

Smt. Nandita Bose

Vs

Ratanlal Nahata

Civil Appeal No. 1544 of 1987

(E. S. Venkataramiah, K. N. Singh JJ)

04.08.1987

JUDGMENT

VENKATARAMIAH, J. -

1. The question involved in this case is whether the High Court of Calcutta was right in returning the plaint presented by the appellant for presentation to the proper court under Order 7 Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code').

2. The appellant is the owner of Flat No. 2 (now know as 'B'), 7th Floor, Gem Building at 5/B, Russel Street, Calcutta. The said premises had been leased out in favour of the respondent on a monthly rent of Rs. 1,400. The respondent committed default in the payment of rent from the month of June 1984. The appellant, therefore, served a notice on the respondent under Section 106 of the Transfer of Property Act, 1882 and Section 13(6) of the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as 'the Act') determining the tenancy with the expiry of the month of January 1985 and called upon him to deliver possession of the premises. Upon failure of the respondent to hand over the vacant possession of the premises on the expiry of January 1985 the appellant filed a suit in Suit No. 755 of 1985 on the original side of the High Court of Calcutta for recovery of possession of the premises and for recovery of arrears of rent amounting to Rs. 11,200 and of Rs. 78,000 by way of mesne profits/damages, claiming mesne profits/damages at the rate of Rs. 7,800 per month from February 1, 1985 until November 30, 1985. The appellant valued the suit for purposes of court fee and jurisdiction at Rs. 1,06,000 which was arrived at as follows :

# (i) For purposes of possession (12 times the monthly rent of Rs. 1,400) .. Rs. 16,800 (ii) For recovery of arrears of rent up to January 31, 1985 .. Rs. 11,200 (iii) For recovery of mesne profits or damages at Rs. 7,800 per month from February 1, 1985 to November 30, 1985 .. Rs. 78,000 ----- Total .. Rs. 1,06,000 -----##

3. Any suit, the value of which was above Rs. 1,00,000, had to be filed in the High Court on its original side. Accordingly, the plaint was presented in the High Court after paying the necessary court fee on the basis of the above valuation. After the respondent was served with the summons in the suit, he made an application before the High Court for taking the plaint off its file and for returning it to the appellant for filing the same in the proper court. The respondent stated in the application that on a plain reading of the definition of the expression 'tenant' in the Act, the respondent continued to be the tenant even after the termination of his contractual tenancy and did not become an unauthorised occupant of the accommodation and he was, therefore, liable to pay rent at the rate of Rs. 1,400 per month till the date of the suit. He further stated that calculated on the above basis, the respondent would be liable to pay Rs. 14,000 only by way of arrears of rent for

the period between February 1, 1985 and November 30, 1985 instead of Rs. 78,000 claimed by the appellant by way of mesne profits/damages for the said period. The respondent contended that the valuation of the suit for purposes of jurisdiction would be Rs. 42,000 only and that the value of the suit being less than Rs. 1,00,000 it had to be filed in the City Civil Court of Calcutta. The respondent, therefore, prayed that the plaint should be returned for presentation to the proper court by virtue of Section 15 of the Code which provided that every suit should be instituted in the court of the lowest grade competent to try it. The learned Judge on hearing the above application accepted the plea of the respondent that under the provisions of the Act the expression 'tenant' included a person continuing in possession of the accommodation even after the termination of his contractual tenancy and on such termination the possession of a tenant did not become wrongful. The learned judge, therefore, held that the appellant was not entitled to claim mesne profits/damages at the rate of Rs. 78,000 per month from February 1, 1985 to November 30, 1985 aggregating to Rs. 78,000 but was entitled to recover Rs. 14,000 only at the rate of Rs. 1,400 per month in respect of that period. The learned judge found that the suit should have been valued at Rs. 42,000 and not at Rs. 1,06,000 and that the High Court had no jurisdiction to entertain the said suit. Accordingly, the learned judge directed that the plaint should be returned to the appellant for presentation to the proper court. Aggrieved by the decision of the learned judge, the appellant has filed the above appeal by special leave before this Court under Article 136 of the Constitution.

4. Under Section 15 of the Code every plaint should be instituted in the court of the lowest grade competent to try it and if the value of the suit was Rs. 42,000 only it had to be filed in the City Civil Court of Calcutta and not on the original side of the High Court. The principles which regulate the pecuniary jurisdiction of civil courts are well settled. Ordinarily, the valuation of a suit depends upon the reliefs claimed therein and the plaintiff's valuation in his plaint determines the court in which it can be presented. It is also true that the plaintiff cannot invoke the jurisdiction of a court by either grossly over-valuing or grossly under-valuing a suit. The court always has the jurisdiction to prevent the abuse of the process of law. Under Rule 10 of Order 7 of the Code the plaint can be returned at any stage of the suit for presentation to the court in which the suit should have been instituted. The question for consideration in this case is whether in the present case the plaint has been grossly over-valued with the object of bringing it within the jurisdiction of the High Court. When the suit is filed for the recovery of money the amount claimed has to be included in determining the value of the suit. In the instant case the appellant has claimed a decree for Rs. 78,000 (at the rate of Rs. 7,800 per month) for the period between February 1, 1985 and November 30, 1985 on the footing that the respondent's possession was unauthorised or illegal and he was liable to pay mesne profits or damages. The question whether the appellant would be entitled to a decree for mesne profits/damages at the rate of Rs. 7,800 per month or at any other rate after the termination of the tenancy is a matter which has to be decided in the suit. If ultimately it is found that the appellant is not entitled to get mesne profits or damages for the period subsequent to February 1, 1985 and that she is only entitled to receive Rs. 1,400 per month, the suit in respect of the claim over and above Rs. 1,400 per month, will have to be dismissed. But the question whether she was entitled to claim mesne profits or damages in respect of the period subsequent to February 1, 1985 could not have been disposed of at a preliminary stage even before the trial had commenced. That question has to be decided at the conclusion of the trial along with other issues arising in the suit. Having regard to some of the decisions on which reliance is placed by the appellant in the course of the appeal we are of the view that the matter is not free from doubt. The claim for mesne profits/damages is neither palpably absurd nor imaginary. It needs judicial consideration. The acceptance of the view put forward by the respondent may lead to encouraging a tenant who has forfeited his right to the tenancy to carry on a dilatory litigation without

compensating the landlord suitably for the loss suffered by him on account of the unreasonable deprivation of the possession of his premises over a long period until he is able to get possession of the premises through the court. We cannot, therefore, state at this stage that the claim for mesne profits/damages had been made without good faith and with the sole object of instituting the said suit before the High Court of Calcutta even though it had no jurisdiction to try it. We do not agree with the submission made on behalf of the respondent that the appellant had "dishonestly and intentionally inflated the value of the suit in order to invite the jurisdiction of a particular court which has no jurisdiction otherwise". If mesne profits/damages are found to be payable then the claim made at the rate of Rs. 7,800 per month for a premises of the nature in question which is situated in Calcutta does not appear to be fanciful having regard to the prevailing situation. We however express no opinion on the actual amount that may be awarded as mesne profits/damages in the event of the liability to pay it being established.

5. We are of the view that on the facts and in the circumstances of the case the High Court was in error in prejudging the issue relating to the right of the appellant to claim mesne profits/damages and is directing that the plaint should be returned for presentation to the proper court. We, therefore, set aside the order passed by the High Court and direct the High Court to proceed with the hearing of the suit. We also direct that the observations made by the learned judge in the course of the order against which this appeal is filed regarding the right of the appellant to claim the mesne profits/damages at the rate of Rs. 7,800 per month shall not be binding on the parties and that the said question shall be decided afresh by the High Court in the course of the trial. We, however, express no opinion on the correctness or otherwise of the observations made by the learned judge on the above question.

6. The appeal is accordingly allowed.

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