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Soba Ram Vs. Sanjeev Sharma

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Court : Jammu and Kashmir

Decided On : Jun-10-2004

Reported in : 2004(3)JKJ434

Judge : S.K. Gupta, J.

Acts : Code of Civil Procedure (CPC) , Svt. 1977 - Sections 100 and 101

Appeal No. : C.S.A. No. 10 of 2003

Appellant : Soba Ram

Respondent : Sanjeev Sharma

Advocate for Def. : Rajesh Oswal, Adv.

Advocate for Pet/Ap. : O.P. Thakur, Adv.

Disposition : Second appeal dismissed

Judgement :

S.K. Gupta, J.

1. This Civil Second Appeal is directed against the judgment and decree dated 7.11.2002 passed by the learned District Judge, Udhampur, whereby he has affirmed the judgment and decree dated 19.2.1996 passed by the trial court in eviction Suit No. 99-Civil/1992 in case entitled Sanjeev Sharma v. Sobha Ram. It

appears that Sanjeev Sharma, respondent (Plaintiff) had initiated an action for eviction from a single storey shop located at Ward No. 2 Domala Udhampur, explicitly delineated in the plaint against Soba Ram, appellant(defendant). The sole ground taken by the respondent(plaintiff) in the suit was that he had purchased the demised shop from its original owners Sh. Dalpat Sharma and Chander Kant Sharma sons of Pt. Amar Nath Sharma for his personal use and occupation as he was sitting idle and without a job. It was further stated in the plaint that after the execution of Sale Deed, he informed the defendant about the change of ownership in respect of the suit shop and later on, the defendant attorned the plaintiff as his landlord and also agreed to pay rent @ 200/- per month. The further request of the respondent-plaintiff was for fresh execution of rent note which did not receive positive response and even the appellant-tenant stopped the payment of rent with effect from December, 1986 despite notice and thereby committed three legal defaults of 2 months each during the phase of 18 months in the payment of rent.

2. The stand of the appellant-defendant before the trial court, in his demurer, was that he had taken the shop on rent from one S. Parvinder Singh, He also denied to have attorned the plaintiff to be the landlord of the suit shop. The trial court framed as many as 07 issues on the pleadings of the parties for adjudication which are detailed as under;

'(1) Whether the plaintiff is the owner of the suit shop by virtue of a registered Sale Deed dated 6.3.1985 O.P.P

(2) In case issue No. 1 is proved in affirmative whether the defendant attorned the tenancy under the plaintiff? O.P.P

(3) Whether the defendant has committed 3 legal and consecutive defaults during the period of 18 months O.P.P

(4) Whether the plaintiff reasonably requires the suit shop for his personal use and occupation O.P.P

(5) What shall be the comparative advantage and disadvantages of the parties O.P. Parties

(6) Whether the need of the plaintiff can be met by the partial eviction of the defendant and if so, whether the defendant is agreeable for the same O.P. Parties

(7) Relief?'

3. The Trial court after recording the evidence, adduced by the parties, and hearing the arguments has returned findings on all the issues in favour of the plaintiff and decreed the suit for eviction, vide its judgment and decree dated 19.2.1996. Aggrieved by the aforesaid judgment and decree passed by the trial court, the tenant-appellant impugned its correctness before the First Appellate Court on a variety of grounds. The Appellate Court by giving a detailed judgment on each issue confirmed the judgment and decree of the trial court and dismissed the appeal, vide its order dated 7.11.2002 which became the subject matter of challenge in this Civil Second Appeal on the following substantial questions of law formulated in the memo of appeal:

' (i)Whether the certified copies of the plaint and orders passed by a civil court in a civil suit are public documents and as such admissible in evidence.?

(ii)Whether a 2nd suit is barred under order 23 of the C.P.C, when the earlier suit has been with-drawn without seeking or getting the liberty to file fresh one, particularly when in both the cases the issue regarding the dispute of ownership has been raised.?

(iii) Whether the bar created under order 23 C.P.C is applicable to the parties when the 2nd suit who are claiming through the parties in the earlier suit which was dismissed as with drawn.?

(iv) Whether the bar created under Order 23 C.P.C is not applicable in a case of ejectment in which relationship of Landlord and tenant is in dispute, as has been held by the court below ?

(v) Whether mere prove of the execution of the sale deed amounts to the proof of ownership of the vendor?

(vi) Whether the trial court and 1st appellate court can decide the vital issue without referring the important vital facts and evidence available on record. ?

(vii) Whether the courts below are justified in ignoring the vital contradictions of the pleadings and proof available on record.?'

4. It may be pointed out at the first flush that during the course of arguments, Mr. O.P. Thakur, learned counsel appearing for the appellant did not press the proposed substantial questions of law from 1 to 5 specified in the memo of appeal.

5. As regards the proposed substantial questions of law raised in the appeal, it is found that these manifestly relate to the factual aspect of the case. All these factual issues have been decided by the trial court by referring to the evidence available on record. Pointing out the contradictions, if any found, in the pleadings and proof available on record referred by the parties in their arguments, the trial court returned findings by giving detailed reasons. The execution of the Sale Deed in respect of the demised shop by original owners in favour of the respondent-plaintiff pleaded in the plaint has not been rebutted by the tenant in his written statement and instead only expressed ignorance about it. The original Sale Deed placed on record by the respondent-plaintiff clearly indicates that suit shop was purchased by him for ostensible consideration of Rs. 45,000/- and the sale deed has been proved by PW Amar Nath Sharma, Advocate, besides its scribe. Even S. Parvinder Singh admitted that shop was let out to him on lease in the year 1987 which was later on purchased by the respondent-plaintiff from its original owners. Finding on this issue has been returned by the First Appellate Court also in favour of the plaintiff and there being concurrent finding of fact that the plaintiff is the owner of the suit shop and the same cannot be interfered in the Civil Second Appeal.

6. Similarly the other issues/substantial questions of law Nos. 6 and 7 pertain to the decision of the trial court and First Appellate Court, stated to have reached the conclusions after going through the pleadings of the parties and the evidence

available on record.

7. On going through the record of both trial court and First Appellate Court, it is clearly emanated that the trial court has returned findings on each issue after discussing the evidence adduced by the parties and by referring to their pleadings and the pleas raised during arguments and giving detailed reasons to the conclusions arrived at. These issues of facts do not involve any substantial question of law which are required to be determined in Civil Second Appeal.

8. The effect of Sections 100 and 101 C.P.C read together is that second appeal is competent only on the ground of an error on a question of law or procedure and not merely on the ground of an error on a question of fact. The High Court has no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however, gross or inexcusable the error may seem to be. Concurrent findings of fact returned by the lower court that the respondent-plaintiff is the owner of demised shop which is purchased from previous owners and requires the property for his personal use and occupation, after appreciation of evidence available on record and giving detailed reasons by the trial court, cannot be challenged in Civil Second Appeal. The findings being the findings of fact cannot be interfered in this Second Appeal by the High Court. Further, it may be pointed out that there is no justification for going into the fact and re-appreciating the evidence, when it is neither pleaded nor the order under appeal is perverse nor substantial question of law to that effect is involved. The contention raised by Mr. O.P. Thakur, learned counsel for the appellant that as both the courts below ignored the weight of evidence and prepondering circumstances and allowed their judgments to be influenced by inconsequential matters is neither tenable nor acceptable.

9. Whether a finding of fact reached at by the courts below is against the weight of evidence or not, is a question which will remain in the realm of appreciation of evidence and does not project any question of law, much less, any substantial question of law, which can enable the High Court in second appeal to upset such a finding of fact.

10. For what has been stated and discussed above, no substantial question of law, in my view, is involved in this Second Appeal. Thus, same cannot be entertained

and is, accordingly dismissed.

11. Let the record of the trial court be remitted back forthwith.

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