

Budhu Mal

Vs

Mahabir Prasad and Others

Ram Phal

Vs

Mahabir Prasad and Others

Civil Appeals Nos. 1271 and 1272 of 1978

(Ojha JJ)

05.08.1988

JUDGMENT

OJHA, J. –

1. These appeals by special leave have been preferred by tenants of certain premises against the judgment of the Allahabad High Court dismissing their civil revisions.

2. The facts in a nutshell necessary for the decision of these appeals are that one Mahabir Prasad had let out the premises in question to the appellants. It appears that on November 28, 1966 Sukmal Chand alias Lalloo, son of Mahabir Prasad was murdered leaving Smt. Sulochna Devi as his widow and two sons Sanjeev Kumar alias Teetu aged 1 1/2 years and Rajeev Kumar alias Cookoo aged 3 years. Mahabir Prasad on December 8, 1966 executed a registered deed with regard to certain properties including the premises in question which he described as his own by using the words "out of my property". The nature of the deed would appear from the following recital contained therein :

I give the benefits arising out of the abovesaid property to my grandsons Rajeev Kumar alias Cookoo aged 3 years, and Sanjeev Kumar alias Teetu aged 1 1/2 years s/o Sukmal Chand and guardian Smt. Sulochna Devi mother of the children, residents of Town Sardhana. Therefore Smt. Sulochna Devi will be able to maintain herself and her born and unborn children from the rent realized from the abovesaid three shops and she will use the house as her residence and with her I and my wife Sunheri Devi will live throughout life. Smt. Sulochna Devi will neither be able to transfer these shops and house nor to mortgage them by borrowing money. She will have the right to maintain her children only with the benefit arising from them. I will neither interfere with her right nor transfer the ownership of this property. Hence this Parivarik Vayawastha Patra i. e. family settlement has been scribed. dated December 8, 1966.

3. It further appears that after executing the said deed Mahabir Prasad informed the tenants concerned to make payment of rent to Smt. Sulochna Devi in terms of the aforesaid deed and the tenants started paying rent accordingly. Mahabir Prasad, however, sub-sequently executed a deed of

cancellation dated November 3, 1970. This deed too was registered and Mahabir Prasad thereby purported to cancel the deed dated December 8, 1966 for reasons stated therein. In this deed Mahabir Prasad inter alia stated that by the deed dated December 8, 1966 written in favour of Sanjeev Kumar alias Teetu and Rajeev Kumar alias Cookoo, guardian Smt. Sulochna Devi, mother had been given the right to realise rent and that the deed of cancellation "debarred them from the right to realising the rent". The tenants were informed about the deed of cancellation also.

4. Subsequently suits were instituted by Mahabir Prasad against the appellants for recovery of arrears of rent etc. and their eviction from the premises in their tenancy on the ground that notwithstanding being informed of the deed of cancellation they had not paid rent to him and were in arrears. One of the pleas raised in defence by the appellants was that the deed dated December 8, 1966 could not be unilaterally cancelled by Mahabir Prasad by the subsequent deed dated November 3, 1970 and that the rent claimed by Mahabir Prasad to be in arrears had already been paid by them to Smt. Sulochna Devi. In other words, title of Mahabir Prasad to realise rent from the appellants was disputed by them. Smt. Sulochna Devi was also arrayed as a defendant in these suits. She seems to have filed a written statement acknowledging receipt of rent claimed by Mahabir Prasad as arrears from the appellants.

5. The pleas raised by the appellants in their defence did not find favour with the Judge, Small Causes in whose court the suits were filed and consequently the suits were decreed. The appellants filed revisions before the District Judge and on these revisions being dismissed the appellants filed further revision before the High Court which too were dismissed. It is against these judgments of the High Court that these appeals have been preferred. With regard to the deed dated December 8, 1966 it has been held that by the said deed only a permission had been granted by Mahabir Prasad to Smt. Sulochna Devi to realise rent and to maintain herself and her two children and that it did not amount to a transfer of immovable property in favour of Smt. Sulochna Devi. It has further been held that in this view of the matter Mahabir Prasad was competent to revoke the permission granted to Smt. Sulochna Devi. The other plea that the suit involved a question of title and consequently was not cognizable by a court of small causes also did not, as a consequence of the aforesaid finding, find favour with the courts below.

6. It has been urged by learned counsel for the appellants that by the deed dated December 8, 1966 the right to rent and not only the right to realise the rent was transferred and this right was described in the deed by saying "I give the benefits arising out of the abovesaid property". According to learned counsel benefits arising out of immovable property themselves partook the nature of immovable property and the said deed having been acted upon, it was not open to Mahabir Prasad to unilaterally cancel the benefits conferred on Smt. Sulochna Devi and her sons, by the subsequent deed.

7. Learned counsel appearing for the landlord on the other hand urged that the courts below have rightly interpreted the deed dated December 8, 1966 to be one which only granted the permission to realise rent and the plea raised by the tenants did not involve any question of title.

8. Having heard learned counsel for the parties we are of the opinion that on the facts of the instant case the provisions of Section 23 of the Provincial Small Cause Courts Act (hereinafter referred to as 'the Act') are clearly attracted and the plaints of these cases ought to have been returned for presentation to a court having jurisdiction to determine the title. Section 23 reads as hereunder :

23. Return of plaints in suits involving questions of title.-

(1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a court cannot finally determine, the court may at any stage of the proceedings return the plaint to be presented to a court having jurisdiction to determine the title.

(2) When a court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of Section 57 of the Code of Civil Procedure (14 of 1882) and make such order with respect to costs as it deems just, and the court shall, for the purposes of the Indian Limitation Act, 1877 (15 of 1877) be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

9. With regard to the applicability of Section 23 aforesaid the High Court has taken the view that the said section gave a discretion to a court to return or not to return the plaint where a question of title is raised and did not debar it from deciding the suit. It in a particular case the Judge, Small Causes did not exercise his discretion to return the plaint the said discretion could not be interfered with in a civil revision.

10. It is true that Section 23 does not make it obligatory on the court of Small Causes to invariably return the plaint once a question of title is raised by the tenant. It is also true that in a suit instituted by the landlord against his tenant on the basis of contract of tenancy, a question of title could also incidentally be gone into and that any finding recorded by a Judge, Small Causes in this behalf could not be res judicata in a suit based on title. It cannot, however, be gainsaid that in enacting Section 23 the legislature must have had in contemplation some cases in which the discretion to return the plaint ought to be exercised in order to do complete justice between the parties. On the facts of the instant cases we feel that these are such cases in which in order to do complete justice between the parties the plaints ought to have been returned for presentation to a court having jurisdiction to determine the title. In case the plea set up by the appellants that by the deed dated December 8, 1966 the benefit arising out of immovable property which itself constituted immovable property was transferred and in pursuance of the information conveyed in this behalf by Mahabir Prasad to them the appellants started paying rent to Smt. Sulochna Devi and that the said deed could not be unilaterally cancelled, is accepted, it is likely not only to affect the title of Mahabir Prasad to realise rent from the appellants but will also have the effect of snapping even the relationship of landlord and tenant, between Mahabir Prasad and the appellants which could not be revived by the subsequent unilateral cancellation by Mahabir Prasad of the said deed dated December 8, 1966. In that event it may not be possible to treat the suits filed by Mahabir Prasad against the appellants to be suits between landlord and tenant simpliciter based on contract of tenancy in which an issue of title was incidentally raised. If the suits cannot be construed to be one between landlord and tenant they would not be cognizable by a Court of Small Causes and it is for these reasons that we are of the opinion that these are such cases where the plaints ought to have been returned for presentation to appropriate court so that none of the parties was prejudiced.

11. In the both these appeals are allowed and the judgments and decrees of the courts below are set aside and the Judge, Small Causes is directed to return the plaints of these two cases for presentation to the appropriate court as contemplated by Section 23 of the Act. The amount of rent which may have been deposited by the appellants in any of the courts below in these suits shall, however, not be refunded to the appellants and shall be disbursed in accordance with the decision of the appropriate civil court. In case the dispute about title is settled by the parties amicably, the aforesaid amount of

rent can be disbursed in pursuance of such amicable settlement also. We further direct that the tenant-appellants shall, till the dispute about title is decided or settled, deposit rent of the premises in their tenancy regularly as contemplated by sub-section (2) of Section 30 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. In the circumstances of the case, the parties shall bear their own costs throughout.

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