Shamma Bhatt and Others

Vs

T. Ramakrishna Bhatt

Civil Appeal No. 383 (N) of 1973

(G. L. Oza, V. Khalid JJ)

27.03.1987

JUDGMENT

V. KHALID, J. -

1. The appellant is the defendant is O.S. 55 of 1952 in the Sub-Court, Mangalore. His father had obtained sale of the property involved in this appeal by a document dated April 28, 1939, executed by the widowed mother of the respondent-plaintiff who was a minor, aged six years, she acting as his guardian. After the attained majority, he filed a suit for a declaration that the said sale deed was invalid and was not binding upon him and for recovery of possession thereof. The trial court dismissed the suit. In appeal, the appellate court confirmed the decree and judgment of the trial court. In second appeal, the High Court of Kerala, by its judgment, dated November 27, 1969, set aside the judgments of the courts below, allowed the appeal and decreed the suit. The decree directed recovery of possession of the properties an payment of the sub of Rs. 4700 being the sale consideration and a sum of Rs. 4164 being the compensation for improvements.

2. On September 15, 1970, the decree-holder, respondent herein, filed R.E.P. 68/70 in the Sub-Court, Kasargod, depositing the amount due under the decree of the High Court and praying for delivery of the properties from the possession of the judgment debtors, the appellants. Execution was resisted by the appellants on the ground that no delivery could be ordered without payment of the value of improvements effected by them subsequent to the year 1952. They also filed R.E.A. No. 146/70 for the issue of a commission to revalue the improvements, claiming that they had effected improvements to the tune of Rs. 80,000. The respondent contested this application, denied that the appellants had made any improvements and contended that the question of improvements had been concluded by the judgment of the High Court in the second appeal. The executing court dismissed this petition. Aggrieved by this order, the appellants filed an appeal before the District Judge, Tellicherry, who allowed the appeal by his judgment dated April 12, 1971 and set aside the order of the executing court. The matter was taken to the High Court by way of Execution Second Appeal. A Division Bench of the Kerala High Court, on a reference from a learned Single Judge, set aside the judgment of the District Judge by its judgment dated March 7, 1972 and restored the order of the Subordinate Judge and directed recovery of the property. The appellants moved the High Court for grant of certificate of fitness, which prayer was declined and hence have filed this appeal, by special leave.

3. The suit filed by the plaintiff within three years of his attaining majority alleging that the assignee took advantage of the ignorance and helpless condition of the plaintiff's mother, who was a young widow and that there was neither legal necessity nor pressure from the estate for effecting the sale. He averred in the plaint that there was a partition decree in his favour in which he had been allotted

these properties with outstanding amounting to Rs. 5300 and mesne profits to the extent of Rs. 1549 which were sufficient to discharge the debts due by the estate. The entire immovable properties belonging to the plaintiff, including the family residential house, were alienated. The High Court in second appeal on the trial side held that the alienation was not something which a man of ordinary prudence would have effected, had the properties been owned by him and thus held it not binding on the plaintiff. The learned Judges of the Division Bench then considered the question of the defendant's right for compensation for improvements, if any, effected. This claim was denied. In the written statement filed by the defendant, as noted by the High Court, all that was claimed was that improvements had been effected to the tune of Rs. 4000. But no specific claim was made for compensation in the event of eviction. The High Court also noted that the averment regarding improvement was itself made in the context of denying that the property would have fetched Rs. 11,000 at the time of sale. In the additional written statement filed by the defendant a claim was made that improvements to the value of Rs. 11,168 had been effected after the sale date and that under any circumstances, the defendants were entitled to just and adequate compensation for them. The Division Bench adverting to this aspect of the case held against the appellants with the following observation :

> The Basis of the claim has not been stated anywhere, and no averments of fact necessary for attracting Section 51 of the Transfer of Property Act or Section 4 of the Kerala Compensation for Tenants' Improvements Act, 1958, have been made. Hence, the claim for value of improvements would appear to be unsustainable, However, no objection has been taken by the appellant in the lower appellate court or in this Court to the finding of the trial court that in case of eviction, the defendants would be entitled to Rs. 4164.8.0 as compensation for improvements.

It was with these observations regarding improvements that the appeal was allowed and the suit for recovery decreed.

4. When the matter reached the High Court in second appeal on the execution side the matter was heard by another Division bench of the Kerala High Court. The Division Bench relied upon the following observation in the judgment of the Division Bench on the original side and declined relief of value of improvements to the appellants, with the following observation :

> The Division Bench considered the question of value of improvements in paragraph 9 of the judgments and Unnikrishna Kurup, J. who spoke for the Division Bench has stated in unequivocal terms :

Hence, the claim for value of improvements would appear to be unsustainable. However, no objection has been taken by the appellant in the lower appellate court or in this Court to the finding of the trial court that in case of eviction, the defendants would be entitled to Rs. 4164.8.0 as compensation for improvements.

We may in passing also observe that the appellant had filed an application for special leave against the first judgment in second appeal, which was dismissed. The claim of value of improvements was rejected by the Division Bench with the following observation :

> The sum of Rs. 4164.8.0 was directed to be paid, we repeat, not because the respondents were entitled to it, but because the appellant agreed to pay it.

5. It is with these materials that the present claim of the appellants for value of improvements has to be considered. We may indicate at this state itself that the Commissioner appointed at the instance of this Court, assessed the value of improvements at Rs. 1,00,031.40, by his report dated October 12, 1972. The learned counsel for the appellant made a forceful plea the judgment of the High Court was wrong and that the conclusion arrived at by the High Court was as a result of a confusion regarding the pleadings in the case and the question of law involved. He stated that at the trial state an issue was struck as issue No. 8 regarding the value of improvements. This question was adjudicated and the value of improvements was adjudged after due consideration of this issue. His further submission in that the appellants were tenants within the meaning of Section 2(d) of the Kerala Compensation for Tenants Improvements Act, 1958 (29 of 1953), and that the claim for value of improvements was made on the strength of Section 5 of the Act. He relied upon a Division Bench ruling in Veerasikku Gounder v. Kurian, in support of his contention that the appellants were tenants and were entitled to the value of improvements.

6. The property is situated in the old South Kerala District which formed part of the other Madras Presidency. At the time the suit was filed, there was no enactment in force in that area, enabling persons in possession of property belonging to another to claim value improvements in a suit for recovery of possession. The area, where the property in dispute is situated, became part of Kerala when the said State was formed. When Act 29 of 1958 was enacted, there were two enactments in existence, applicable to the Travancore Cochin and the Malabar area, regarding the claims for improvements for tenants in possession. They are the Travancore Cochin Compensation for Tenants improvements Act, 1956 and the Malabar Compensation for Tenants Improvements Act, 1899. Both these Acts were repealed when Act 29 of 1958 was enacted. Section 2(d) of the new Act defined 'tenant' the relevant portion of which reads as follows :

> 2(d) 'tenant' with its grammatical variations and cognate expressions includes -
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> #(i) * * *(ii) * * *##
>
> (iii) a person who comes into possession of land belonging to another person and makes improvements thereon in the bona fide belief that he is entitled to make such improvements.

The appellants' contention is that they satisfy this definition and that, therefore they are entitled to the benefit of this Act. Section 4 deals with the entitlement to compensation for improvements for tenants for the improvements made by them, or their predecessor-in-interest on eviction. Section 5 states that when in a suit for eviction instituted against the tenant the plaintiff succeeds and the defendant establishes a claim for compensation due under Section 4 for improvements, the court shall ascertain the amount of compensation and shall pass a decree for payment of the amount so found due to the tenants. Sub-section (3) of this section gives an additional right to such tenants for value of improvements effected after the decree by evaluation. We read the section for a correct understanding of the same :

> 5(3) The amount of compensation for improvements made subsequent to the date up to which compensation for improvements has been adjudged in the decree and the revaluation of an improvements, for which compensation has been so adjudged, when and insofar as such revaluation may be necessary with reference to the condition of such improvement at the time of eviction as well as any sum of money accruing due to the plaintiff subsequent to the said date for rent, or otherwise, in

respect of the tenancy, shall be determined by order of the court executing the decree and the decree shall be varied in accordance with such order.

It is basing on this section that the claim is made for value of improvements by the appellants.

7. The suit was filed in 1952. At that time there was no enactment available for the defendant to claim value for improvements. Neither in the original written statement nor in the additional written statement dated November 15, 1954, did the defendants claim the value of improvements under the Act. It is true that at the execution stage a plea was raised under Section 5 of Act 29 of 1958. But it is necessary to remember that in the judgment in the Second Appeal No. 464 of 1964, the Division Bench decided on November 27, 1969, that no claim for improvements was made either under Section 51 of the Transfer of Property Act or under Section 4 of Act 29 of 1958. Moreover, the High Court also found that no objection was taken by the appellants in the lower appellate court or before the High Court to the finding that in case of eviction the defendant would be entitled to Rs. 4164.8.0 as compensation. This judgment was rendered when Act 29 of 1958 had already come into force. Against this judgment this Court was moved by filing a special leave petition and that was dismissed. Thus, there is a concluded finding against the appellants that they were not entitled to anything more than the value of improvements decreed by the trial court.

8. In the judgment under appeal also the High Court has reiterated the fact that the appellants were being paid the amount mentioned above not because they were entitled to it, but because the appellant (sic respondent) agreed to pay it. The learned counsel for the appellants Shri G. Viswanatha Iyer tries to overcome the finality of this judgment with the contention that the value of improvements has to be ascertained under the Act on the execution side and his claim cannot be defeated by flourishing the judgment of the High Court and the dismissal of the SLP. We find it difficult to accept the appellant's case. Section 5 comes into operation only when a defendant against whom a suit for eviction is instituted establishes a claim for compensation under the Act. The judgment of the High Court rendered in 1969 has clearly held that the value of improvement awarded was not under Section 4 of the Act but was an amount agreed by the plaintiff. The appellant cannot succeed and has not succeeded in satisfying us that he ever made a claim for compensation under Section 4 of the Act and succeeded in such a claim. Therefore, his further claim for getting the improvements revalued cannot be accepted.

9. We do not with to pronounce upon the question whether a person like the appellants who came into possession of the properties of a minor through his young widowed mother could be brought within the definition of tenant in Section 2(d)(iii). This matter will have to be considered in an appropriate case and the correctness of the decision of the Kerala High Court brought to our notice by the appellants' counsel tested then. The appeal has only, therefore, to be dismissed.

10. However, we feel that some equity has to be worked out in this case. This Court issued notice in the SLP on June 20, 1972. On September 1, 1972 stay of operation of decree was granted, and an opportunity was given to enable the parties to come to a compromise. On September 18, 1972, this Court directed a Commissioner to be appointed to assess the value of improvements which were made subsequent to the date up to which the compensation for improvements had already been adjudged. It was pursuant to this direction that a report was submitted showing the value of improvements at more than a lakh of rupees. On February 23, 1973, this Court granted special leave and stayed the operation of the decree on condition that the appellants deposit a sum of Rs. 5,000 each year in the trial court and permitting the respondents to withdraw the same on furnishing security. On April 1, 1980, this Court passed an order as follows :

Counsel on both sides, after arguments were heard in substantial measure, agreed with us that this was a case pre-eminently fit for settlement. The question of law raised is a ticklish one and the consequences will be 'all or nothing'. The suggestion which appears to be acceptable to counsel on both sides is one of two alternatives, the option to choose being left to the respondent, since he has won in the High Court. The alternatives are :

> (a) the appellant is to pay a sum of Rs. 50,000 to the respondent in addition to the respondent being entitled to withdraw an amount of Rs. 30,000 plus Rs. 8,000 and odd lying in deposit to the credit of the suit. Thereupon the appellant will surrender possession forthwith to the respondent. The property be kept in the same condition as it is now. Post the matter on Tuesday i.e. April 8, 1980.

11. When the matter came before us for hearing, we asked the counsel whether a compromise was possible. We found that the parties were not agreeable for a compromise. The appellants have been in possession of the properties ever since 1934 and have been enjoying the income therefrom. It is true that they have effected improvements to the property. That being so, we feel that the appellants should not be left without any compensation for the improvements effected. We make this observation purely on an equitable basis. We direct the respondents to pay to the appellants a sum of Rs. 30,000 in addition to the amount decreed. On such payment the appellants shall deliver the property to the respondents. The respondents will be at liberty to withdraw the amounts deposited by the appellants in the trial court pursuant to the orders of this Court if not already withdrawn.

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