

Rukmini Amma Saradamma

Vs

Kallyani Sulochana and Others

Civil Appeal No. 5403 of 1992

(M.N. Venkatachaliah, S.Mohan, Dr. A.S. Anand JJ)

16.12.1992

Judgement

MOHAN, J. :-

1. Leave granted.

2. This appeal by special leave is directed against the judgment dated 28-5-91 of the High Court of Kerala in C.R.P. No. 1752 of 1990-D.

3. The short facts leading to this appeal are as under:

The petition schedule shed and the premises were obtained by the appellant and the second respondent under a partition of the year 1959, The second respondent is the mother of the appellant. In 1969, the premises were let out to the first respondent by the husband of the second respondent on a monthly rent of Rs. 15. On 24-1-1969 a rent deed was executed (Ex. A 1). After the death of the husband of the second respondent the first respondent paid rent up to September 1976. Thereafter she committed default in payment of rent. A notice was issued by the second respondent terminating the tenancy with effect from 20-4-77 and demanded vacant possession with arrears of rent.

4. On 14-2-78, the second respondent relinquished her entire right in favour of the appellant. Thereupon, the appellant obtained absolute right over the property. She filed a petition for eviction on two grounds: (i) the first respondent committed default in payment of rent and (ii) she will be entitled to recover possession of the petition schedule shed for demolition. By an order dated 28-6-82 the Rent Controller directed eviction on the ground of arrears of rent. However, the claim for recovery of building for demolition was disallowed.

5. Aggrieved by the order of the Rent Controller, the appellant preferred an appeal before the Appellate Court. By its order dated 14-12-83 the finding of the trial Court was reversed in so far as the bona fide need was concerned and the order of eviction was confirmed on this ground as well. Thereupon, the first respondent filed a revision under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the Act) before the District Court, Kollam. That was dismissed on 24-6-85. The first respondent preferred a further revision before the High Court under Section 115 of the Civil Procedure Code (hereinafter referred to as the Code). The High Court by its judgment dated 21-8-86 set aside the finding of the Appellate Court and the Revisional Court and the matter was remitted to the trial Court.

6. On remit, the Rent Controller dismissed the petition filed by the appellant. Hence, the appellant filed an appeal to the District Court. By its order dated 30th of June, 1990 it directed eviction of the first respondent on the ground of bona fide need under Section 11(3) of the Act. The first respondent aggrieved by the order of eviction preferred a revision. The Division Bench of the High Court set aside the order of eviction holding that the landlady was not successful in proving her case of bona fide need. It is under these circumstances, this appeal by special leave has come to be preferred.

7. Learned counsel for the appellant would urge that the High Court had misconceived the scope of revisional jurisdiction. Having held that under Section 20 of the Act, a re-appreciation of the evidence as such was not called for, yet the High Court went into the factual details and re-appreciated the entire evidence as though it was an Appellate Court.

8. Notwithstanding the fact that Section 20 of the Act conferring revisional jurisdiction of the High Court is widely worded, such a jurisdiction cannot be converted into an appellate jurisdiction. This Court in *Rai Chand Jain v. Chandra Kanta Khosla* (1991) 1 SCC 422: (AIR 1991 SC 744) has clearly pointed out the scope of such revisional jurisdiction and has held that it cannot act as a second court of appeal. Therefore, the impugned order is liable to be set aside. Without prejudice to the above, it is submitted that this Court in *Aundal Ammal v. Sadasivan Pillai*, AIR 1987 SC 203 has held that no second revision is permissible to the High Court either under Section 115 of the Code or under Section 20 of the Act. The District Court has exercised the revisional jurisdiction. Hence, the remit order in CRP No. 1719 of 1985 is void and is illegal. If that remit order goes, what remains is only the revisional order of the District Court, Kollam, confirming the appellate order directing revision on the ground of bona fide need. Hence, the impugned order calls for interference.

9. In opposition to this, it is urged on behalf of the respondent that the revisional jurisdiction conferred under Section 20 of the Act is wider in scope in comparison to Section 115 of the Code. Therefore, there is no need to confine oneself to illegality alone. Further, the revisional court could consider the propriety of the order under revision. It is on this score the High Court chose to interfere with the finding of the appellate authority. In exercise of this jurisdiction it has correctly appreciated the evidence and come to the right conclusion.

10. It is too late in the day to urge on behalf of the appellant that the earlier exercise of second revisional jurisdiction by the High Court was wrong. She ought to have raised it then and there. Having taken a chance after remit and pursued the eviction petition, merely because the order of the High Court went adverse to the appellant, it cannot be contended that the order of remit in exercise of second revisional jurisdiction is wrong. Even otherwise, under Section 115 of the Code the revisional powers could be exercised. *Aundal Ammal's case* (AIR 1987 SC 203) (*supra*) has no application to this case having regard to the peculiar circumstances.

11. We shall now proceed to consider the correctness of these submissions.

12. Firstly, as to the scope of revisional jurisdiction under S. 20 of the Act. S. 20 reads as under :

"20. Revision:- (1) In cases where the appellate authority empowered under S. 18 is a Subordinate Judge, the District Court, and in other cases the High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for

the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings and may pass such order in reference thereto as it thinks fit.

(2) The costs of and incident to all proceedings before the High Court or District Court under sub-sec. (1) shall be in its discretion."

13. Revision as seen from Black's Law Dictionary (Fifth Edition) at page 1187 denotes:

"A re-examination or careful reading over for correction or improvement."

14. Under S. 115 of the Code the revisional jurisdiction is exercisable by the High Court in the following three cases:

(i) When the Subordinate Court appears to have exercised a jurisdiction not vested in it by law, or

(2) to have failed to exercise a jurisdiction vested in it by law, or

(3) to have acted in exercise of its jurisdiction illegally or with material irregularity.

15. Unlike this jurisdiction, in S. 20 power is given to the revisional authority to call for and examine the records relating to any order for the purposes of satisfying itself as to the legality, regularity or propriety of such order. As to the distinction between these two jurisdictions this Court had occasion to consider in *H. V. Mathai v. The Subordinate Judge, Kottayam* (1969) 2 SCC 194 at 198: (AIR 1970 SC 337 at p. 340) and held thus:

"The words of S. 20 however are much wider than those in S. 115 of the Code of Civil Procedure. Under S. 20(i) the District Court is empowered to call for and examine the records relating to any order passed or proceedings taken under the Act for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and pass such order in reference thereto as it thinks fit. On the words of this section we cannot hold that a revision is limited to a mere question of jurisdiction."

16. In *Rai Chand Jain v. Miss Chandra Kanta Khosla* (1991) 1 SCC 422: (AIR 1991 SC 744), arising under E. P. Urban Rent Restriction Act, 1949 (3 of 1949), whereunder the revisional jurisdiction was conferred u/S. 15(5) of the said Act. At page 430 (of SCC) : (at p. 749 of AIR) this Court held:

"It is appropriate to note in this connection the relevant provision of S. 15(5) of the Act which specifically conferred jurisdiction on the High Court in an application for revision against the order of the appellate authority to satisfy itself as to the legality or propriety of the order made by the appellate authority. On a plain reading of this provision it is clear and transparent that the revisional jurisdiction conferred on the High Court is much wider than the jurisdiction provided under S. 115 of the Code of Civil Procedure. The High Court while exercising this jurisdiction is competent not only to see the irregular or illegal exercise of jurisdiction but also to see to the legality or propriety of the order in question."

17. Again at page 431 (of SCC) : (at p. 750 of AIR) it was observed:

"The High Court in exercising its power under S. 15(5) of the said Act is within its jurisdiction to reverse the findings of fact as the same were improper and also illegal. It is appropriate to refer in this connection to the decision in the case of Ram Dass v. Ishwar Chander (1988) 3 SCC 131 : (AIR 1988 SC 1422) where it has been held that S.15(5) of the Act enables the High Court to satisfy itself as to the 'legality or propriety' of the order under revision, which is, quite obviously, a much wider jurisdiction. That jurisdiction enables the Court of revision, in appropriate cases, to examine the correctness of the findings of facts also, though the revisional court is not "a second court of first appeal" (see Dattonpant Gopalvarao Devakate v. Vithalrao Marutirao Janagaval 1975 (2) SCC 246 : (AIR 1975 SC 1111).)"

18. In an earlier ruling, the scope of revisional jurisdiction of the same section i.e. S. 15(5) of the said Act came up for consideration. In Smt. Rajbir Kaur v. M / s. S. Chokosiri & Co. (1989) 1 SCC 19: (AIR 1988 SC 1845), the Division Bench to which one of us (Venkatachaliah, J.) was a party held in paragraph .42 at page 37 (of SCC) : (para 16, at P. 1854 of AIR):

"The scope of the revisional jurisdiction depends on the language of the statute conferring the revisional jurisdiction. Revisional jurisdiction is only a part of the appellate jurisdiction and cannot be equated with that of a full-fledged appeal. Though the revisional power - depending upon the language of the provision - might be wider than revisional power under S. 115 of the Code of Civil Procedure, yet, a revisional court is not a second or first appeal."

19. As far as the present Act is concerned S.20 contains the word "propriety" also. As to the meaning of the word "propriety" in Raman and Raman Ltd. v. The State of Madras 1956 SCR 256 at page 264 : (AIR 1956 SC 463 at p. 467) it was held thus:

"The word "propriety" has nowhere been defined in the Act and is capable of a variety of meanings. In the Oxford English Dictionary (Vol. VIII), it has been stated to mean "fitness; appropriateness; aptitude suitability; appropriateness to the circumstances or conditions, conformity with requirements, rule or principle; rightness, correctness, justness, accuracy"."

20. Therefore, the question would be whether in the context of this provision the High Court was right in re-appreciating the evidence and coming to a different conclusion? In the impugned judgment in paragraph 7 the High Court observed:

"Under S. 20 of the Act though re-appreciation of the evidence as such is not called for, the pleadings and evidence have to be examined to satisfy the legality, regularity of the order of the lower authorities."

21. We are afraid this approach of the High Court is wrong. Even the wider language of S. 20 of the Act cannot enable the High Court to act as a first or a second court of appeal. Otherwise the distinction between appellate and revisional jurisdiction will get obliterated. Hence, the High Court was not right in re-appreciating the entire evidence both oral or documentary in the light of the Commissioner's report (Exts. C1 and C2 Mahazar). In our considered view, the High Court had travelled far beyond the revisional jurisdiction. Even by the presence of the word "propriety" it cannot mean that there could be a re-appreciation of evidence. Of course, the revisional court can come to a different conclusion but not on a re-appreciation of evidence; on the contrary, by

confining itself to legality, regularity and propriety of the order impugned before it. Therefore, we are unable to agree with the reasoning of the High Court with reference to the exercise of revisional jurisdiction.

22. As to whether a second revision lay to the High Court this Court by the judgment in Aundal Animal's case (AIR 1987 SC 203) (supra) held that no such revision lay. On this point the High Court referring to this very judgment held that the jurisdiction under Art. 227 of the Constitution is not taken away. Therefore, the earlier order dated 21-8-86 passed in exercise of revisional jurisdiction under S. 115 of the Act is not void. We need to pause to consider this because this point ought to have been urged by the appellant immediately after the order of remit was made. Pursuant to the order of remit the appellant took a chance by participation in the proceedings before the Rent Controller, taking up the matter in appeal. Thus, having acquiesced in these proceedings she cannot question the first remit order.

23. For the foregoing reasons, we set aside the judgment of the High Court and remit the matter to the High Court for reconsideration, confining itself to the revisional jurisdiction as pointed out above. Accordingly, the civil appeal will stand allowed. However, there shall be no order as to costs. Appeal allowed.

</html