

Sunder and ors. Vs. Kirpu and ors.

Sunder and ors. Vs. Kirpu and ors.

SooperKanoon Citation : sooperkanoon.com/888282

Court : Himachal Pradesh

Decided On : May-29-1979

Reported in : AIR1980HP1

Judge : T.U. Mehta, C.J. and; T.R. Handa, J.

Acts : Himachal Pradesh (Courts) Order, 1948

Appeal No. : Letters Patent Appeal No. 21 of 1973

Appellant : Sunder and ors.

Respondent : Kirpu and ors.

Advocate for Def. : Chhabil Dass, Adv.

Advocate for Pet/Ap. : Inder Singh, Adv.

Disposition : Appeal dismissed

Judgement :

T.U. Mehta, C.J.

1. This Letters Patent Appeal is preferred against the judgment and order recorded by the Chief Justice Shri R. S. Pathak (as he then was) sitting singly on 22-6-1972 in R. S. A. No. 22 of 1969. The learned Chief Justice has held that the second appeal preferred by the present appellants, Sunder and others, was not competent

under Clause (b) of Paragraph 32 (1) of the Himachal Pradesh (Courts) Order 1918 (hereinafter referred to as 'the Order').

2. Short facts of the case are that the respondent No. 1, Kirpu, filed this suit for redemption of the suit property and for obtaining possession thereof on redemption. Kirpu became the owner of the equity of redemption with regard to the suit property by virtue of the sale deed found at Ex. PW 1/A which is dated 22 Posh 1990 BK. This equity of redemption was purchased by him for the amount of Rs. 1300/- The present appellants claim that they are the tenants on the land in question and are, therefore, entitled to the possession of this land as such. They are, therefore, joined as parties to this suit.

3. The suit was decreed by the trial court on 30-5-1962 and this decree of the trial court has been affirmed by the District Judge concerned in appeal on 26-8-1968.

4. It is an admitted position that the original mortgage which is sought to be redeemed, was for the amount of Rupees 470/- and that the suit was therefore, valued accordingly.

5. The present appellants, who are tenants in the land, feeling aggrieved by the decision of the District Judge confirming the decree of the trial court, preferred second appeal in the High Court. It is this second appeal which has been dismissed by the learned Single Judge on the ground that the same was not competent under the above referred Clause (b) of paragraph 32 (1) of the Order.

6. Paragraph 32 of the order provides for appeal from the appellate decree and states as under:

'32 (1) A Second appeal shall lie to the Court of the Judicial Commissioner in any of the following cases from an appellate decree of a District Court on any ground which would be a good ground of appeal if the decree had been passed in an original suit, namely:--(a) in a small cause suit or unclassified suit.

(i) if the value of the suit is one thousand rupees or upwards, or the decree involves directly some claim to, or question respecting property of like value, and the decree of the District Court varies or reverses, otherwise than as to costs the

decree of the Court below, or

(ii) if the value of the suit is two thousand five hundred rupees or upwards or the decree of the District Court involves directly some claim to, or question respecting, property of like value; (b) in a land suit,

(i) if the value of the suit is two hundred and fifty rupees or upwards or the decree involves directly some claim to, or question respecting, property of like value, and the decree of the District Court varies or reverses otherwise than as to costs the decree of the Court below, or

(ii) if the value of the suit is one thousand rupees or upwards, or the decree of the District Court involves directly some claim to, or question respecting, property of like value.

(2) The provisions of Order XLI of the Civil P. C., 1908, other than Rule 35 of the said order shall apply, as far as may be, to a second appeal under this paragraph and to the execution of a decree passed on any such appeal.'

7. Obviously the present suit is a land suit and, therefore, this Clause (b) of sub-para. (1) of para 32 has an application to the facts of this case. It appears from the judgment recorded by the learned Single Judge that when the matter was argued before him, it was contended that Sub-clause (i) of Clause (b) was no bar to the second appeal inasmuch as the decree passed by the District Court cannot be said to be confirming the decree of the trial Court. This argument, however, does not survive to be considered as the same is not pressed during the course of the hearing of this appeal.

8. The learned Advocate of the appellants, however, contended that this suit is covered by Sub-clause (ii) of Clause (b) inasmuch as the decree of the District Court involves directly a claim to, or a question respecting, the suit property which is obviously of the value of more than a thousand rupees, having regard to the fact that the equity of redemption was purchased by the plaintiff for the amount of Rs. 1300/-. This argument was based on the fact that the appellants claim tenancy rights and this claim must necessarily be considered as a claim to the suit

property. At any rate, according to the learned Advocate of the appellants, claim over the tenancy rights should be considered as directly involving a question 'respecting' the suit land itself. In other words, the contention of the appellants is that as they have claimed tenancy rights in different parts of the suit property, it should be held that the decree of the District Court directly involved a question respecting the suit property. In support of this contention the learned Advocate of the appellants has put reliance on the interpretation given to a similar provision found in Section 110 of the Civil P. C. 1908 and Article 133 (1) (b) of the Constitution as it stood previous to its amendment in the present form.

9. Section 110 of the Civil P. C. 1908 provided for the value of the subject matter in cases in which appeal lay to the Supreme Court under Section 109 thereof. First part of Section 110 provided that cases which could be carried to the Supreme Court in appeal under Section 109, must have a subject matter of the value of Rupees twenty thousand or upwards. Second part of the section which is relevant for our purpose was in the following terms:--

'or the judgment, decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value'.

Thus under this part an appeal lay to the Supreme Court even if the main subject matter of the suit could be valued at less than twenty thousand rupees, but the judgment, decree or the final order is found involving, directly or indirectly, some claim or question to or respecting the property of the value of rupees twenty thousand. Thus the section stipulated a distinction between value of the subject matter of the suit and the value of the property involved in the suit, and permitted the party to file an appeal to the Supreme Court if there was a claim or question to or respecting the property worth rupees twenty thousand or more.

10. A corresponding and similar provision was at the relevant time found even in Article 133 of the Constitution which contemplates the appellate jurisdiction of the Supreme Court in appeal from the High Courts. Clause (b) of Article 133 (1), as it stood at that time, provided for an appeal to the Supreme Court if the High Court certified 'that the judgment, decree or final order involves directly or indirectly some claim or question respecting the property of like amount or value'.

11. Clauses (a) and (b) of Article 133 (1), as they stood before the amendment of the Article, have been considered by the Supreme Court in *Chittarmal v. Pannalal* reported in AIR 1965 SC 1440. In that case, the Supreme Court has observed that to attract the application of Article 133 (1) (b), it is essential that there must be, besides other conditions, a judgment involving directly or indirectly some claim or question respecting property of an amount or value not less than rupees twenty thousand. Explaining the scope of Clauses (a) and (b), the Supreme Court has observed that under Clause (a) what is decisive is the amount or value of the subject matter in the court of first instance and still in dispute in appeal to the Supreme Court, under Clause (b) it is the amount or the value of the property respecting which a claim or question is involved in the judgment sought to be appealed from. In the opinion of the Supreme Court, the property respecting which the claim or question arises, must be property in addition to or other than the subject matter of the dispute and, therefore, if there is involved in an appeal a claim or question respecting the property of an amount or value not less than rupees twenty thousand in addition to or other than the subject matter of the dispute, Clause (b) would apply.

12. The Supreme Court applied this principle to the facts of the case before it and finally observed that it could not be said that a judgment dealing with a claim to money alleged to be due from an agent for price of property belonging to the principal sold by the agent, either directly or indirectly involved a claim or question respecting the property which was sold. It would be worthy to note at this stage that the contention which was raised before the Supreme Court was that the money due from an agent would have reference to the property which was actually sold through the agent in question and, therefore, Clause (b) of Article 133 (1) would be attracted and the valuation which would be taken into account would be the valuation of the property which was sold through the concerned agency. This contention was rejected by the Supreme Court.

13. So far as the cases involving claims to tenancy over a particular piece of land are concerned, the reported decisions of the High Courts in India are not uniform, because, while some High Courts have held that a claim to tenancy rights is a claim which directly involves a question respecting the immoveable property with

regard to which the tenancy rights are claimed, some other High Courts have taken a contrary view, However, if the above referred decision given by the Supreme Court in Chittarmal v. Pannalal is taken to mean that the word 'property', which is referred to in Clause (b) of Article 133 (1), should be construed as property regarding which the actual dispute exists, and not the property with which the actual dispute has a remote connection--the former set of decisions should be treated as implicitly overruled as held by the Calcutta High Court in Ramric Lal v. Sachindra Narayan reported in AIR 1968 Cal 316. However, before considering the reported decisions which are cited at the Bar during the course of the hearing of this appeal, we would prefer to construe the provisions contained in Sub-clause (ii) of Clause (b) of para 32 (1) of the order according to the settled principles of interpretation of statutes.

14. On proper analysis of Sub-clauses (i) and (ii) of Clause (b) of para 32 (1) of the Order, the following undisputed position is revealed:--

(a) If the value of particular land suit is of Rs. 250/- or upwards, but below rupees one thousand, and the decree of the District Court varies or reverses the decree of the trial court, a second appeal would lie.

(b) If, however, the value of a land suit is one thousand rupees or upwards, a second appeal would lie, irrespective of the question whether the District Court varies or confirms the decree of the court below.

(c) The above referred Sub-clauses (i) and (ii) would respectively apply even in cases where the decree in question directly involves some claim to or question respecting the property of the value as envisaged by each of them.

15. It is obvious that both the Sub-clauses of Clause (b) comprehend even the cases wherein the value of the suit is different from the value of the property to which a claim is advanced or respecting which a question is involved in that very suit. In the cases belonging to this category, if the value of such a property is rupees one thousand or more, Sub-clause (ii) would apply, and a second appeal would lie even if the value of the suit is less than rupees one thousand and the decree of the District Court is a confirmatory one.

16. Therefore, the real question which arises to be considered in such cases is, what is the value of the property to or respecting which a claim or question is 'directly' involved in the suit.

17. Speaking of the facts of the in that case, it is obvious that this suit is a suit for possession by redemption. The appellants, who are parties, to the suit, claim that they being tenants in possession of different parcels of the disputed land, they are entitled to remain in such possession even if the suit property is allowed to be redeemed. The claim of the appellants is thus a claim to the tenancy rights as distinguished from the ownership rights over the land in question. In other words, tenancy rights over the suit land constitute 'the property' to which a claim is advanced or respecting which a question is directly involved in this suit. In our opinion, the correct interpretation of Sub-clause (ii) of Clause (b) should rest on seeking a correct answer to the question as to what is the actual 'property' which is 'directly' involved in the dispute between the parties, It should be remembered that the word 'property' as used in Sub-clause (ii) signifies only that property regarding which the dispute exists and not the property regarding which none of the parties is at issue. The reason for adopting such an approach is that the Legislature can be presumed to be anxious to provide appeals only for the redress regarding the real disputes and not regarding imaginary disputes. It is only to emphasise this aspect of the matter that it has advisedly used the word 'directly' to signify that the claim to or the question respecting the property must find its involvement in the suit 'directly' and not indirectly or incidentally. It is not without significance that unlike S. 110 of the Civil P. C., 1908 and Clause (b) of Article 133 (1) referred to above, Sub-clause (ii) of Clause (b) of para. 32 (1) of the order does not use the word 'indirectly' with reference to the claim or, question regarding the property in dispute. The net result, therefore, is that the valuation which is envisaged by Sub-clause (ii) of Clause (b) is the valuation only of property which is directly in dispute. To put it in other words, this valuation must be determined with reference to the property rights of the appellants in respect of which prejudice has been caused to him by the judgment appealed against.

18. Applying this principle to the facts of the present case, therefore, we find that prejudice against which the appellants have complained of is with regard to their

tenancy rights and, therefore, these tenancy rights should be considered as the property regarding which a direct dispute exists. If the valuation of these tenancy rights can be put to more than rupees one thousand, then of course, Sub-clause (ii) of Clause (b) would apply. But there is no evidence to show that tenancy rights over which the appellants have advanced their claim could be valued at more than rupees one thousand.

19. We shall now shortly advert to some of the cases which have bearing on the above discussion.

20. A Division Bench of Allahabad High Court has decided in *Central Talkies v. Dwarka Prasad*, reported in AIR 1956 All 348, that the word 'property' used in Clause (b) of Article 133 (1) does not necessarily mean the subject-matter of the dispute and can be interpreted to mean some property which might be other than the subject-matter of the dispute which may be affected by the decision in the suit. So far as the statement of a bare principle is concerned, the above observations cannot be objected to, but on application of the principle to the facts of the case before it, the said High Court has held that although the right of tenancy which the applicants claimed, would be worth less than rupees twenty thousand, he was certainly laying claim to possession over the building of the Cinema House which was worth more than rupees twenty thousand and, therefore the case did involve directly a claim in respect of the property worth rupees twenty thousand and, therefore, it satisfied the requirement of Sub-clause (b) of Article 133 (1) of the Constitution. This decision is definitely in favour of the view propounded by the appellants in this appeal. Similar view seems to have been taken by the High Court of Bombay in *Kastur Bhai v. Hiralal* reported in AIR 1923 Bom 23 (1) and the Calcutta High Court in *Ram Lakshman Singh v. Girindra Mohan*, reported in AIR 1963 Cal 13 wherein it is observed that even if the claim for ejectment may be of the value which is less than rupees twenty thousand, the test laid down in Article 133 (1) (b) is satisfied, if the property from which the tenant is sought to be ejected is of the value of Rs. twenty thousand or upwards.

21. We, however, find that this view is not shared by other High Courts. As already observed above, the Calcutta High Court itself has taken a different view

overruling the above referred decision given in Ram Lakshman Singh v. Girindra Mohan in the later decision of Ramric Lal v. Sachindra Narayan (AIR 1968 Cal 316). Where it is held that in a suit by landlord for eviction of a tenant, the subject matter of the suit is the tenancy of the tenant and no question respecting the premises let out to the tenant is involved in such a suit and, therefore, the tenant is not entitled to a certificate under Article 133 (1) (b) of the Constitution. The Judicial Commissioner, Ajmer has taken the same view in a case which was for a declaraton regarding adoption in Lakshman Singh v. Rupkunwar reported in AIR 1956 Ajmer 15. A Division Bench of Orissa High Court has held in Vyasyaraju v. Provas Chandra reported in AIR 1962 Orissa 154, that the words 'like amount or value' in Article 133 (1) (b) qualify not merely the word 'property' occurring immediately before them but the entire expression 'some claim or question respecting property' and the valuation must be determined with reference to the property right of the appellant in respect of which prejudice has been caused to him by the judgment appealed against. Even Andhra Pradesh High Court has taken the same view in Smt. Kishore Devigar v. B. G. Chorani reported in AIR 1960 Andh Pra 286 (FB). This view is shared even by the Judicial Commissioner, Himachal Pradesh in Krishan Dev v. Ram Piari reported in AIR 1965 Him Pra 23.

22. For the reasons already stated, we prefer the second view and, therefore, confirm the judgment of the learned single Judge against which this Letters Patent Appeal is preferred.

23. This appeal accordingly fails and the same is dismissed without any order as to costs.