

Satya Devi and ors. Vs. Chuni Lal

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Court : Himachal Pradesh

Decided On : Apr-10-2009

Reported in : 2009(2)ShimLC353

Judge : Sanjay Karol, J.

Appellant : Satya Devi and ors.

Respondent : Chuni Lal

Disposition : Appeal allowed

Judgement :

Sanjay Karol, J.

1. The appellants are the defendants and the respondent is the plaintiff and are referred to as such hereinafter.

2. The plaintiff filed a suit for declaration to the effect that he is in lawful possession of suit land comprising Khewat No. 101, Khatauni No. 160, Khasra No. 199 measuring 0-3 Marias of Jamabandi 1966-67 Jhikli Dar, Mauza Khanyara, Tehsil Dharamshala, District Kangra, H.P. Consequential relief of permanent injunction, restraining the defendants from interfering in the suit land was also prayed for.

3. The said suit being RBTCS No. 217/99/98 titled as Chuni Lal v. Sunt. Satya Devi and Ors. was dismissed in terms of judgment and decree dated 28.9.2002 passed by the Sub-Judge, 1st Class (II), Dharamsala, District Kangra, H.P.

4. The plaintiff assailed the same in terms of Civil Appeal No. 96-D/2002, titled as Chuni Lal v. Satya Devi and Ors. which stood decided in terms of judgment dated 14.1.2005, which is subject-matter of challenge in the present appeal.

5. The plaintiff filed a suit, raising his claim on the basis of revenue entries (Jamabandi 1966-67) showing his father to be in possession of the suit land. However, subsequently, the defendants illegally got the said revenue entry changed in their name. But after the death of his father he continued to be in possession and as such had legal right of enforcing his right and claim.

6. The defendants filed their written statement, inter alia, denying the plaintiff's plea and asserting their right as their predecessor-in-interest was reflected as owner of the suit land in the revenue record. A subsequent stray entry illegally and wrongly reflected the name of the successor-in-interest of the plaintiff in the revenue record.

7. Based on the pleadings of the parties, the trial Court framed the following issues:

(1) Whether the plaintiff is in lawful possession of the suit land? OPP

(2) Whether the entries were wrongly changed by the settlement authorities in possessory column during settlement operation in the village, as prayed? OPP

(3) Whether the plaintiff is entitled for relief of injunction, as prayed for? OPP

(4) Whether the plaintiff has no locus standi to file the present suit? OPD.

(5) Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD.

(6) Whether the suit of the plaintiff is not maintainable? OPD.

(7) Whether the suit of the plaintiff is within time? OPP.

(8) Relief.

8. The trial Court discussed Issues No. 1, 2 and 3 together and decided all the issues in favour of the defendants and consequently dismissed the plaintiff's suit.

9. While deciding Issues No. 1, 2 and 3, the trial Court in detail, examined the statement of the plaintiff's witness as also the documentary evidence placed on record. Statements of defendants' witnesses were also examined.

10. The trial Court observed that Khasra No. 165 was renumbered as Khasra No. 199 and new Khasra Numbers being Khasra Nos. 199 and 200 were assigned to old Khasra No. 199. Subsequently, Khasra No. 199 was again re-numbered as Khasra Nos. 872 and 873.

11. Based on the same, the trial Court came to the conclusion that jamabandi for the year 1954-55 (Ext.D-1) reflected Shri Chatar Singh to be owner in possession in Khasra No. 165. This continued to be so reflected in the subsequent jamabandi for the year 1959-60 Ext.D-2 and Ext.PX, but, however, in the next Jamabandi for the year 1962-63 (Ext.P-1) for the first time name of Shri Shiv Ditta (father of the plaintiff) was shown in the possessory column since 1962-63, which position continued for the year 1967-68. This position was later on reversed. After discussing the ratio of law laid down by this Court in Ram Prakash v. Geeta Devi and Ors. 1999 (1) SLJ 16 in paras 19 and 20 of the judgment, the trial Court came to the conclusion that the provisions of Section 38 of H.P. Land Revenue Act, 1953 and para 9.8 of H.P. Land Record Manual had not been complied with and as such, name of Shri Shiv Ditta in the revenue record showing the column of possession had been incorporated without any order of the competent authority. It was so observed that revenue entry in jamabandies Ext.P-3 and Ext.P-4 pertaining to year 1975-76 and 1995-96 showing the defendants to be the owners had statutory presumption being the latest entries and the plaintiff had not produced any material to rebut the presumption and to show that settlement authorities had wrongly deleted the name of Shiv Ditta from the record. No cogent and reliable evidence was furnished by the plaintiff to disbelieve the existence of entries in the

latest revenue record.

12. The Court did not find the plaintiff to be either in possession or owner of the suit land and hence was not entitled to the reliefs claimed for.

13. Issues No. 4, 5 and 6 were not pressed by defendants and Issue No. 7 was decided against the plaintiff and it was so held that the suit of the plaintiff was time-barred.

14. The first Appellate Court after considering the ratio of law laid down by this Court in *Om Prakash and Ors. v. State of H.P. and Ors.* : AIR 2001 HP 18, and Apex Court in *Formaneto Resorts and Hotels Ltd. v. Custavo Ranto Dei Cruz Pinto* : AIR 1985 SC 736, set aside the judgment and decree and remanded the matter in toto, for consideration afresh as it was found that the judgment was in violation of the mandatory provision of Order 20 Rule 5, CPC. In effect a whole sale remand was ordered.

15. In fact the findings and reasons of the first Appellate Court are reproduced, in toto, as under:

11. In the above case the law as cited above is definitely settles the proposition of law, but in the instant case the judgment of the Ld. Court below, as far as the issues are concerned is lacking. The issues were not inter-connected and were required to be disposed of separately. Further in the last para of the judgment, the reasons for coming to the conclusion are lacking before that the Id. Court below has discussed the evidence in details, but the reasons for coming to the conclusion are lacking.

12. I have taken into consideration the contentions raised by the learned Counsel for the parties. Taking into consideration the peculiar facts and circumstances of the case, and the manner in which the Id. trial Court proceeded to decide the three material issues i.e. issues No. 1, 2 and 3 simultaneously. In a similar situated case a Divisional (sic Division) Bench of our own High Court in case titled as *Om Parkash and Ors. v. State of H.P. and Ors.* reported in : AIR 2001 HP page 18, has held as under: In the present case, the trial Court has framed all the issues and

was supposed to give separate findings on each issue, as admittedly the findings upon any one or more of them are not sufficient, for the decision of the suit. By simply enumerating the evidence and law and thereafter giving conclusion whereby the case of one party is accepted and the other party is rejected, is not judgment in the eyes of law. In other words, the judgment which does not contain the reasons or grounds on the basis of which the Judge has come to his conclusion/decision for passing the judgment and decree on the point on issue or controversy is vitiated. It is all the more necessary when the judgment is by the Court or fact and is appealable to avoid unnecessary delay and protected litigation.

The Hon'ble Supreme Court in case titled Formaneto Resorts and Hotels Ltd. v. Custavo Ranto De Cruz Pinto : AIR 1985 SC 736, wherein in para No. 27 the Hon'ble Supreme Court has held as under:

In a matter of this nature several contentions factual and legal are urged and when there is a scope of an appeal from the decision of the Court. It is desirable as was observed by the Privy Council long time ago to avoid delay and protraction of litigation that the Court would when dealing with any matter dispose of all the points and not merely rests its decision on the single point.

Similar view has been expressed by the various Hon'ble Court in the following cases:

Ram Ranbhiya Prasad Singh v. Sukar Ahir : AIR 1947 Pat. 234 SB, Ambor Ali v. Nichar Ali AIR 1950 Assam 79, Ahmed Ali v. Shalik Ahmed AIR 1955 Hyd 268 and Swaminthan Ambalan v. P.K. Nagaria Pillai AIR 1979 Mad 110.

It appears from the persal (sic perusal) of the impugned judgment and decree that the learned trial Court framed the material issues No. 1, 2 and 3 and was supposed to give separate findings on each issue, as admittedly the findings on any one or more of them are not sufficient for the decision of the suit. The Id. trial Court discussed the evidence and law and thereafter gave conclusion. In view of the ratio of the case Om Parkash and Ors. v. State of H.P. and Ors. referred to above and also the view expressed by the Hon'ble Supreme Court and other High

Courts as has been referred to herein-in-above, the impugned judgment and decree has been passed by the Id. trial Court in violation of the mandatory requirement of Order 20 Rule 5 CPC and the impugned judgment and decree, therefore, 'is no judgment and it cannot be sustained. Accordingly this point is decided in favour of the appellant and against the respondents.

(Emphasis supplied)

16. In my considered view, the first appellate Court has not assigned any reasons while arriving to the conclusion that issues No. 1 to 3 were not inter-connected and required to be disposed of separately. Not only that the Court has misinterpreted the ratio of law laid down by this Court in Om Prakash (supra) and wrongly applied the ratio of law laid down by the Apex Court in Formaneto Resorts and Hotels Ltd. (supra). Further he has not indicated as to how the provisions of Order 20 Rule 5, CPC stand violated. There is no reasoning given as to how he has come to the conclusion that the findings of any one or more issues are not sufficient for decision of the appeal.

17. Rule 5 of Order 20, CPC is reproduced as under:

5. Court to state its decision on each issue.-In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefore, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

Relevant provisions of Order 41 of Code of Civil Procedure, 1908, dealing with remand are reproduced as under:

23. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any)

recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23-A. Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same power as it has under Rule 23.

24. Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

25. Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereupon and the reasons therefore within such time as may be fixed by the Appellate Court or extended by it from time to time.

18. The Apex Court in *P. Purushottam Reddy and Anr. v. Pratap Steels Ltd.* : (2002) 2 SCC 686, has considered the legislative purpose and intent of bringing out the amendment in the relevant provisions of Code of Civil Procedure. The Court noticed that prior to the 1976 amendment, in an appropriate case the Court could exercise its inherent jurisdiction under Section 151, CPC and remand the manner if it was considered pre-eminently necessary. In 1976 Rule 23-A, CPC was inserted which provides for a remand by an appellate Court hearing an appeal against a decree if (i) the trial Court disposed of the case otherwise than on a preliminary point, and (ii) the decree is reversed in appeal and a retrial is considered necessary. It was so observed that on twin conditions being satisfied the appellate Court could exercise the same power of remand under Rule 23-A as

under Rule 23. After 1976 amendment all cases of wholesale remand were covered by Rules 23 and 23-A. In view of the express provision of Rules even the High Court could not take recourse to its inherent powers to make a remand, except in exceptional cases where it is found that the appeal had not been disposed of satisfactorily in the manner required by Order 20 Rule 3 or Order 41 Rule 31, CPC and hence, the judgment is no judgment in the eye of law. Even in those cases, the matter would be sent back for re-writing the judgment so as to protect the valuable rights of the parties. The Court observed that 'an appellate Court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23-A or Rule 25, CPC'.

19. This Court, in *Om Prakash* (supra) was dealing with a case where the plaintiffs No. 1 to 4 were claiming plaintiff No. 5 to be a private temple and owner of the suit land. The District Judge, instead of giving his findings issue-wise clubbed issues No. 1 to 5 and decided the same on the ground that it would have resulted in the repetition of evidence. The Court found that the District Judge had simply enumerated the oral and documentary evidence, the provisions of the relevant statutes and the ratio of law laid down by the Apex Court in various judicial pronouncements. The plaintiffs' suit was decreed 'without referring to evidence on these points which were formulated in issues No. 1 to 5 and reasons for its acceptance or rejection'. It was also found that the District Judge had only referred to part of documentary evidence produced by the parties and ignored the other relevant material on record. The plaintiffs' contention was 'accepted without giving reasons by referring to the evidence produced by the parties'. It was in this background, the Court found that the judgment did not stand the judicial scrutiny as it was completely in violation of the provisions of Order 20 Rule 5 and Order 14 Rule 2, Code of Civil Procedure. The Court found that 'by simply enumerating the evidence and law and thereafter giving conclusion whereby the case of one party is accepted and other party is rejected, is no judgment in the eyes of law'.

20. In fact, the ratio of law laid down in *Om Prakash* (supra) is squarely applicable to impugned judgment passed by the first Appellate Court. It is evident that in the present case the first appellate Court has given no reason whatsoever while arriving at its conclusion. His judgment, in fact, consisting of nothing except for

reproduction of the paragraphs of the decision in Om Prakash (supra). In this manner the ratio of has been misinterpreted and misapplied.

21. Issues No. 1 to 3, as is evident are definitely interlinked. Whether the revenue entries are wrongly changed by the revenue authorities with regard to possessory column during the settlement operation in the village and whether the plaintiff was in possession of the suit land and entitled to relief of injunction based on the same, in my considered view, are issues interlinked with each other. Undoubtedly, the trial Court should endeavour to decide every issue separately, but, however, there is no bar in any of the issues being decided together, if however by reasons so assigned the trial Court comes to the conclusion that they can be decided together. The controversy in issue which is required to be considered and decided was same and similar. The trial Court, therefore, was right in assigning the reason that to avoid repetition of facts for the purpose of discussion and decision issues No. 1 to 3 are being clubbed together.

22. The first appellate Court should not have passed an order directing a wholesale remand. In fact having come to the conclusion that issues were not inter-linked and required to be disposed of separately, the learned Judge ought to have decided the manner himself and answered the issues rather than sent the matter back to the trial Court for consideration and that too by way of a wholesale remand.

23. The twin conditions noticed by the Apex Court in P. Purushottam Reddy (supra), contained in Rules 23 and 23-A, CPC were absent in the present case. In the present case, the first appellate Court had not concluded that retrial was necessary and nor had the trial Court disposed of the suit on a preliminary point. In fact the trial Court decided the issues with regard to locus and limitation separately. Therefore, under Rule 24, it was obligatory upon the first Appellate Court to have decided the appeal on merits.

24. Rule 25 (supra) deals with a situation where it is found by the appellate Court that the trial Court has either omitted to frame or try an issue or determined any question which appears to be essential to the right decision of the suit on merits. In that event, it may frame issue and remand the same for trial to the Court for taking

additional evidence. This also was not the position in hand.

25. This Court in *Jabbar Singh v. Shanti Saroop*, Latest HLJ 2007 (HP) 192, has held that the appellate Court should not normally remand a case unless it has no alternative left to it. It can either call for the finding on a particular issue or it can even remand the case back to the trial Court for fresh decision on a particular issue. Wholesale remand should be last resort which should be resorted to only when no other way out is possible.

26. A Division Bench of this Court in *Prem Kumar and Ors. v. Parkash Chand and Ors.* 2002 (3) Shim. L.C. 358, has also taken a similar view.

27. The trial Court had not decided the issue on a preliminary point nor had the first appellate Court framed any additional issue or found that retrial was necessary, hence, the remand was not necessary. The case did not fall under any of the provisions of Order 41 dealing with remand.

28. In fact in *Formaneto Resorts and Hotels Ltd. (supra)*, the Court has held that an endeavour should be made to avoid delay and ensure that the litigation is not unnecessarily protracted. The exact opposite of which, the first Appellate Court had done.

29. In the present case, as has been noticed hereinabove, the trial Court in extensio discussed the evidence oral and documentary, the provisions of law and the decisions referred by this Court and had come to its conclusion. Hence the findings of the first Appellate Court that the issues are not inter-linked and required to be disposed of separately or that judgment lacks reasons or that judgment was in violation of Order 20 Rule 5, CPC is not only without reasons but contrary to record.

30. Order 20 Rule 5, 'CPC does not bar the trial Court to decide the issues together if it is satisfied that they are inter-linked and the evidence is common.

31. The Appellate Court should not ordinarily remand a case to the lower Court simply because it considers that the reasoning of the lower Court in some respect is wrong. Remand orders lead to unnecessary delays and cause prejudice to the

parties to the case. When the material was available before the Court, it ought to have itself decided the appeal one way or the other. After considering various aspects of the case noticed by the trial Court it should have considered whether the said order ought to have been confirmed, reversed or modified. While taking this view, I am supported by a decision of the Apex Court in Ashwin Kumpr K. Patel v. Upendra J. Patel and Ors. : (1999) 3 SCC 161.

32. In my considered view, the first Appellate Court has seriously erred in remanding the matter and consequently the orders of wholesale remand are set aside.

33. The appeal is allowed and the case is remanded to the first appellate Court. The appeal is restored to its original number. Needless to add, the parties shall be afforded adequate opportunity and the first Appellate Court shall decide the appeal on its merits.

34. Any observation made hereunder are only for the purpose of deciding the issues raised in the appeal. The first appellate Court shall decide the appeal on its own merits inhibited by any of the observations made hereinabove. The parties through their learned Counsel are directed to appear before the Court on 27th April, 2009. The Registry is directed to send back the record immediately.

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