SUPREME COURT OF INDIA

Ratilal Balabhai Nazar

Vs.

Ranchhodbhai Shankarbhai Patel

C.A.No.1012 of 1963

(K. Subba Rao, J. R. Mudholkar and R. S. Bachawat, JJ.)

23.08.1965

JUDGEMENT

MUDHOLKAR, J.:

1. This is an appeal by special leave against the order of the High Court of Gujarat dismissing summarily the appellant's application under S. 115, Code of Civil Procedure for revision of the judgment of the Principal Judge of the City Civil Court, Ahmedabad passed in an appeal under S. 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

2. The appellant is the tenant of certain premises belonging to the respondent, the rent of which was fixed at Rs. 50 According to the respondent, the appellant was required under the terms of the tenancy to pay in addition municipal taxes and charges for electric energy consumed by him. The appellant did not pay rent from June 1, 1956 for a period of over six months, in consequence of which the respondent gave a notice to him on February 20, 1957 terminating his tenancy and also demanding the rent and other charges which were due from the appellant. As the appellant did neither vacate the premises, nor pay the arrears due from him, the respondent instituted a suit on

April 1, 1957 for recovery of possession and for the recovery of Rs. 838-11-0. This amount comprised of the standard rent in arrears amounting to Rs. 600, proportionate electric charges of Rs. 59-13-0; Rs. 158-14-0 in respect of municipal taxer and Rs. 25 as charges incurred for giving notice to him. In his written statement the appellant pleaded that the rent of R. 50 p.m. was inclusive of taxes as well as of charges for consumption of electricity, Subsequently, however, as the appellant sought leave to amend his written statement by adding to it the plea that the rent agreed to originally between the parties was excessive and that the reasonable rent would be Rs. 30 p.m. The amendment was allowed by the trial court, and upon the finding that the standard rent of Rs. 50 was inclusive of municipal taxes and electric charges and the relief for possession was refused to the respondent. The court found that on June 30, 1960 the total amount due to the respondent in respect of rent was Rs. 2,550. It may be mentioned that at the first hearing of the suit the appellant had in fact deposited Rs. 2,890 in court, which, according to him, was an amount larger than that due to the respondent on the date of deposit. While passing the decree the trial court directed that out of the amount deposited by the appellant a sum of Rs. 2,550 and half the costs of the suit be paid to the respondent and the remaining amount returned to the appellant. In appeal the Principal Judge of the City Civil Court held that the appellant was bound to pay taxes and electric charges and also held that there was a bona fide dispute between the parties about standard rent. But upon a construction placed by him on the provisions of S. 12 of the Act the learned Judge held that the case fell under S. 12 (1) of the Act read with the Explanation thereto and not under either Cl. (a) or Cl. (b) of Sub-s. (3) of S. 12. Upon that view he decreed the relief for possession in favour of the respondent and also held the respondent entitled to a sum of Rs. 90-9-0 in addition to the amount of Rs. 2,550 decreed by the trial court.

3. Mr. Peerzada, who appears for the appellant, relying upon the decision of this Court in Jashwantrai Malukchand v. Anandilal Bapalal, C. A. No. 539 of 1963, D/- 7-12-1964: (AIR 1965 SC 1419), contended that the view taken by the Principal Judge is not in accord with what this Court has taken in the aforesaid case. Prima facie the decision of this Court supports the contention of the appellant; but even so, we are constrained to hold that the High Court was not, in the exercise of its jurisdiction under S. 115, Code of Civil Procedure which was invoked by the appellant, competent to interfere and that the limitations placed upon the powers of the High Court under that section would also circumscribe the power of this Court to interfere under Article 136 of the Constitution. No doubt, by an erroneous construction of the relevant provisions the Principal Judge of the City Civil Court granted relief of possession to the respondent to which he would not have been entitled had the provision been rightly construed. Even so, as observed by this Court in Abbasbhai v. Gulamnabi, AIR 1964 SC 1341 at p. 1346, an erroneous construction placed upon the relevant provision would not furnish a ground for interference under S. 115 of the Code. It may be mentioned that in that case also the question was about the construction of S. 12(3) (b) of this very Act, and an argument similar to the one advanced before us was addressed in it. Rejecting that argument this Court observed.

"The District Court on an erroneous view of S. 12(3) (b) held that the requirements of that provision were complied with by the defendant, but it also held that having regard to the circumstances the readiness and willingness contemplated by Sub-s. (1) was otherwise established. The High Court had, in exercise of its powers under S. 115, Code of Civil Procedure, no authority to set aside the order merely because it was of the opinion that the judgment of the District Court was assailable on

the ground of error of fact or even of law. Jurisdiction to try the suit was conferred upon the Subordinate Judge by Section 28(1) (b) of the Act, and the decree or order passed by the Subordinate Judge was by S. 29(1) (b) subject to appeal to the District Court of the District in which he functioned; but all further appeals were by Sub-s. (2) of S. 29 prohibited. The power of the High Court under S. 115, Code of Civil Procedure was not thereby excluded, but the exercise of that power is by the terms of the statute investing it severely restricted."

After referring to the decision of the Privy Council in Balkrishna Udayar v. Vasudeva Aiyar, 44 Ind App 261; (AIR 1917 PC 71), and quoting a portion therefrom this Court observed :

"Therefore, if the Trial Court had jurisdiction to decide a question before it and did decide it, whether it decided it rightly or wrongly, the Court had jurisdiction to decide the case and even if it decided the question wrongly, it did not exercise its jurisdiction illegally or with material irregularity."

On behalf of the plaintiff in that case Mr. Chatterjee relying upon the decision in Joy Chand Lal v. Kamalaksha Chaudhury, 76 Ind App 131; (AIR 1949 PC 239), had contended that the District Court in declining to pass a decree in ejectment refused to exercise a jurisdiction vested in it by law and, therefore, the case fell within the terms of Cl. (b) S. 115 C. P. C. This contention was negatived by the Court after citing the following passage from the opinion of Sir John Beaumont in that case. The passage runs thus :

"There have been a very large number of decisions of Indian High Courts on S. 115 to many of which their Lordships have referred. Some of such decisions prompt the observations that High Courts have not always appreciated that although error in a decision of a subordinate court does not by itself involve that the subordinate court has acted illegally or with material irregularity so as to justify interference in revision under Sub-s. (c), nevertheless, if the erroneous decision results in the Subordinate Court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under Sub-s. (a) or Sub-s (b), Sub-s, (c) can be ignored."

This Court then observed that the Privy Council had distinguished between cases in which on a wrong decision the Court assumes jurisdiction which is not vested in it or refuses to exercise jurisdiction which is vested in it by law and those in which in exercise of its jurisdiction the Court arrives at a conclusion erroneous in law or in fact, and that while in the former class of cases exercise of revisional jurisdiction by the High Court is permissible it is not permissible in the latter class of cases.

4. Reliance was also placed in the aforesaid case upon the decision of this Court in Manindra Land and Building Corporation Ltd. v. Bhutnath Banerjee, AIR 1964 SC 1336, where it was held that the Court was in error in setting aside the decree of the District Court in exercise of its revisional powers under S. 115. The decisions both in Abbasbhai's case, AIR 1964 SC 1341, and Manindra Land and Building Corporation's case, AIR 1964 SC 1336, were referred to in Pandurang Dhondi Chougule v. Maruti Hari Jadhav, Civil Appeal No. 163 of 1963, D/- 26-4-1965; (AIR 1966 SC 153), by a Constitution Bench of this Court in which it was observed :

"The effect of these two decisions clearly is that a distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said court, and errors of law which have no such relation or connection."

We are bound by these decisions and, therefore, it is not open to us to examine the merits of the contention advanced by Mr. Peerzada. We, therefore, dismiss this appeal; but in the particular circumstances direct the parties to bear their own costs in this Court.

Appeal dismissed.