

SUPREME COURT OF INDIA

Kuldeep Kumar Dubey

Vs.

Ramesh Chandra Goyal (D) Th Lrs.

C.A.No.1094 of 2015

(T.S.Thakur and Adarsh Kumar Goel JJ.)

21.01.2015

JUDGMENT

ADARSH KUMAR GOEL, J.

1. Leave granted.

2. This appeal has been preferred against judgment and order dated 19th October, 2012 passed by the High court of Judicature at Allahabad in Civil Misc. Writ Petition No.52578 of 2004.

3. The question for consideration is whether the suit filed by the father of the appellants in respect of property owned by appellants Nos.1 and 2 could be held to be not maintainable even when the appellants were added as plaintiffs as heirs of their father who died during pendency of the suit and whether description of the appellants who are owners as heirs instead of owners in their own right will be a case of mere "error, defect or irregularity" not affecting the merits or jurisdiction of the Court which did not affect the maintainability of the suit.

4. Raj Kumar was owner of the suit property who died on 4th February, 1994. Shiv Kumar Dubey, brother of Raj Kumar filed the suit for eviction of the respondent-tenant in his capacity as heir of Raj Kumar on the ground of non payment of rent on 24th April, 1995. During pendency of the suit, Shiv Kumar Dubey died on 11th August, 1996 and the appellants Kuldeep Kumar and Pradeep Kumar sons of Shiv Kumar Dubey and Smt. Dayawati widow of Shiv Kumar Dubey were substituted as plaintiffs being his heirs. The suit was contested by the tenant (who has also died during pendency of the proceedings in this Court and who has been substituted by his legal heirs) by filing a written statement admitting that Raj

Kumar was the owner and Shiv Kumar was his brother and heir apart from other heirs. It was stated that rent was deposited in Court. Sister of Raj Kumar, an heir of Raj Kumar, was also a necessary party. It may be mentioned that Raj Kumar had executed Will in favour of appellants Kuldeep Kumar and Pradeep Kumar but the said appellants were shown in cause title only as heirs of Shiv Kumar and not as owners. No objection was, however, raised by the tenant on that account. The trial Court framed the following issues :

- "1. Whether the plaintiff is the landlord of the defendant?
2. Whether the defendant has defaulted in payment of rent and has not made the payment of rent from 01.06.1993 and the computed amount of Rs.830, of water tax?
3. Whether the disputed shop is on rent of Rs.75/- per month including house tax and water tax?
4. Whether the suit is bad for the non-joinder of necessary parties?
5. Whether defendant is entitled to get the benefit of section 20(4) Uttar Pradesh Rent Act?
6. Whether the eviction notice dated 22.07.1995 is against law?"

Issue Nos. 1 and 4 were decided in favour of the plaintiffs and against the defendant. It was observed that the defendant had not mentioned the name of any other heir of Raj Kumar in the written statement.

Issue Nos. 2 and 5 were also decided against the defendant. It was held that the defendant had defaulted in payment of rent from 1st June, 1993 and was not entitled to benefit under Section 20(4) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Under Issue No.3, the rate of rent was held to be Rs.75/-per month, excluding the house tax and the water tax. Under Issue No.6 it was held that the tenancy was validly terminated. Accordingly, the trial Court passed a decree for eviction and for payment of rent on 8th December, 1998.

5. Aggrieved by the decree of the trial Court, the tenant preferred a revision petition before the District Judge, Moradabad, which was allowed vide order dated 2nd September, 2004. It was held that the plaintiff had himself produced the Will dated 14th December, 1988 whereby Raj Kumar, original owner of the property in question bequeathed the property in favour of the appellants Pradeep Kumar and Kuldeep Kumar sons of Shiv Kumar. In such situation, Shiv Kumar did not have any right to file the suit and only his sons had such a right. The relevant observations are as under:

"Whereas Shiv Kumar died on 11.08.1996/04.02.1998 and in his place, his two sons Kuldeep Kumar and Pradeep Kumar and his wife Dayawati have been impleaded in his place, as his representatives and the plaintiff has submitted a Will document No.32 ga vide which Raj Kumar has given all his properties house and shop and bhoomidaari vide Will to both the sons of Shiv Kumar - Pradeep Kumar and Kuldeep Kumar, on 14.12.1988 by executing it and registering it, which Will has been submitted by the plaintiff and the defendant has not denied it. On that basis, from the above Will, whatever the representatives of Raj Kumar would get upon his death, all that will go only to Pradeep Kumar and Kuldeep Kumar and only they are the representatives, owner and landlords of the property of Raj Kumar. It is also pertinent to mention this fact here that above Will is in the name of both the sons Kuldeep and Pradeep Kumar of Shiv Kumar and it also cannot be considered that the knowledge of the said Will was not known to Shiv Kumar.

Beside this, PW1 Pradeep Kumar has stated in his examination in chief that his uncle was Raj Kumar who has expired on 4.2.94 and that his uncle had given will in regard to all his moveable and immoveable properties in his favour along with his brother Kuldeep Kumar on which statement no cross examination has been done by the respondent and nor the said will was challenged in the arguments due to which reason also the statement of Pradeep Kumar in connection with the will is found as acceptable in the evidence and the said will also is acceptable as evidence due to not being challenged by the respondent. Here this fact is also pertinent that both parties have accepted that Raj Kumar was the owner of the property in question and this is acceptable to the petitioner also that on 14.12.88, Raj Kumar had granted will of all his moveable and immoveable properties in favour of Kuldeep Kumar and Pradeep Kumar from which it is clear that the averment of Shiv Kumar in his notice about his being joint owner of the property with Raj Kumar and in the plaint as successor of Raj Kumar being landlord of the

shop in question was incorrect and after the death of Raj Kumar, Shiv Kumar got no rights in the property in question as successor and as per Will dated 14.12.88, after the death of Raj Kumar it is found that owner of his property are opposite parties Pradeep Kumar and Kuldeep Kumar and this is also found proven that Shiv Kumar got no ownership rights after the death of Raj Kumar. Here this fact is also pertinent that the payment of rent was made up to the end to Raj Kumar and thereafter rent was deposited under section 30(1) of the U.P. Act 13, 1972 in Misc. Suit No.20/93 Ramesh Kumar vs. Raj Kumar and Raj Kumar died on 4.2.94 and in this way in the definition of landlord given in section 3(j) U.P. Act 13, 1972, in that also only Raj Kumar is covered and since no rent was paid to Shiv Kumar therefore he does not fall in the definition of landlord. Therefore, the conclusion given by lower court in regard to issue no.1 is dismissed due to being found against law. And this is held that Shiv Kumar was neither the owner of the shop in question nor landlord and accordingly issue no.1 is disposed off."

6. The appellants moved the High Court by way of writ petition against the order of the District Judge. The High Court vide impugned order affirmed the order of the District Judge.

7. During pendency of the matter in this Court, the respondent has died and his heirs have been brought on record. Though the heirs of the deceased respondent have been duly served, only respondent No.3 has chosen to put in appearance and other heirs are proceeded against ex-parte. In his counter affidavit, respondent No.3 has stated that only appellants Nos.1 and 2 had the title to the shop and they could seek eviction only in their own capacity and not in their capacity as legal heirs.

8. We have heard learned counsel for the parties.

9. Learned counsel for the appellants submitted that it is undisputed that appellants Nos.1 and 2 are the sole owners of the property in question. It is not disputed that they were substituted as plaintiffs on the death of Shiv Kumar before the trial Court itself. It is also not disputed that they could maintain the suit for eviction. Thus on admitted facts, only defect pointed out is of formal nature in description without, in any manner, affecting the merits or the jurisdiction of the Court. Such irregularity could have been corrected by the Court under Order 1 Rule 10 and can be corrected even at this stage unless the defendant is in any manner prejudiced. No principle or authority has been brought to our notice which could affect the

maintainability of the suit merely on account of wrong description which did not in any manner cause prejudice to the defendant, particularly when no such objection is shown to have been raised before the trial Court.

10. In our view, the District Judge is, thus, not justified in reversing the decree of the trial Court on such a technicality which did not in any manner affect the merits of the case. Section 99 of the Code of Civil Procedure, 1908 provides as under:

1 "99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction:

No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder [or non-joinder] of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court:

[Provided that nothing in this section shall apply to non-joinder of a necessary party.]

11. Thus, the High Court also erred in upholding the order of the District Judge.

12. Accordingly, we allow this appeal, set aside the impugned orders of the High Court and the District Judge and restore the order of the trial Court dated 8th December, 1998 in JSCC No.5 of 1995 passed by the Civil Judge, (J.D.), Hasanpur, Moradabad. No costs.