Bhagwati Prasad

Vs

Shri Chandramaul

Civil Appeals Nos. 964 and 965 of 1964

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, V. Ramaswami – I JJ)

19.10.1965

JUDGMENT

GAJENDRAGADKAR, C.J. –

These two cross appeals arise from a suit filed by Chandramaul (hereinafter called the plaintiff) against Bhagwati Prasad (hereinafter called the defendant) in the Court of Second Civil Judge, Kanpur. The plaintiff alleged that he was the owner of house No. 59/8, Nachghar, Birhana Road, Kanpur and that he had let out the said house to the defendant as his tenant. According to the plaint, the plaintiff and the defendant were friends and enjoyed mutual confidence. As the house was being constructed, the defendant wanted some premises for residence, and so, when the ground floor was constructed he was let in as a tenant by the plaintiff on a monthly rent of Rs. 150 in 1947. In 1948, the first floor was completed and the defendant took that portion as well as a tenant on an additional rent of Rs. 150 p.m. By 1950, another floor had been added and the defendant was given the said floor as well on a further additional rent of Rs. 150 p.m. Thus, the defendant was in possession of the house as a tenant of the plaintiff on the condition that he was to pay Rs. 450 p.m. as rent. The defendant continued to pay this rent and was not in arrears in that behalf as on the 31st March, 1954. Thereafter, he failed to pay the rent, and so, the plaintiff terminated his tenancy and bought the present suit on the 30th November, 1955 claiming ejectment against the defendant and a decree for Rs. 8,550 as arrears of rent from the 1st April, 1954 to the end of October, 1955. Future mesne profits were also claimed.

The defendant admitted that the land over which the house stood belong to the plaintiff. He, however, pleaded that the house had been constructed by the defendant at his own cost and that too at the request of the plaintiff, because the plaintiff had no funds to construct the building on his own. Having constructed the house at his own cost, the defendant went into possession of the house on condition that the defendant would continue to occupy the house until the amount spent by him on the construction was repaid to him by the plaintiff. According to the defendant, he had spent Rs. 32,704-1-0 on the construction of the house. Basing himself on this agreement, the defendant resisted the claim made by the plaintiff for ejectment as well as for rent.

On these pleadings, the learned trial Judge framed seven issues. He disbelieved the defendant's version in regard to the construction of the house and found that the agreement set up by him in that behalf on the basis that he spent the money on the construction of the house himself, had not been established. He also disbelieved the plaintiff's case about the agreement as to rent on which the plaintiff relied. According to the trial Judge, the defendant had admitted the ownership of the plaintiff, and having regard to the pleadings and the evidence adduced by the parties, he came into the conclusion that the relationship of landlord and tenant had been proved. Having made this

specific basic finding, the learned trial Judge held that the suit was competent and came to the conclusion that the plaintiff was entitled to a decree for ejectment as well as for rent.

In regard to the amount of rent, however, the learned trial Judge did not accept the plaintiff's version and considered the question on the merits. He held that Rs. 300 p.m. would be a reasonable rent for the premises in question. That is how he passed a decree for Rs. 5,700 in favour of the plaintiff as arrears of rent from 1st April, 1954 up to the 31st October, 1955. The decree further directed the defendant to pay damages by way of use and occupation at the rate of Rs. 300 p.m. till the date of ejectment.

Against this decree the defendant preferred an appeal before the Allahabad High Court. The High Court has agreed with the trial Court in disbelieving the defendant's version about the construction of the house and about the terms and conditions on which he had been let into possession. The High Court was also not satisfied with the plaintiff's version about the tenancy between him and the defendant. Having regard to the fact that the defendant had virtually admitted the title of the plaintiff, the High Court held that the defendant must be deemed to have been in possession of the house as a licensee; and treating the plaintiff's claim for ejectment on the basis that the defendant was proved to be a licensee of the premises, the High Court has confirmed the decree for ejectment passed by the trial Court.

It has, however, set aside the said decree insofar as it directed the defendant to pay past rent at the rate of Rs. 300 p.m. This decision was the result of the fact that the High Court was not satisfied that the plaintiff has established any of the terms of the tenancy. In that connection, the High Court has referred to the fact that even if the plaintiff's case about the tenancy had been proved, such a tenancy would have been invalid because of the relevant statutory provisions then prevailing in the area. In December, 1946, the State Government of U.P. had issued an Ordinance controlling the letting of residential and non-residential accommodation. This Ordinance was later enacted as the U.P. (Temporary) Control of Rent and Eviction Act (No. III) of 1947. The material provisions of this Act as well as the provisions Ordinance require that no premises could be let out by the land-lord without the permission of the District Magistrate or other appropriate authorities mentioned in that behalf. Thus, the tenancy not having been proved, the High Court came to the conclusion that it would be inappropriate to allow any rent to the plaintiff at all. That is how while confirming the decree for ejectment passed by the trial Court, the High Court rejected the plaintiff's case for rent or for mesne profits. It appears that his claim for future mesne profits was also not upheld.

Against this decree Civil Appeals Nos. 964 and 965 of 1964 have been filed in this Court by the plaintiff and the defendant respectively with a certificate granted to them by the High Court in that behalf. The defendant objects to the decree for ejectment, whereas the plaintiff objects to the rejection of his claim for the past rent and future mesne profits.

Mr. Setalvad for the defendant contends that in confirming the trial Court's decree for ejectment, the High Court has made a new case for the plaintiff, and that, according to him, is not permissible in law. The Plaintiff came to the Court with a clear and specific case of tenancy between him and the defendant and that case has been rejected by the High Court. As soon as the plaintiff's case of tenancy was rejected, his claim for ejectment should also have been negative. In support of his argument Mr. Setalvad had referred us to the decision of this Court in Trojan & Co. Ltd. v. Rm. N. N. Nagappa Chettiar ([1953] S.C.R. 789.). In that case, this Court has observed that it is well-settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. It is necessary to remember that these observations were made

in regard to a claim made by the plaintiff for a certain sum of money on the ground that the defendant had sold certain shares belonging to him without his instructions, but he had failed to prove that the sale had not been authorised by him. The question which the Court had to consider in the case of Trojan & Co. ([1953] S.C.R. 789.). was that in view of the plaintiff's failure to prove his case that the impugned sale was unauthorised, was it open to him to make a claim for the same amount on the ground of failure of consideration ? And this Court held that such a claim which was new and inconsistent with the original case could not be upheld.

There can be no doubt that if a party asks for a relief on a clear and specific ground, and in the issues or at the trial, no other ground is covered either directly or by necessary implication, it would not be open to the said party to attempt to sustain the same claim on a ground which is entirely new. The same principle was laid down by this Court is Sheodhar Rai & Others v. Suraj Prasad Singh & Others (A.I.R. 1954 S.C.R. 758.). In that case, it was held that where the defendant in his written statement sets up a title to the disputed lands as the nearest reversioner, the Court cannot, on his failure to prove the said case, permit him to make out a new case which is not only made in the written statement, but which is wholly inconsistent with the title set up by the defendant in the written statement. The new plea on which the defendant sought to rely in that case was that he was holding the suit property under a shikmi settlement from the nearest reversioner. It would be noticed that this new plea was in fact not made in the written statement, had not been included in any issue and, therefore, no evidence was or could have been led about it. In such a case clearly a party cannot be permitted to justify its claim on a ground which is entirely new and which is inconsistent with the ground made by in its pleadings.

But in considering the application of this doctrine to the facts of the present case, it is necessary to bear in mind the other principle that considerations of form cannot over-ride the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issue, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it ? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and had had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.

Therefore, in dealing with Mr. Setalvad's argument, our enquiry should not be so much about the form of the pleadings as their substance; we must find out whether the ground of licence on which the plaintiff's claim for ejectment has been confirmed by the High Court was in substance the subject-matter of the trial or not; did the defendant know that alternatively, the plaintiff would rely upon the plea of licence and has evidence been given about the said plea by both the parties or not ? If the answers to these questions are in favour of the plaintiff, then the technical objection that the plaint did not specifically make out a case for licence, would not avail the defendant.

Turning then to the pleadings and evidence in this case, there can be little doubt that the defendant knew what he was specifically pleading. He had admitted the title of the plaintiff in regard to the plot and set up a case as to the manner in which he spent his own money in constructing the house. The plaintiff led evidence about the tenancy set up by him and the defendant led evidence about the agreement on which he relied. Both the pleas are clear and specific and the common basis of both the pleas was that the plaintiff was the owner and the defendant was in possession by his permission. In such a case the relationship between the parties would be either that of a landlord and tenant, or that of an owner of property and a person put into possession if it by the owner's licence. No other alternative is logically or legitimately possible. When parties led evidence in this case, clearly they were conscious of this position, and so, when the High Court came to the conclusion that the tenancy had not been proved, but the defendant's argument also had not been established, it clearly followed that the defendant was in possession of the suit premises by the leave and licence of the plaintiff. Once this conclusion was reached, the question as to whether any relief can be granted to the plaintiff or not was a mere matter of law, and in deciding this point in favour of the plaintiff, it cannot be said that any prejudice had been caused to the defendant.

When Mr. Setalvad was pressing his point about the prejudice to the defendant and the impropriety of the course adopted by the High Court in confirming the decree for ejectment on the ground of licence, we asked him whether he could suggest to us any other possible plea which the defendant could have taken if a licence was expressly pleaded by the plaintiff in the alternative. The only answer which Mr. Setalvad made was that in the absence of definite instructions, it would not be possible for him to suggest any such plea. In our opinion, having regard to the pleas taken by the defendant in his written statement in clear and unambiguous language, only two issues could arise between the parties : is the defendant the tenant of the plaintiff, or is he holding the property as the licence subject to the terms specified by the written statement ? In effect, the written statement pleaded licence, subject to the condition that the licence was to remain in possession until the amount spent by him was returned by the plaintiff. This latter plea has been rejected, while the admission about the permissive character of the defendant's possession remains. That is how the High Court has looked at the matter and we are unable to see any error of law in the approach by the High Court in dealing with it.

In support of its conclusion that in a case like the present a decree for ejectment can be passed in favour of the plaintiff, though the specific case of tenancy set up by him is not proved, the High Court has relied upon the two of its earlier Full Bench decisions. In Abdul Ghani v. Musammat Babni (I.L.R. 25 All. 256.), the Allahabad High Court took the view that in a case where the plaintiff asks for the ejectment of the defendant on the ground that the defendant is a tenant of the premises, a decree for ejectment can be passed even though tenancy is not proved, provided it is established that the possession of the defendant is that of a licensee. It is true that in that case, before giving effect to the finding that the defendant was a licensee, the High Court remanded the case, because it appeared to the High Court that that part of the case had not been clearly decided. But once the finding was returned that the defendant was in possession as a licensee, the High Court did not feel any difficulty in confirming the decree for ejectment, even though the plaintiff had originally claimed ejectment on the ground of tenancy and not specifically on the ground of licence. To the same effect is the decision of the Allahabad High Court in the case of Balmakund v. Dalu (I.L.R. 25 All. 498.).

It is hardly necessary to emphasise that in a matter of this kind, it is undesirable and inexpedient to lay down any general rule. The importance of the pleadings cannot, of course, be ignored, because it is the pleading that lead to the framing of issues and a trial in every civil case has inevitably to be

confirmed to the issues framed in the suit. The whole object of framing the issues would be defeated if parties allowed to travel beyond them and claim or oppose reliefs on grounds not made in the pleadings and not covered by the issues. But cases may occur in which though a particular plea is not specifically included in the issues, parties might know that in substance, the said plea is being tried and might lead evidence about it. It is only in such a case where the Court is satisfied that the ground on which reliance is placed by one or the other of the parties, was in substance, at issue between them and that both of them have had opportunity to lead evidence about it at the trial and the formal requirement of pleadings can be relaxed. In the present case, having regard to all the facts, we are unable to hold that the High Court erred in confirming the decree for ejectment passes by the trial Court on the ground that the defendant was in possession of the suit premises as a licensee. In this case, the High Court was obviously impressed by the thought that once the defendant was shown to be in possession of the suit premises as a licensee, it would be built to require the plaintiff to file another suit against the defendant for ejectment on that basis. We are not prepared to hold that in adopting this approach in the circumstances of this case, the High Court can be said to have gone wrong in law.

The result is, the appeal preferred by the defendant fails and is dismissed.

That takes us to the appeal preferred by the plaintiff. This appeal is confirmed to the plaintiff's case for past rent and future mesne profits. As we have already indicated, the judgment of the High Court seems to suggest that the High Court set aside the trial Court's decree for Rs. 5,700 as well as for the payment of future mesne profits. It is true that the judgment is somewhat ambiguous on this point, but the decree drawn is clear and it shows that the plaintiff's claim both for past rent and future mesne profits has been rejected by the High Court. The application for leave to appeal this Court presented by the plaintiff in the High Court has both in regard to the past rent and the future mesne profits. In fact, the valuation of the appeal has been placed at over Rs. 20,000 on that basis. So, there can be no doubt that the plaintiff's appeal is directed against the refusal of the High Court to grant past rent as well as future mesne profits.

In regard to the plaintiff's claim for past rent, we see no reason to interfere with the decree passed by the High Court. But we do not see how the High Court's decree in relation to future mesne profits can be sustained. Once it is held that the plaintiff is entitled to eject the defendant, it follows that the from the date of the decree granting the relief of ejectment to the plaintiff, the defendant who remains in possession of the property despite the decree, must pay mesne profits or damages for use and occupation of the said property until it is delivered to the plaintiff. A decree for ejectment in such a case must be accompanied by a direction for payment of the future mesne profits or damages. Then as to the rate at which future mesne profits can be awarded to the plaintiff, we see no reason to differ from the view taken by the trial Court that the reasonable amount in the present case would be Rs. 300 per month.

In the result, the plaintiff's appeal is partly allowed and a decree is passed in his favour directing the defendant to pay to the plaintiff future mesne profits at the rate of Rs. 300 p.m. from the date of the trial Court's decree, i.e., 16th October, 1958, until the date of delivery of possession of the property in suit to the plaintiff. In the circumstances of this case, we direct that parties should bear own costs in both the appeals.

Appeal allowed in part.

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