SUPREME COURT OF INDIA

Shri Mahabir Prasad Jain

Vs.

Shri Ganga Singh

C.A.Nos. 5732-33 of 1999

(M.Srinivasan, A.P.Mishra and N.Santosh Hegdes JJ.)

05.10.1999

ORDER

M. SRINIVASAN, J.

1. Leave granted.

2. It is very unfortunate that a summary suit filed under Section 6 of the Specific Relief Act 1963 by the respondent herein has been disposed of by the Trial Court without understanding the law relating to such suits. Besides, the Trial Court has also overlooked material evidence on record raising some erroneous presumptions. Moreover, the Trial Court has granted a relief in the decree which could not have been granted in a suit under Section 6 of the Specific Relief Act and which was not in fact prayed for by the respondent in his plaint. The judgment of the High Court in revision petition filed by the appellant herein under Section 115 C.P.C. is no better. It has confirmed the judgment of the Trial Court without considering the aforesaid matters. We have no hesitation to point out at this stage that the judgments of both the courts arc totally unsatisfactory if not perverse. As the litigation, has already been pending for more than 13 years, it is not proper to remand the matter for fresh consideration. Hence, we have gone through the entire evidence on record by perusing the original record ourselves for disposing of these appeals finally.

3. The respondent herein filed suit No. 557/86 on the file the Court of Senior sub-Judge, Delhi against the appellant and the Municipal Corporation of Delhi for a permanent injunction restraining the defendants therein from dispossessing him from the tuck shop in premises No. G-19, N.D.S.E. Part-I, New Delhi-110049 and occupying the same and constructing anything on the same in any way. That suit was filed on 14.7,86. In the body of the plaint it was alleged that on the night of 12.7.1986 the defendant No. 1 therein with the help of local police threw the entire goods of the plaintiff from the tuck shop in the verandah and started constructing basement and covering the tuck shop of the plaintiffs place with the glass which was refuted and objected to by the plaintiff but the local police had not helped the plaintiff and the officials of the Municipal Corporation had also sided with the appellant herein in raising the illegal construction, violating building bye-laws and without prior permission of the Corporation. It was also alleged that the action of the defendants in raising the illegal constructing and forcibly removing the plaintiff from the premises and converting the tuck shop into their private room and basement was altogether illegal, arbitrary and without any justification of any kind whatsoever. In Paragraph 10 of the said plaint it was expressly stated that the cause of action for filing that suit arose on 12.7.84 at night. There was an application for an ad

interim injunction pending that suit. The Court granted an order of ex parte injunction and also appointed a local commissioner to report after inspecting the premises. The commissioner submitted his report which did not mention anything about any construction activity being carried on at that time. It did not also mention that the tuck shop of the respondent herein or any part thereof was inside the premises of the appellant. On 29.9.86, the Court passed an order of injunction restraining the appellant herein from disturbing the possession of the respondent till the disposal of the said suit. That suit is said to be still pending.

4. Even before the order of injunction was passed on 29.9.86, the respondent herein file an application on 11.8.86 before the Additional Rent Controller, Delhi under Section 45 of the Delhi Rent Control Act alleging disconnection of electricity by the appellant to the said tuck shop. An interim order was passed by the Additional Rent Controller, Delhi directing the appellant to restore the electricity to the said shop. The order was confirmed on 19.8.86 without going into the question on merit as to whether the respondent was a tenant under the appellant. Against the order directing restoration of electricity, an appeal was preferred by the appellant before the appellate authority. That appeal was dismissed and the appellant preferred a revision petition in the High Court. When the revision petition was pending electricity connection was restored whereupon the respondent made a statement before the Additional Rent Controller that electricity supply had been restored and the petition be dismissed as withdrawn. The Additional Rent Controller dismissed the petition in view of the statement made by the respondent. When the revision petition was taken up by the High Court, neither party appeared before that Court, obviously because the main petition had already been dismissed as withdrawn, but the High Court went on to confirm the order of the Appellate Authority holding that there was no merit in the revision petition.

5. Even when the first suit filed by the respondent was pending and there was an order of interim injunction in his favour, the respondent filed a second suit bearing No. 793/86 on the file of the Sub Judge, Delhi against the appellant under Section 6 of the Specific Relief Act from which the present appeal arises. The prayer in the suit was for grant of decree for possession in favour of the respondent in respect of part of the tenanted premises as shown red in the site plan attached therewith in the premises bearing No. G-19, New Delhi South Extension Part I, New Delhi. The basis of the claim in the suit was that the respondent became a tenant on or about 1.11.1969 under one Saraswati Devi through her attorney Lal Chand Gaur at a monthly rent of Rs. 200. It was alleged by the respondent that the appellant purchased the premises on 12.2.1969 and became the landlord of the premises and therefore he became a tenant under the appellant by operation of law with effect from 12.2.1969, The suit was contested by the appellant. The Trial Court framed as many as 9 issues. Issue No. 5 was whether the plaintiff was inducted as a tenant as alleged in the plaint by the predecessor-in-interest of the defendant. The Trial Court found categorically against the plaintiff (respondent herein) on that issue. Issue No. 7 was whether the plaintiff was in possession of the alleged portion on 22.7.1986 and was dispossessed by the defendant as alleged in the plaint. The finding on that issue was in favour of the plaintiff. The Trial Court granted a decree in the suit holding that the plaintiff was entitled to the portion at the back of the shop inside the wall so as to bring his shop/khoka half inside the premises bearing No. (1-19, South Extension Part-I New Delhi and half in the verandah portion for keeping the tuck shop inside to be delivered to the plaintiff after removing obstruction including dismantling of the glass if it was not handed over to the plaintiff by the defendant within 15 days of the passing of the order as per the site plan attached.

6. Aggrieved by the decree, the appellant approached the High Court under Section 115 C.P.C. as it was the only remedy available to him in law. The High Court observed that the only contention

urged before it was that the suit was barred by limitation. Holding against the appellant on that question the High Court dismissed the revision petition. The appellant has preferred this appeal. When notice was ordered on 20.3.1998 in the Special Leave Petition, this Court passed an order that status quo as on that date shall be maintained. When the matter was heard on 23.3.99, this Court passed the following order:

Since a dispute has been raised whether the date mentioned in paragraph 1 of the plaint is 1.11.1969 or 1.11.1968 for which original record is necessary which is not yet called for, we direct the Registry to get the original record either from the High Court or from the Subordinate Court, wherever it is available within four weeks.

List the matter after five weeks.

7. Pursuant to the said order, the entire original record had come to this Court and we have had the benefit of going through the same.

8. Mr. Dushyant Dave, learned Senior Advocate for the appellant placed before us the following contentions:

(i) The Trial Court having found against the respondent's ease of tenancy failed to consider the evidence on record on that footing. In other words, his argument is that once the basis of the claim made by the respondent that he came into possession of the properly as a tenant of the appellant's predecessor-in-title has been found against, the Court ought to have realized that the respondent could never have been the tenant on the property and consequently he could not have been in possession of the same as such. It is rightly pointed out that the respondent had no alternative pleading that if his case of tenancy under the appellant's predecessor is found against, he should be considered to have become the tenant of the appellant on a later date after the appellant purchased the property. Such an inconsistent alternative plea could not have been raised by the respondent and as a matter of fact it was not raised.

(ii) The second contention is that the dispossession of the respondent was completed in 1984 and the suit having been filed in November 1986 was clearly barred by limitation. It is submitted in this connection that both the courts have erroneously discredited the document proving the payment of Rs. 22,972 for regularisation of unauthorised construction on a wrong premise that payment will not prove the completion of unauthorised construction overlooking that for the purpose of calculating the relevant charges and the compounding fee, the total area of the unauthorised construction had to be and had been measured by the Municipal Corporation of Delhi and it is only on that basis the compounding fee was collected on 17.12.84. Learned Counsel submits that the said document is by itself sufficient proof of a completed construction in 1984 which meant that the respondent could not have been and was not in possession thereafter.

(iii) The third contention is that there is no explanation on the part of the respondent for filing the second suit for possession when he had earlier filed a suit for injunction as if he was in possession and obtained an order of interim injunction. If the respondent had been factually in possession when he obtained the order of injunction, he would have rushed to Court with an application for contempt against the appellant In the first suit which is alleged to be still pending. Alternatively, if the respondent had been dispossessed after the order of injunction was passed in the first suit, he could have and would have applied for amendment of the prayer in the first suit and converted the same

into one for possession instead of filing a fresh suit.

(iv) The fourth contention is that the material discrepancies between the averments in the plaint in the first suit and the plaint in the second suit have been completely overlooked and ignored by the courts below. It is submitted by the learned Counsel that none of the aforesaid points has been considered either by the Trial Court or by the High Court and consequently both the judgments are vitiated and deserve to he set aside.

9. Per contra, learned Counsel for the respondent has contented that in the High Court the only question argued by the appellant herein was that of limitation and it is not open to the appellant to enlarge the scope of the controversy in these appeals. At one stage, learned Counsel also contended that there was no issue on limitation even in the Trial Court. However, he did not press that contention as he found that Issue No. 7 was the relevant issue under which the Trial Court has considered the question of limitation and the High Court has also proceeded on the footing that Issue No. 7 covers (he question of limitation. The second contention of learned Counsel for the respondent is that the dispossession of the respondent was only in July or August 1986 and it was not in due process of law and consequently the appeal deserves to be dismissed.

10. We have already referred to the specific averment in the plaint that the respondent became a tenant under one Saraswati Devi though her attorney Lal Chand Gaur on 1.11.1969 at a monthly rent of Rs. 200. In the very same paragraph in the plaint it is averred that the appellant purchased the property on 12.2.1969 and became the landlord of the premises whereupon the respondent became a tenant under the appellant by operation of law. On the face of it, (he averments arc inconsistent and do not make any sense. In order to verify whether the date '1.11.69' was found in the original plaint, this Court called for the original record and it is now seen that the same date is mentioned in the original plaint without any room for any doubt. Even assuming for a moment, that the date was a mistake for '1.11.68' as now sought to be contended, there being no evidence in support of the same, the Trial Court has rightly found against that pica. A perusal of the evidence of the respondent as PW-1 is itself sufficient to show that his case of tenancy under the predecessor-in-title of the appellant is absolutely false. Even in the chief-examination, PW-1 has admitted that he had never seen Smt. Saraswati Devi and that Lal Chand told him that she was owner of the premises. It is also his deposition that for the first time, he met Lal Chand at the time of taking the shop on tenancy and thereafter he did not meet the said Lal Chand. According to him he used to pay the rent to the Manager but he docs not remember the name of the Manager. Admittedly, there is no lease deed or rent note or rent receipt to support the plea of tenancy. The Trial Court has rightly held that no case of tenancy as put forward by the respondent has been proved.

11. But unfortunately, while discussing Issue No. 8, the Trial Court has assumed that it had given a finding earlier in its judgment that the respondent herein was a tenant in respect of a tuck shop half inside the wall and half outside the wall if not earlier, from 1972 onwards. We have searched in vain the entire judgment of the Trial Court for such a finding. While negativing the contention of the respondent on Issue No. 5 relating to his tenancy under the predecessor-in-title of the appellant, the Trial Court made an observation that evidence brought on record by the respondent at the earliest related to 1972 and prior to that, there was no evidence. That would not amount to a finding by any stretch of imagination, that the respondent became a tenant in 1972 under the appellant. In any event such a finding could not have been given by the court as it is not the case of the respondent that he became a tenant under the appellant directly after the appellant purchased the property. The only case put forward by the respondent in the plaint is that he became a tenant under the prior owner by

contract and became a tenant under the appellant by operation of law when the latter purchased the property from the prior owner.

12. At this stage we think it better, to set out the grievous errors committed by the Trial Court which have been ignored by the High Court. It is the specific case of the appellant in the written statement that the respondent herein was never a tenant under him or under his predecessor-in-title and that the respondent had been engaged on daily wages through his brother Ajit Prasad or other relatives to sell pan etc. It is also his plea that other persons besides the respondent were similarly engaged on daily wages. It was however, pleaded that the respondent was not regular in attendance and when his services were not engaged, he requested the appellant's brother Ajit Prasad to recommend to the appellant to give a last chance by engaging him as a panwala on daily wages. That was in about July 1986. Taking pity on his condition and on the assurance of Ajit Prasad that the respondent would behave properly, the appellant engaged his services. Immediately thereafter, the respondent filed the first suit for injunction claiming to be a tenant. This specific plea of the appellant was supported by his own evidence and the evidence of Ajit Prasad as DW-3. The correctness of the plea and acceptability of the evidence have not been considered by the Trial Court anywhere in its judgment though they have been referred to as part of the narration of facts. The Trial Court has not even framed an issue on that question. The Trial Court having found expressly against the case of tenancy put forward by the respondent ought to have considered whether the plea of the appellant was true or not. If the court had found in favour of the appellant with regard to the said plea, the suit filed by the respondent under Section 6 of the Specific Relief Act was not maintainable as he could not claim to have been in possession of the premises. Possession of a servant or agent is that of his master or principal as the case may be for all purposes and the former cannot maintain a suit against the latter on the basis of such possession. (Vide Southern Roadways Ltd. Madurai v. S.M. Krishnan: AIR1990SC673). It is very unfortunate that the High Court has entirely overlooked this aspect of the matter,

13. While discussing Issues 6 and 7, the Trial Court has placed reliance on the order passed by the Additional Rent Controller directing restoration of electricity in the application filed by the respondent under Section 45 of the Delhi Rent Control Act and proceeded as if the tenancy of the respondent was upheld by that Court. The Trial Court has failed to take note of the fact that the Additional Rent Controller did not decide the question whether the respondent was the tenant under the appellant. The trial court has made a reference also to the order of interim injunction passed in the first suit 557/86 by the Sub-Judge, First Class and proceeded on the footing that the case of tenancy put forward by the respondent was upheld in the said order. The Trial Court has overlooked, that in the said order, the Sub-Judge First Class has only expressed a prima facie view of the matter and not come to any conclusion on the basis of any specific evidence. The relevant observation in the order of the Sub-Judge reads as follows:

Prima facie an exclusive possession of the plaintiff shows that he is a tenant in respect of the tuck shop/Almirah. Exclusive possession by itself gives rise to a presumption of tenancy and there is nothing on record to rebut this presumption.

14. Apart from the fact that the Sub-Judge has taken a prima facie view of the matter, it is seen that he has proceeded on an erroneous assumption of the position in law. Exclusive possession by itself will not give rise to any presumption of tenancy and the Sub-Judge is entirely wrong in expressing

that opinion in that order. Consequently, the Trial Court in the present proceeding is in error in placing any reliance on the said order of the Sub-Judge.

15. The Trial Court has placed reliance on some inspection report of 1972 of House Tax Department for holding that the tuck shop was inside the premises bearing No. G-19, N.D.S.E. Part I and that a wooden almirah was earlier inside the wall which had been pushed away thereafter. None of the said matters is relevant in this case. The two crucial questions are whether the respondent was in exclusive possession of the premises as claimed by him and whether he was dispossessed within a period of six months prior to the date of the suit. Unfortunately, the Trial Court has ignored the relevant materials with regard to the said questions and overlooked that the specific case put forward by the respondent has been negatived by itself.

16. The report of the local commissioner appointed in the first suit 557/86 disproves the averments made by the respondent in the plaint in that suit as well as the plaint in the second suit. It is worthwhile mentioning here that the averments in Para 5 of the plaint in the earlier suit are sufficient to prove that he was already dispossessed and yet he prayed for injunction as if he was in possession. It is unnecessary for us to take up the exercise of pointing out the material discrepancies between the averments in the two plaints. Suffice it to say that the respondent has failed to offer any explanation as to why in Paragraph 10 of the plaint in the earlier suit he alleged that the cause of action arose in 1984. We put a specific question to Mr. Shiv Pujan Singh, learned Counsel appearing for the respondent before us as to whether he had any explanation for the same. He had no answer to our question.

17. It is significant to point out that in the plaint in the present suit namely 793/86, in Paragraph 10 the date on which the cause of action is said to have arisen was originally typed as "12.7.84" but the figure "4" has been later corrected in ink as "6". For this also, there is no explanation.

18. Learned Counsel appearing for the respondent has placed strong reliance on some extracts from the House Tax Register and submitted that the respondent's name has been specifically mentioned therein as a tenant. We find that for the first time in the document dated 193.1986 the respondent's name has been mentioned in the column, 'tenant or occupier' and in the previous Registers no name was mentioned. The column mentioned only "Panwala". Admittedly, disputes has arisen between the parties in 1984 and it is quite obvious that the respondent has chosen to get his name entered in the Register maintained by the House Tax Department after the dispute arose. On a perusal of all the records in the case, we have no hesitation whatever to hold that the respondent was not in exclusive possession at any time as a tenant and even if he was in possession, the dispossession took place in 1984 when the appellant raised a construction which was not authorised by the Municipal Corporation and paid the compounding fee. Neither the Trial Court nor the High Court is right in taking the view that compounding fee would have been paid even before the completion of the unauthorised construction and one part of the construction would have been completed only long afterwards. There is no warrant for such a presumption or assumption.

19. As pointed out earlier, the compounding fee can be calculated only on the basis of the area of the unauthorised construction and it is possible only when the same is completed. There is no suggestion whatever to the appellant or his witnesses that he started the unauthorised construction sometime in 1984 and completed it much later in 1986. In the absence of any such suggestion to the witnesses of the appellant and in the absence of any such evidence on the side of the respondent, the Courts below are not justified in assuming that the payment of compounding fee docs not support

the case of the appellant that the unauthorised construction was completed in 1984.

20. The High Court has made the following observation in Paragraph 13 of its judgment:

In my view, simply because the compounding fee was paid in December 1984, it would not establish that the construction of the basement was complete then. There is no completion certificate or other evidence placed on record with regard to completion of basement. The alleged act of dispossession of the respondent was fixing of a glass which pushed out the respondent's shop into the verandah. This could be done at the time of renovations, even if the basic structure of the basement was complete.

The above observation is wholly unwarranted as it is not the case of the respondent that the basic structure of the basement was completed earlier and fixing of a glass was much later. The averments in the plaint are significantly silent on this aspect of the matter. The plaint does not mention anywhere the exact date on which the respondent was dispossessed.

21. While the High Court has taken the trouble of referring to the evidence of the respondent as PW-1, it does not choose to consider the evidence on the side of the appellant in the light of the finding given by the Trial Court that the respondent has not proved the case of tenancy as pleaded by him. We are sorry to point out that the High Court has failed to do its duty.

22. The way in which the respondent has been instituting different proceedings in different for a within a short time making inconsistent allegations show that the respondent has been abusing the process of Court and not come to Court with clear hands. He is not entitled to get any equitable relief under the Specific Relief Act.

23. The only other argument which has to be considered is that of the respondent's counsel that it is not open to the appellant to enlarge the scope of the controversy as the appellant's counsel has confined his arguments before the High Court to the question of limitation. The High Court has no where stated that the counsel for the respondent herein had made any concession with regard to the other questions. Just because the counsel in the High Court thought fit to argue the question of limitation only, the right of the appellant to reiterate the case put forward in the trial court and in the grounds of revision before the High Court is not lost so long as there was no concession or admission by the appellant or his counsel. But, as a matter of fact, the scope of the controversy before us has not been enlarged in any manner. Even for the purpose of considering the plea of limitation, the question whether the respondent was in exclusive possession as a tenant as claimed by him is absolutely necessary. Once the case of tenancy is found against, it is for the respondent to establish that his possession is exclusive possession and not one on behalf of the appellant. The question whether a relief can be granted to the respondent under Section 6 of the Specific Relief Act hinges on that issue. The respondent having failed to prove the only plea of tenancy put forward by him is not entitled to get any relief in this suit.

24. As already pointed out, the decree passed by the Trial Court as affirmed by the High Court travels beyond the prayer in the plaint and also the scope of Section 6 of the Specific Relief Act. Apart from granting a decree for possession as prayed for by the respondent, the trial court has granted an additional relief which was not prayed for by him in that the trial court has directed the

appellant to remove the construction put up by him including the dismantling of the glass. Such a relief cannot be granted under the provisions of Section 6 of the Specific Relief Act, particularly when there is no prayer therefore in the plaint.

25. In the result, the appeals are allowed. The judgment and the decree of the Courts below are set aside. The Suit No. 793/86 on the file of the Subordinate Judge stands dismissed. The parties shall bear their respective costs.