provides that this power can be exercised by the court notwithstanding that appeal is against part of the decree only. It further provides that this power may be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have filed the appeal or objection. In present case, compromise between the parties is not in dispute, statements of plaintiff and defendant were before the First Appellate Court whereby case of the plaintiff for grant of decree is not only passed but even defendant himself admitted that the decree be passed, then, the first Appellate Court very rightly exercised jurisdiction under Order 41 Rule 33 and rightly modified the decree of the trial court and rightly made the intention of the trial court clear, by taking help of statutory power to do, by the Appellate Court itself, which ought to have been done by the trial court. It is always desirable to exercise power by the court to avoid multiplicity of the proceedings and remand of cases may also be avoided. Here in this case there was no reason or grounds were available before the First Appellate Court to set aside the decree of the trial court as it would have negating and nullifying the intention of the trial court on passing the judgment and decree and also would

have been against the intention of the parties to the suit in getting the decision of the trial court. Setting aside of the decree in this case by the Appellate Court would be in disregard of the law laid down by the Hon'ble Supreme Court in the case of Laxmi Ram Bhuyan (Supra). In view of the above reasons, the Appellate Court has exercised its jurisdiction absolutely in accordance with law and made corrections of irregularities if it was there, of the trial court.

12. Apart from it, it is clear from the judgment of the trial court dated 31.01.02 that the trial court specifically directed to prepare decree sheets as per the compromise therefore, the trial court made the compromise itself as part of the decree. When compromise itself is made part of the decree then the compromise itself becomes part of the decree. It is true that while deciding the suit on the basis of the compromise, the court may alter the language of the compromise so as to make it in the form of direction or command which is required in the decree. Therefore, what has been done by the trial court may not be proper but it cannot amount to any illegality. The irregularity was corrected by the Appellate Court.

13. In view of the above legal proposition of law and in view of the observation of the Hon'ble Supreme Court in the case referred above, I do not find that this appeal involves any substantial question of law to assail the decrees of the courts below.

14. The appeal is dismissed.