

Girdhari Lal (dead) by Lrs.

Vs

Hukam Singh and Others

Civil Appeal Nos. 774-775 of 1971

(CJI A.N. Ray, M.H. Beg, P.N. Shinghal JJ)

19.10.1976

JUDGMENT

BEG, J. –

1. These are defendant's appeals by certificate of fitness of the case for appeal to this Court directed against a judgment of a Division Bench of the Rajasthan High Court.

2. The plaintiff, who is a Receiver of a property known as Nabhu building, appointed specifically for realising rent from tenants of the building, sued the defendant for recovery of arrears of rent amounting to Rs. 1,31,266 at the allegedly agreed rate of rent of Rs. 1,700 per month. In the alternative, the plaintiff prayed that a decree may be awarded at the rate of Rs. 1,000 per month in accordance with the orders of the Deputy Custodian, Jodhpur, who, it seems, had fixed that amount provisionally when litigation with regard to the property was going on the assumption, subsequently found to be erroneous, that the owner of it was an evacuee. Again, in the alternative, the plaintiff Receiver, who was, quite understandably, not certain of the exact position, had asked for a fixation of standard rent, under the provisions of Section 6 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as 'the Act'), in case no rent was found to be either agreed upon or settled. Furthermore, the plaintiff had prayed for the fixation of provisional rent to be paid during the pendency of the suit, "and, in case it is not paid, the defendant be ordered to vacate the premises". The defendant had pleaded, inter alia, that proper Court fee should have been paid for relief by way of eviction of defendant from the premises, which had been taken on rent for the purposes of running a hotel called the "Grand Hotel" at Jodhpur. The defendant had also denied the jurisdiction of the Court of the Civil Judge, where the suit was filed, to fix standard rent. He had objected to the competence of the Receiver to sue on the ground that he had not been appointed to realise the rent. There was an objection also to the frame of the suit by misjoinder of causes of action in suing for arrears of rent as well as for fixation of a standard rent. There was contest also on demands for various expenses alleged by the defendant to have been incurred by him over items such as making of certain constructions or payments to the Custodian or to the landlord.

3. The Civil Judge, over-ruling technical objections, had passed a decree for Rs. 42,797.50 as arrears of rent, after fixing Rs. 782 per month as the standard rent of the premises. The arrears of rent were payable in installments of Rs. 5,000 every two months, beginning from June 1, 1961, with interest at 6% per annum in case of default. The suit for the remaining remaining reliefs claimed had been dismissed with proportionate costs.

4. The High Court, on counter appeals by the Receiver as well as by the tenant, against the Civil Judge's judgment, had examined the whole evidence and based its finding, that there was an agreed

rent of Rs. 1,250, principally upon an admission made by the defendant appellant Girdhari Lal in proceedings before the Custodian of evacuee property. The High Court had reached the conclusion that this was also the basic rent under the first proviso to Section 6 of the Act. It had dismissed the tenant's appeal but had partly allowed the Receiver's appeal by passing a decree for Rs. 75,718 instead of Rs. 42,797.50 awarded by the trial Court.

5. The High Court had, in our opinion rightly, overruled the objection that a decree for rent or mense profits during the pendency of the suit could not be granted under Order 20, Rule 12 Civil Procedure Code in this case. The defendant had himself pleaded here that the suit was for ejectment on which the additional Court fee had to be paid. The High Court pointed out that the plaintiff had paid the additional Court fee for a suit for ejectment. Hence, it held that it was not open to the defendant to object to the award of mense profits on the ground that there was no suit for ejectment before the Court. This was, we think, quite a frivolous objection.

6. The questions raised before the High Court have been re-agitated before us. We have been taken through the evidence which, according to the learned Counsel for the defendant-appellant, did not justify the finding that the agreed rent was Rs. 1,250. After having examined this evidence, we think that the High Court was correct in inferring at least a willingness on the part of Girdhari Lal, respondent, to pay Rs. 1,250 per month as rent. The High Court had not only given the finding that this was an agreed rent, but it had held, rightly in our opinion, that this must also be found to be the basic rent under the first proviso to Section 6(2) of the Act as it was applied to cases where the first letting out was after January 1, 1946.

7. As regards the competence of the Receiver to sue for arrears of rent for a period of three years prior to the filing of the suit, to which the claim was confined, we think that the objection is wholly without substance. The Receiver was specifically appointed for, inter-alia, realisation of arrears of rents, in the following terms :

You are further authorised to realise the arrears of rent from the tenants of the said property (Nabu building) and do all legal and necessary acts in realisation of those arrears.

There was no appeal against this order. The Receiver is really an Officer of the Court who realises the income and holds it in trust for the party which may eventually succeed.

8. We also think that the High Court was correct in rejecting the objection to the frame of the suit on the ground of an alleged misjoinder of causes of action. It had pointed out that the relief for rent was linked up with the fixation of rent. In any case, as the finding was that the agreed rent was Rs. 1250, a decree could be passed on the basis of that agreement without the need for any fixation of the basic rent. Indeed, such an objection could be said to be covered and rejected, by implication, by a judgment and order of the High Court dated October 8, 1959, upon a Revision Application in this very suit, where the objection which gave rise to issue 6 was dealt with directly and rejected. This issue read as follows :

Whether it was imperative that a suit for fixation of standard rent must be filed in the Munsiff's Court ?

We do not find any force at all in this very question raised again before us dressed up in various garbs.

9. An objection based upon the proviso to Section 109 of the Transfer of Property Act was, we think rightly, disposed of by the High Court as follows :

The next objection is that under the proviso to Section 109 of the Transfer of Property Act the transferee is not entitled to arrears of rent due before the transfer. In our opinion he is ordinarily not so entitled unless there is a contract to the contrary. There was an express contract to the contrary contained in the compromise petition which was incorporated in the compromise decree passed by the Court.

10. As regards the objection that the terms of the compromise operated as a transfer which required a registered deed for its enforcement, the High Court found that it was a sufficient answer to it that the terms were embodied in a compromise decree. The terms of the compromise did not provide for the execution of any deed of transfer. We were taken through the compromise decree by learned Counsel for the appellant. Even though the decree of a Court embodies an agreement between the parties, we do not think that the agreement between the parties placed before us, involving the recognition of a transfer, could require registration unless the terms of the compromise decree necessarily involved the execution of a deed of conveyance also. We, therefore, reject this ground of objection also pressed before us vehemently for acceptance by learned Counsel for the appellant.

11. Connected Civil Miscellaneous Petition 3689 of 1976 for filing some additional documents, which do not seem to us to be necessary at all to enable us to reach our conclusion or to make any difference to them, is rejected.

12. Connected Civil Miscellaneous Petition 3690 of 1976 for dispensing with official translations of some additional documents sought to be filed is also rejected as we have found those documents to be unnecessary.

13. We affirm the judgment and decree of the High Court and dismiss these appeals with costs.

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