

SUPREME COURT OF INDIA

Bhikhi Lal

Vs.

Tribeni

C.A.No.835 of 1964

(K. Subba Rao, Raghubar Dayal and N. Rajagopala Ayyangar, JJ.)

18.11.1964

JUDGEMENT

SUBBA RAO, J.:

1. This appeal arises out of the fresh preliminary decree dated May 24 1961, made by the Senior Civil Judge, Ajmer, pursuant to the directions given by this Court in Civil Appeal No. 383 of 1956 and by the High Court in Civil Revision Petition No. 181 of 1956.

2. It will be recalled from the facts narrated in (Gyarsi Bai v. Dhansukh Lal) Civil Appeal No. 257 of 1963** in which we have just delivered judgment that the Senior Subordinate Judge, Ajmer, in making the preliminary decree disallowed interest to the appellants from September 14, 1936 to March 13, 1950, on the mortgage of Rs. 25,000. The appellants preferred Civil Appeal No. 71 of 1953 against the said decree in so far as it disallowed the said interest to the Judicial Commissioner, Ajmer, and the respondents filed cross-objections against that part of the decree awarding costs against them. On August 25, 1954, both the appeal filed by the appellants and the cross-objections filed by the respondents were dismissed by the Judicial Commissioner, Ajmer Against the decree of the Judicial Commissioner dismissing Civil Appeal No. 71 of 1953. the appellants, by special leave, preferred an appeal to this Court. On December 16, 1960 , this Court allowed the appeal, and directed the Trial Court to pass a fresh preliminary decree by adding the amount of interest accrued due prior to March 13, 1950. This Court further directed that "in the light of this judgment a fresh preliminary decree in the appropriate form will be passed and the usual period of redemption will be given under the Code". After this Court disposed of the appeal the Rajasthan High Court also allowed the revision petition filed by the appellants against the order of the Subordinate Judge. Ajmer refusing to amend the preliminary decree framed by his predecessor; the, High Court directed the Subordinate Judge to incorporate a direction in the fresh preliminary decree directing the appellants to account for the rents and profits received by them from the mortgaged properties pursuant to the direction given by this Court. The proceedings came up before the Senior Civil Judge. Ajmer for passing a fresh preliminary decree pursuant to the directions given both by the Supreme Court and by the High Court. Elaborate arguments were advanced before the learned Civil Judge on behalf of both the parties as regards the credit and debit item, that should be taken into consideration in passing the preliminary decree having regard to the directions given by the said two Courts. The learned Civil Judge broadly held that, having regard to the judgment of this Court the appellants would be entitled to get interest accrued prior to March 13, 1950; but even so they would not be entitled to an amount higher than that claimed in the plaint. Having regard to the directions given by the High Court, he held that the appellants were liable to furnish accounts of the receipts of

the mortgaged properties from August 10, 1950, the date of the filing of the suit, till they handed over possession of the mortgaged properties to the respondents. He further held that the appellants would be entitled only to interest on the principal amount of Rs. 30,000 at the rate of 6 per cent per annum from the date of the suit till August 17, 1953, and made it conditional on their furnishing the said account of the receipts of the usufruct of the mortgaged properties. Pursuant to that order a preliminary decree was made carrying out the directions given in the judgment. The plaintiffs-appellants did not file any appeal against the said preliminary decree; but instead they filed an application in the said Court for amending the decree. It was contended before the learned Civil judge that the Supreme Court amended the previous preliminary decree only in regard to interest that accrued before March 13, 1950, and therefore the fresh preliminary decree in giving the other aforesaid directions to the detriment of the appellants was not in conformity with the judgment of this Court. The learned Civil Judge held that the fresh preliminary, decree was in conformity with the judgment given by him and that there was no mistake in the decree to be corrected by way, of amendment. The revision filed by the appellants was also dismissed on the ground that the fresh preliminary decree passed by the learned Civil judge involved fresh adjudication determining the rights of the parties and an appeal lay against the said preliminary decree and, therefore, no revision would lie against that decree. As regards the direction given in the preliminary decree in regard to the profits, the High Court held that the said direction was given in accordance with the order made by it and that apart, in view of the fact that a fresh preliminary, decree was made, the Court had jurisdiction to give that direction Hence the appeal.

** Since reported in AIR 1965 SC 1055.

3. If a decree is not in conformity with the judgment, the Court has the duty to amend the decree so as to bring it in conformity with the judgment. But the fallacy of the argument lies in the fact that the fresh preliminary decree made by the Senior Civil judge was not the decree of this Court, Pursuant to the directions given by this Court and those given by the High Court, the learned Civil judge heard fresh arguments and made a considered judgment. The decree passed, it cannot be disputed, was in terms of the judgment. That judgment had become final as the appellants did not prefer an appeal against the same, but instead filed an application for amendment of the decree. The High Court was, therefore, right in holding that the fresh preliminary decree was in conformity with the judgment of the Civil Judge and, therefore, there was no scope for amendment. The, order is perfectly right and there is no ground for interference.

4. Even so, one of the directions given in the preliminary decree will have to be amended as in the events that have now happened that direction is not in conformity with the judgment of the Senior Civil Judge. We have held in Civil Appeal No. 257 of 1963* in which judgment was just now delivered, that the High Court was wrong in holding that the respondents would be entitled to an account for the rents realized by the appellants for the period between the date of the plaint and the preliminary decree. Pursuant to the order of the High Court, which we have held now to be wrong to that extent, the learned Civil Judge gave a direction that the appellants shall be liable to furnish accounts of the receipts of the usufruct of the mortgaged properties from August 10, 1950, the date of the filing of the suit, till they hand over possession of the mortgaged properties to the defendants and that amount shall be adjusted towards the decretal amount". As we have held that that direction to the said extent was wrong, the order of the learned Civil Judge was also wrong to that extent and if that be so, the decree was also incorrect in that regard. We, therefore, hold that the High Court should have modified the decree to that extent as it would not be in conformity with the judgment as modified by the earlier judgment of this Court. We, therefore, substitute for the words in para. 13 of the fresh preliminary decree "from 10th August, 1950 the date of the filing of the suit" the words

"from April 25, 1953, the date of the original preliminary decree". With this modification, the appeal is dismissed with costs.

* Since reported in AIR 1965 SC 1055

Order accordingly.

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