

Baboo Ram Vs. Ajmer Singh

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Court : Himachal Pradesh

Decided On : Oct-28-1965

Reported in : AIR1966HP77

Judge : Om Parkash, C.J.

Acts : Himachal Pradesh (Courts) Order, 1948; ;Punjab Urban Rent Restriction Act - Section 13; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Sections 38, 47 and 100

Appeal No. : Civil Appeal No. 31 of 1965

Appellant : Baboo Ram

Respondent : Ajmer Singh

Advocate for Def. : Ramji Dass and; Radhe Lal, Adv.

Advocate for Pet/Ap. : Prithvi Raj, Adv.

Disposition : Appeal dismissed

Judgement :

Om Parkash, J.

1. The facts, giving rise to this appeal, against an order of the learned District Judge, Mahasu, whereby an appeal, against an order of the learned Subordinate Judge, Solan, was dismissed, are as follows:

2. The respondent had filed an application, under Section 13 of the Punjab Urban Rent Restriction Act, as applied to Himachal Pradesh (hereinafter referred to as the Punjab Act), before the controller, Solan, for evicting the appellant, from a motor garage, owned by the respondent. It was alleged that the appellant was a tenant of the motor garage, that he had not paid 'the rent and' that the respondent required the motor garage for his own occupation. The appellant paid the rent before the controller. He contested the allegation that the respondent required the motor garage for his personal use. The controller accepted the plea of the respondent that he required the motor garage for his personal use. He allowed the application of the respondent and passed an ejectment order against the appellant, on 31-12-1960. The appellant was given one month's time to vacate the motor garage. The appellant went up in appeal, to the appellate authority. The appeal was compromised. In accordance with the terms of the compromise, the order of ejectment, passed by the controller, was upheld but the appellant was granted 15 months' time to vacate the motor garage. The order in a appeal was passed in 13-12-61. The appellant filed an application, under Section 47. C. P. C., on 25-3-1963, before the Subordinate Judge, Solan, questioning the validity of the order of ejectment. It was contended that the premises, in dispute, was a shop and not a motor garage and that the controller or the appellate authority had no jurisdiction to evict the appellant from the shop on the ground that the respondent required it for his personal use, and that order of ejectment was therefore, without jurisdiction and void. The Subordinate Judge rejected the application of the appellant, holding that, as an executing Court, he could not go behind the ejectment order. The decision was upheld by the learned District Judge, on appeal.

3. The appellant has come up in second appeal, to this Court. A preliminary objection was taken up, on behalf of the respondent, that the second appeal was not competent. The learned counsel for the appellant met the preliminary objection, by contending, that as the order, under appeal, was passed under Section 47, C. P. C., and was a decree, second appeal was competent under Section 100, C. P. C. The contention of the learned counsel for the appellant is unsound. The competency of a second appeal, in Himachal Pradesh, is not governed by Section 100, C. P. C., by the para. 32 of the Himachal Pradesh

(Courts) order, 1948. The provisions of para. 32 make it abundantly clear that a second appeal lies against a decree, passed in a suit only. The order, under appeal was passed under Section 47; C. P. C. It may be regarded as a decree. The question, which requires consideration, is whether it was a decree passed in a suit. The order, related to the execution of an ejectment order, passed on an application under Section 13 of the Punjab Act. Such an application is not a suit. The word 'suit' has not been defined in the Himachal Pradesh (Courts) Order or in the C. P. C. Section 20, C. P. C., says that every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. The C. P. C., does not define the word 'plaint', but Order 7 prescribes the particulars to be given in a plaint. An application, under section. 13 of the Punjab Act, does not contain the particulars of a plaint. Such an application, therefore, cannot be considered to be a plaint. A proceeding which does not commence with a plaint, cannot be held to be a suit, vide. Secretary of State v. Kundan Singh, AIR 1932 Lah 374. In that case an application under para. 17, Schedule 2, C.P. C., was held not to be a suit. In Mst. Kalawati v. Devi Ram, AIR 1961 Him Pra 7, a petition, under the Hindu Marriage Act was , held, not to be a suit. For the reasons stated above, a proceeding under Section 13 of the Punjab. Act is not a suit. The mere fact that Section 17 of the Punjab Act provides that every order, passed under Section 13, shall be executed by a Civil Court, as if it were a decree of that Court, cannot lead to the inference that the aforesaid order may be regarded as a decree of a Civil Court for all purposes or that it may be regarded as a decree passed in a suit. The only effect of Section 17 is that a Civil Court is invested with jurisdiction to execute an order, passed under Section 13, in accordance with the provisions, applicable to the execution of its decrees.

4. As the proceeding, in which the order of ejectment was passed, was not a suit, the order, under Section 47 C. P. C., which related to the execution of the ejectment order, cannot be regarded as a decree, passed in a suit. Second appeal, against such an order, does not lie, under para. 32 of the Himichal Pradesh (Courts), Order. It may be pointed out that the Punjab Act does not provide for a second appeal against an order of ejectment.

5. The preliminary objection, against the competency of the present second appeal, is well founded and is upheld.

6. At the request of the learned counsel for the appellant; the second appeal was treated and heard as a revision-petition.

7. The learned counsel for the appellant contended that the orders of the controller and the appellate authority were without jurisdiction and invalid inasmuch as the premises in dispute was a shop, and not a motor garage and neither the controller nor the appellate authority had jurisdiction to order ejectment of the appellant from a shop on the ground that it was required by the respondent for his own occupation. The learned counsel for the respondent argued that the validity of the ejectment order could not be questioned in an application, under Section 47, C. P. C. It was laid down, by their Lordships of the Supreme Court, in *Kiran Singh v. Chaman Paswan*, AIR 1954 SC 340 that:

' It is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity and that its validity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings.'

8. Again, in *Hira Lal Patni v. Kali Nath*, AIR 1962 SC 199, it was observed :

'The validity of a decree can be challenged in execution proceedings only on the ground that the Court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seized of the case, because the subject-matter was wholly foreign to its jurisdiction. '

9. It is well settled that the question of lack of jurisdiction, in execution or collateral proceedings, can be entertained only in a case where lack of jurisdiction is apparent on the face of the record and the determination of the question does not involve an investigation into the jurisdiction of the Court or tribunal to pass the order. Reference may be made to *Krishnan Nair v. Ramchandra Vithal*, AIR 1956 Bom 268, wherein it was said :

' Where an objection is raised in execution proceedings as to the want or absence of jurisdiction in the Court to pass the decree, the decree must be 'apparently' without jurisdiction, that is on the face of it the decree must show that it was passed by a Court which was incompetent to pass it. If for purposes of ascertaining whether the Court which passed it had or had no jurisdiction to pass it, it is necessary to make investigation as to the jurisdiction of the Court, then the executing Court has no competence to permit that investigation to be made.'

10. In the instant case, the controller and the appellate authority had jurisdiction to pass an ejectment order with respect to a motor garage and a shop. So, there was no apparent inherent lack of jurisdiction. In the controller or the appellate authority, to pass the ejectment order. It is true that an ejectment order with respect to a shop could not be passed on the ground that the respondent required it for his personal use. But the question whether the premises in dispute was a motor garage or a shop was a disputed question of fact and its decision required investigation. The determination of the question whether there was absence of jurisdiction in the Controller or the appellate authority will involve investigation into facts. Such a question cannot be permitted to be raised in execution or collateral proceedings. The two lower Courts were right in holding that, in the circumstances of the case, the question that the ejectment order was without jurisdiction could not be permitted to be raised in an application under Section 47, C. P. C.

11. The validity of the order of the appellate authority was challenged, on behalf of the appellant, on another ground, also- It was contended that the order was based on an illegal compromise and was, therefore, invalid. The argument was that the compromise for eviction violated the provisions of Section 13 of the Punjab Act which granted protection to a tenant against eviction except on certain statutory grounds which should be established to the satisfaction of the controller or the appellate authority and that a tenant Could not contract himself out of that protection, by a compromise. The question, :about the validity of an eviction order parsed on the basis of a compromise, in an application under Section 13 of the Punjab Act, was considered by this Court, in Mela Ram v. Balak Ram, Civil Revn. No. 31 of 1964 : (AIR 1966 Him Pra 74), The facts, in- that case, were that an application, under Section 13 of the Punjab Act, was made by Balak. Ram, for the

eviction of Mela Ram, who was a tenant. One of the grounds for eviction was that Mela Ram had not paid the rent. During the course of trial of the application, Mela Ram had made a statement that he had effected a compromise with Balak Ram and had already paid him a certain amount, out of the arrears of rent, and would pay the balance of Rs. 400 in the month of October, 1962. Mela Ram had, further, slated that, in case, he failed to pay the amount of Rs- 400 in October, 1962, he would be liable to be ejected. That statement was accepted by Balak Ram. On the basis of the above statements, the controller had passed an order of ejectment against Mela Ram, subject to the condition that the order would not take effect in case Mela Ram would pay Rs. 400 upto the month of October, 1962. Mela Ram had failed to pay the amount of Rs. 400, as agreed. Thereupon, Balak Ram had taken out execution of the ejectment order. Mela Ram had, in the execution, taken up the objection that the order of ejectment, which had been passed on the basis of a compromise, was without jurisdiction and illegal inasmuch as such an order could be passed only on the satisfaction of the controller that any of the statutory grounds for eviction existed and not merely on the basis of a compromise. The trial Court, as well as the appellate Court, had rejected the objection of Mela Ram. The rejection was up-held by this Court. This Court had referred to the case *Middleton v. Baldock*, 1950-I All ER 708, wherein it was observed, by Jenkins L. J. :

' I think the principles deducible from those cases are that under the Acts the Court only has jurisdiction to order possession on one or other of the specified statutory grounds. The Court, however, is not always obliged to hear a case out, because, if the tenant appears and admits that the plaintiff is entitled to possession on one of the statutory grounds, the Court may act on that admission and make the appropriate order.'

12. This Court had, finally, held that Section 13 or any other provision in the Punjab Act does not enjoin that the satisfaction of the controller, about the existence of grounds of ejectment, must invariably be founded on the result of a contentious trial only and that it can never be based on the terms of a compromise and that all what is necessary is that there should be material on record for the satisfaction of the controller that one of the statutory grounds for ejectment exists and that material may be furnished by an admission of the tenant, in this behalf.

13. In the instant case, one of the grounds of eviction was that the respondent required the motor garage for his personal use. After a contentious trial, the controller had upheld the plea of the respondent and had passed an ejectment order against the appellant. In appeal, the appellant had submitted to that order, on the basis of a compromise. It is clear that the appellant admitted that the respondent required the motor garage for his personal use. The implication was that a statutory ground for eviction from the motor garage existed, in the case. According to the principle, laid down, in Civil Revn. No. 31 of 1964 : (AIR 1966 Him Pra 74), the compromise and the order of the appellate authority were valid.

14. The authority, *Korah Punnen v. Parameswara Kurup Vasudeva Kurup* AIR 1956 Trav-Co 1 relied upon by the learned counsel for the appellant, is distinguishable. The facts, in that authority, were that a conditional decree for ejectment was passed against a tenant, by a Civil Court, on the basis of a compromise. The tenant failed to comply with the condition of the decree. The landlord sought to execute the decree. The tenant took up the objection that he could be ejected only in pursuance of an order, passed in accordance with the provisions of the Travancore-Cochin Buildings (Lease and Kent Control) Order, 1950 and that as the decree was not passed under the provisions of that order he was not liable to be ejected, in execution of the decree. This objection was upheld. In the present case, the order of ejectment was passed by the controller, in accordance with the provisions of the Punjab Act and not by a Civil Court.

15. The result is that the so-called second appeal, which was heard as a revision-petition, is dismissed with costs.