

Jaygun Bibi Vs. Tarakeswar Chatterjee

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Court : Kolkata

Decided On : Apr-09-1997

Reported in : (1997)2CALLT394(HC)

Judge : Sudhendu Nath Mallick, J.

Acts : [Constitution of India](#) - Article 227; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Section 115A

Appeal No. : C.O. No. 2229 of 1992

Appellant : Jaygun Bibi

Respondent : Tarakeswar Chatterjee

Advocate for Def. : Jiban Ratan Chatterjee and ;Jayanti Mukherjee, Adv.

Advocate for Pet/Ap. : Subhas Chandra Bose, Adv.

Disposition : Application dismissed

Judgement :

Sudhendu Nath Mallick, J.

1. The instant revisional application under Article 227 of the [Constitution of India](#) has been preferred by the defendant/petitioner against the judgment and order passed by the learned 2nd Additional District Judge, Barasat, North 24-Parganas

in Civil Revision Case No. 86 of 1991 on 28.5.92 setting aside the order of the learned Munsif, 4th Court, Sealdah dated 31.5.91 allowing in part the defendant/petitioner's prayer for amendment of the written statement under Order 6 Rule 17 of the Code of Civil Procedure in Title Suit No. 558 of 1979.

2. The learned Counsel appearing for the petitioner has submitted that the impugned order passed by the learned Additional District Judge under Section 115A of the Code of Civil Procedure is manifestly illegal and, as such, should be set aside under Article 227 of the [Constitution of India](#) restoring the order passed by the learned Munsif against which the defendant/petitioner came up in revision before the learned Additional District Judge under Section 115A of the Code of Civil Procedure. In order to appreciate the contentions of the learned counsel appearing for the petitioner, the undisputed facts on record may be referred to as follows :-

3. The plaintiff/opposite party filed the aforesaid suit for eviction against the present petitioner under the provisions of the West Bengal Premises Tenancy Act admitting him to be the sole tenant in respect of the disputed premises on the ground that she had defaulted in payment of rent. Written statement was duly filed by the defendant/petitioner and issues were framed. There was no defence in the written statement that the suit was bad for defect of parties that the defendant's husband was the sole tenant and after his death his heirs including the present petitioner became the tenants in respect of the suit premises. After the cross-examination of the plaintiff/opposite party, the defendant/petitioner filed an application for amendment of the written statement on 20.2.91. In the said application for amendment of the written statement it was stated that after the death of husband of the defendant the tenancy devolved upon the defendant along with other heirs. So, a new plea was sought to be taken that the suit was bad for defect of parties and the notice to quit was illegal.

4. The learned Munsif allowed the amendment sought for in point Nos. 2 and 3 of the application covering the above allegations, Against the above order, the present petitioner moved the court below under Section 115A of the Code of Civil Procedure.

5. The learned Additional District Judge after considering the application and after hearing both the parties dismissed the revisional application and set aside the order passed by the learned Munsif allowing the amendment of written statement in part. The learned Additional District Judge while setting aside the order of the learned Munsif took note of the following admitted matters on record.

1. In the original written statement there was no challenge to the description of the suit property or to the relationship of landlord and tenant between the parties.

2. The relationship of landlord and tenant was not denied in the written statement. On the other hand, the defendant deposited rent in respect of the suit premises with the Rent Controller since September, 1978 in favour of the plaintiff by her own name describing herself as a sole tenant.

3. The defendant filed application before the trial court under Section 17(2a)(b) of the West Bengal Premises Tenancy Act admitting herself to be the only tenant in respect of the suit premises and those applications were disposed of by the trial court asking the defendant to deposit the arrears of rent.

6. It is also admitted by both the parties before this court that the defence against delivery of possession has been struck out under Section 17(3) of the West Bengal Premises Tenancy Act.

7. The learned Additional District Judge has come to a finding that in view of the above admissions made by the defendant before the trial court in written statement as well as in other applications and by her conduct was estopped from challenging the relationship of landlord and tenant between the plaintiff and herself in respect of the disputed premises and was estopped from incorporating a new story that the disputed tenancy was held by her along with other heirs of her deceased husband.

8. The learned Additional District Judge in the impugned order has also observed that such finding of the trial court on the issue of the relationship of landlord and tenant between the parties must be deemed to have been decided finally and would operate as res judicata under Section 11 of the Code of Civil Procedure.

9. Mr. Bose's main contention is that the learned Additional District Judge while passing the impugned order has exercised appellate powers in setting aside the entire order passed by the learned Munsif allowing the amendment in part.

10. Mr. Bose has submitted that the court while exercising its revisional powers cannot exercise powers of an appellate court. According to Mr. Bose, the revisional court under Section 115A of the Code of Civil Procedure against the order of the learned Munsif disallowing a part of the amendment sought for in his applications under Order 6 Rule 17 of the Code of Civil Procedure. He had no grievance against the order of the learned Munsif allowing the amendment in part. Hence, according to Mr. Bose, the learned Additional District Judge should not have set aside the entire order of the learned Munsif while exercising his powers under Section 115A of the Code of Civil Procedure.

11. In the connection Mr. Bose has referred to a decision of the Supreme Court reported in : AIR 1997 SC107 (Ram Avtar and Ors., Appellants v. Ram Dhani and Ors., Respondents) wherein it has been held that the authority while exercising the power under Section 115 of the Code of Civil Procedure cannot act as court of appeal so as to reappreciate the evidence on record for recording finding on questions of fact. But this decision of the Supreme Court has no manner of application to the present case.

12. Mr. Bose has also referred to a decision of the Supreme Court reported in : [1970]2SCR368 [DIF Housing & Construction Private Ltd. New Delhi v. Sarup Singh and Ors.) in which the scope of Section 115 has been discussed. This decision also does not throw any light on the point in issue before me.

13. Mr. Bose has also referred to a decision of the Supreme Court reported in : AIR 1986 SC446 (Manick Chandra Nandy v. Debdas Nandy and Ors.,) where also the scope of Section 115 of the Code of Civil Procedure has been discussed. But it must be stated that the scope of Section 115 of the Code is not the matter in issue in this case as such. The point is whether the learned Additional District Judge while exercising his jurisdiction under Section 115A of the Code of Civil Procedure has acted most illegally amounting to gross injustice or abuse of the process of the court so as to be interfered with by this court under Article 227 of the [Constitution](#)

[of India](#). The scope of Article 227 of the [Constitution of India](#) relating to an order passed by the District Court under Section 115A of the Code of Civil Procedure has been decided by this High Court in a Single Bench decision reported in 1995(2) Calcutta High Court Notes 103 [Bibhuti Charan Chakraborty v. Tapan Kumar Sinha]. It has been held there that the High Court in exercising of its constitutional jurisdiction under Article 227 of the [Constitution of India](#) can interfere with an order passed by the District Court under Section 115A of the Code and no amendment of a statute, short of the amendment of the Constitution can take away the power of superintendence of the High Court conferred upon it under Article 227 of the [Constitution of India](#). It has been further held there that, in an application under Article 227 the petitioner cannot challenge the order passed by trial court which has already been tested in the District Court under Section 115A but he can very well challenge the order passed by the District Court under Article 227 on grounds of gross injustice, abuse of the process of the court and similar other grounds.

14. It may be noted that the revisional application under Section 115A of the Code was filed by the petitioner before the District Court below. Being aggrieved by the impugned order passed by the District Court below she has preferred this application under Article 227 of the [Constitution of India](#).

15. It may be helpful here to quote the relevant provision of Section 115A which runs as follows:-

'115A. District Court's powers of revision.

(1) A District Court may exercise all or any of the powers which may be exercised by the High Court under Section 115.

(2) Where any proceeding by way of revision is commenced before a District Court in pursuance of the provisions of sub-section (1) the provisions of Section 115 shall so far as may be, apply to such proceeding and reference in the said section to the High Court shall be construed as references to the District Court.

(3) Where any proceeding for revision is commenced before the District Court, the decision of the District Court on such proceeding shall be final and no further proceeding by way of revision shall be entertained by the High Court or any other court.

(4) If any application for revision has been made by any party either to the High Court under Section 115 or to the District Court under this section, no further application by the same party shall be entertained by the other of them.

(5) A court of an Additional Judge shall have and may exercise all the powers of a District Court under this section in respect of any proceeding which may be transferred to it by or under any general or special order of the District Court'.

16. It is clear from the above provisions that the decision of the District Court on an application under Section 115A is final and no further proceeding by way of revision shall be entertained by the High Court or any other court and that the party who has moved the District Court under Section 115A is debarred from filing further application before the High Court or before the District Court concerned. It is also clear that the District Court while exercising its powers under Section 115A can exercise all the powers exercisable by the High Court under Section 115 C. P. Code. It is provided in Section 115 that the High Court while exercising its powers under Section 115 can make such order in the case as it thinks fit. Accordingly, the District Court under Section 115A can also pass such order in the case as it thinks fit.

17. Under the circumstances, the powers to be exercised by the High Court under Article 227 of the [Constitution of India](#) relating to an order passed by the District Court under Section 115A are very limited. In order to succeed in this application the petitioner has to convince this court that the impugned order has been passed by the District Court causing grave injustice or abuse of the process of the court or similar other grounds are there which would vitiate the impugned order. In other words, the petitioner has to show that the impugned order is patently illegal, arbitrary or has been passed without following the principles of natural Justice etc. But after going through the impugned order and after hearing the learned Counsel appearing for both the parties, I do not find any reason to hold that the impugned

order is grossly unjust or amounts to abuse of the process of the court or principle of natural justice have been violated. The learned Additional District Judge has given cogent and sufficient reasons for also setting aside the part of the order of amendment passed by the learned Munsif in favour of the petitioner. It is not reasonable to say that as that part of the order was not challenged by the petitioner, the learned Additional District Judge had no jurisdiction to set aside it under Section 115A.

18. On the point of res judicata as noted by the learned Additional District Judge in his impugned order, the learned Counsel appearing for the petitioner has referred to a decision of the Supreme Court reported in : (1972)11LLJ9SC (The United Provinces Electric Supply Co. Ltd. v. T.N. Chatterjee and Ors.,). But this judgment, in my opinion, has no application to the present case and to the circumstances noted by the learned Additional District Judge while coming to a finding that the defendant/petitioner by his conduct is estopped from challenging the relationship of landlord and tenant between the parties in the interlocutory stage.

19. Mr. Chatterjee, the learned Counsel appearing for the plaintiff/ opposite party has referred to a decision of this High Court reported in 89 CWN page 252 (Arun Kumar Biswas, v. Dr. D.N. Majumdar) wherein it has been held in similar circumstances that where at no point of time before the filing of the additional written statement the defendant petitioner had ever come up with a case that the plaintiff alone was not his landlord and the relationship between them had been conceded, the petitioner having admitted the relationship of landlord and tenant between the parties cannot now be permitted to take a plea to the contrary. This High Court disallowed the plea of a defect of parties is to be taken at late stage because such a plea should have been taken at the earliest opportunity. This High Court in view of the circumstances of the aforesaid case held as follows:-

'The plea of the defendant sought to be introduced by way of an additional written statement appears to me to be not only vexatious and harassing but without any merit whatsoever. It will bear repetition that the purpose of allowing a party to amend his pleading suitably is only to enable the court to effectively adjudicate upon the real controversy in the suit. But an amendment of the nature as sought to

be made in this case and more particularly at the stage of the suit ought to be refused because in allowing it the plaintiffs suit would be wholly displaced. The proposed amendment would be wholly inconsistent with the original written statement and in that situation I am unable to agree with Mr. Bhattacharjee that he is entitled to amend the written statement in the manner prayed for. That being so, I find nothing to interfere with the order passed by the learned Munsif. The prayer for amendment is liable to fail not merely because the defence against delivery of possession has been struck out but on its own merits'.

20. Accordingly, I must hold that there is no substance in this application under Article 227 of the [Constitution of India](#). The learned Additional District Judge has not acted illegally or has not caused any grave injustice to the petitioner by setting aside the order of amendment of written statement passed by the trial court. The learned Additional District Judge has given convincing reasons for disallowing amendment as sought for by the petitioner and for setting aside the order of amendment passed by the trial court.

21. The revisional application is dismissed. No order as to costs. All interim orders are vacated.

22. The learned trial court is directed to dispose of the Title Suit No. 558 of 1979 as expeditiously as possible preferably within a period of four months from the date of communication of this order.

23. Let a copy of this order be sent to the trial court by a special messenger at the cost of the opposite party and such cost to be deposited within a week from this day.

24. Let affidavit-in-opposition filed in court today be kept with the record.