

Neyazuddin and Others

Vs

Surya Deva Narain Verma and Others

Civil Appeal No. 1067 of 1966

(J. C. Shah, K. S. Hegde. A. N. Grover JJ)

03.02.1970

JUDGMENT

SHAH, J. -

1. The respondents to this appeal commenced an action in the Munsif Samastipur for a decree in ejectment against one Maddique, the members of his family, Siddique (brother of Maddique), and the members of Siddique's family for a decree in ejectment and for recovery of arrears of rent before action and future rent till eviction. Maddique died shortly after the suit was filed and his brother Siddique contended that the plaintiffs were not the owners of the property in dispute. Sons of Maddique who were shown as legal representatives adopted the stand taken by Siddique. The Trial Court decreed the claim for rent but not for ejectment. Against that decree an appeal was preferred to the District Court. The District Court set aside the decree of the Trial Court and remanded the case for trial and disposal to the Court of First Instance. The trial court decreed the suit against the defendants. An appeal filed to the District Court was unsuccessful. The decree of the Trial Court was confirmed in second appeal to the High Court of Patna.

2. Special leave to appeal was granted by this Court on March 3, 1966. The defendants obtained an order for stay of execution of the decree of the High Court. Thereafter they did not take effective steps to prosecute the appeal. They did not pay the printing charges till September, 1969 and later moved this Court for an order that the printing of the record be dispensed with and that the appeal be heard and disposed of on "the special leave paper book". It was represented to this Court that the only question which the defendants desired to raise before the Court related to the jurisdiction of the Civil Court to entertain the suit on November 14, 1948. The court granted the order dispensing with the printing of the record on that representation.

3. In this appeal Mr. Sinha, appearing on behalf of the defendants (Appellants herein), however, seeks not only to raise the contention that the Civil Court had no jurisdiction to entertain the suit as framed, but further contends that the decree passed by the Civil Court in 1951 dismissing the plaintiffs suit for a decree in ejectment has become final and the plaintiffs not having appealed against that decree the decree of the Civil Court passed in 1957 and confirmed by the District Court and High Court of Patna is without jurisdiction.

4. We have before us only a copy of the judgment of the High Court, the petition for special leave and the application for stay. Neither the copy of the judgment of the trial court which originally decided the suit nor the copy of the District Court's judgment are before us. Even the translation of the plaint is not before us. We are unable to ascertain what precisely were the averments made in the plaint. From the summary given in the judgment of the High Court it appears that the plaintiffs

claimed a decree against the first defendants Maddique on the ground that he was a tenant of no right in the premises. The suit was opposed by the heirs of Maddique and by the defendant Siddique. They contended that the Civil Court had no jurisdiction to entertain the suit at the date when it was instituted in 1948, and only the Rent Controller had, by virtue of Bihar (Lease, Rent and Eviction) Control Act, 1947, jurisdiction to entertain it. The Munsif apparently accepted the contention and declined to grant a decree in ejectment. But the claim in the suit was against Maddique as a tenant of the plaintiff, and against others that they were not tenants. A suit against a tenant could be by virtue of the Bihar (Lease, Rent and Eviction) Control Act, 1947 as it then stood lie only in the Court of the Rent Controller, but no proceeding could lie against a person other than a tenant before the Rent Controller.

5. All the defendants denied the tenancy. Prima facie, the proceeding filed by the plaintiff could not competently be tried by the Rent Controller. It is unnecessary, however, to dilate upon this matter. The decree passed by the Court of First Instance was set aside by the District Court and the suit was remanded for re trial. When the suit was re-tried and decided in the year 1957, the Civil Court was by the amendment made by Bihar Act 26 of 1955, invested with jurisdiction to entertain and try a suit and to pass a decree in ejectment even against a tenant. The decree passed by the Trial Court has been confirmed by the District Court and the High Court. The decree under appeal was apparently passed by a Court with jurisdiction. In this appeal with special leave we see no substantial question of law which would justify us in upsetting the decree.

6. We do not think that would be justified in allowing Mr. Sinha to raise the alternative argument sought to be raised at this stage, when the defendants have obtained an order from this Court that the appeal is only to be heard on the question of absence of jurisdiction in the Trial Court to entertain the suit under the law as it stood in the year, 1948. The relevant material on which the alternative argument can be considered is not before us, and for that the defendants are responsible. We have no reason to believe that the plaintiffs had not filed an appeal or cross-objections against the decree of the Court of First Instance, especially when the Rent Controller had in a proceeding filed practically simultaneously with the present action directed them to obtain an adjudication of their title in the Civil Court.

7. The appeal fails and is dismissed with costs.

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