

SUPREME COURT OF INDIA

Public Trust Shri Geeta Satsang Bhawan

Vs.

Nand Lal

C.A.No.3034 of 2008

(R.K.Agrawal and Abhay Manohar Sapre, JJ.,)

25.07.2017

JUDGMENT

Abhay Manohar Sapre, J.,

1. This appeal is filed by the Plaintiff against the final judgment and orders dated 19.09.2006 passed by the High Court of Judicature for Rajasthan at Jodhpur in S.B. Civil Second Appeal No. 295 of 2006 and S.B. Civil Second Appeal No. 296 of 2006 whereby the High Court, by separate judgments, dismissed the appeals filed by the plaintiff against the judgment dated 30.11.2005 of the Additional District Judge(Fast Track) No.2, Pali (Raj.) in Civil Appeal Decree Nos.3 and 4 of 2005 whereby the appeals of the respondents (defendants) were allowed and the judgment and decree dated 27.10.2004 passed by the Civil Judge (Senior Division), Pali in the Civil Suit No. 4/2004 and Civil Suit No. 5/2004 were set aside.

2. We herein set out the facts, in brief, to appreciate the issues involved in this appeal.

3. The appellant is a public Trust of which Shri Ramanand is the Chairman. The Trust was formed by executing a Trust deed on 31.07.1980. The land measuring 1 Bigha 5 Biswas situated at Pali was allotted by the Government on 14.05.1982 in the name of Shri Rama Nand and the patta was accordingly granted to him. He then constructed shops on this land.

4. On 01.10.1985, the Shop No.7 was let out to Nand Lal-respondent No.1 on rent on an oral agreement at a monthly rent of Rs.500/- which was enhanced at Rs.625/- per month on 01.10.1996 with the consent of both parties.

5. On 01.10.1989, the Shop No.11 was let out to Nand Lal, Jitendar Rai Mathur and M/s Mayur Auto Repairs on rent on the basis of an oral agreement at a monthly rent of Rs.600/-, which was enhanced to Rs.750/- per month on 01.10.1996 with the consent of the parties. After the enhancement of rent, the respondents stopped paying the rent to the appellant-Trust. However, respondent No.1 paid rent only in respect of Shop No. 7 up to 30.06.1998.

6. On 17.10.1998, the appellant, therefore, sent a notice under Section 106 of the Transfer of Property Act, 1882 to the respondents in respect of Shop No.11 through registered post and terminated the tenancy. By virtue of notice, the respondents were informed that their tenancy would terminate w.e.f. midnight of 30.11.1998. Similarly, on 22.10.1998, the appellant sent a notice under Section 106 of the T.P. Act to respondent No.1 in respect of Shop No.7 through registered post and terminated the tenancy w.e.f. midnight of 30.11.1998. Respondent No. 1 did not reply to this notice also.

7. Subsequently, on 23.10.1998, the respondents gave a cheque to the appellant against the rent in respect of Shop No. 11 up to the month of November and damages on account of use and occupation for the month of December, 1998 and respondent No.1 gave a cheque in respect of Shop No.7 against the rent up to the month of November and damages on account of use and occupation for the month of December, 1998. However, the respondents did not hand over the possession of both the shops.

8. On 20.01.1999, the appellant instituted a suit for eviction and recovery of rent being Civil Suit No. 15/99 (re-numbered as 5/2004) against Nand Lal, Jitendar Rai Mathur and M/s Mayur Auto Repairs in respect of Shop No.11 and Civil Suit No.14/99 (re-numbered as 4/2004) against Nand Lal in respect of Shop No.7 before the Additional Civil Judge(Senior Division), Pali.

9. The Trial Court, after framing the issues in both the suits, by separate judgments on 27.10.2004, answered the issues in favour of the appellant and accordingly decreed the appellant's suit and ordered the respondents' eviction from the suit premises within a period of two months and pay the damages for use and occupation w.e.f. 20.11.1998 till the date of handing over the possession of the suit premises (i) at the rate of Rs.750/- per month in Civil Suit No.5/2004 and (ii) at the rate of Rs.625/- per month in Civil Suit No.4/2004.

10. Aggrieved by the said judgment, the respondents filed separate first appeals being Civil Appeal Decree No.3/2005 and Civil Appeal Decree No.4/2005 before the Additional District Judge (Fast Track) No.2, Pali.

11. The Appellate Court framed additional issues in place of issue Nos. 1 and 1(a) framed by the Trial Court, which read as under:

“(1) Whether the plaintiff-trust is exempted from the Rent Act according to the Advertisement No.P-4(11)V.V. and 3/96 dated 04.07.98 published at Page No.51 in the Rajasthan government Gazette Edition dated 06.07.1998?

(2) Whether having terminated the tenancy by issuing notice under Section 106 of the Transfer of Property Act, plaintiff is entitled to get the possession?

(3) Whether the plaintiff is a registered Trust, if yes, then its effect?

(4) Whether all the Trustees are necessary parties to the suit?

(5) Whether the notice has been waived on account of accepting the rent after terminating the tenancy through notice?”

12. By separate judgments on dated 30.11.2005, the Appellate Court decided issue Nos. 3 and 4, as extracted above, against the appellant and accordingly allowed the respondents' appeals and set aside the judgments and decree dated 27.10.2004 passed by the Trial Court in Civil Suit Nos. 4/2004 and 5/2004. It was held that since the plaintiff-Trust was not registered under the Rajasthan Public Trust Act, 1959(hereinafter referred to as “the Act”), the suit itself was not competent for want of registration in the light of bar contained in Section 29 of the Act. The Appellate Court, therefore, did not go into the merits of the case and dismissed the suit.

13. Aggrieved by the said judgments, the appellant preferred S.B.Civil Second Appeal Nos.295/2006 and 296/2006 before the High Court.

14. The High Court, by the impugned judgments, dismissed the appeals in limine.

15. Against both the judgments, this appeal by special leave is filed by the plaintiff-Trust before this Court.

16. Heard Mr. M.R. Calla, learned senior counsel for the appellant-Trust and Mr. Puneet Jain, learned counsel for the respondents.

17. During the pendency of this appeal, the appellant (plaintiff) filed I.A. No 5 of 2013 and sought permission to file additional documents in support of their case. The appellant along with IA filed one Registration Certificate issued on 07.02.2013 by the office of the Assistant Commissioner, Department of Endowments, Jodhpur, Government of Rajasthan(Annexure A-3) certifying therein that the appellant(plaintiff)-Trust is registered under the Act w.e.f. 07.02.2013. A prayer was, therefore, made to take this document on record being relevant one for deciding the appeal. This I.A. was allowed by this Court' s order dated 20.01.2014.

18. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal in part and while setting aside the impugned order and also of the first Appellate Court and the Trial Court restore the civil suit to its file for deciding the civil suit afresh on merits in accordance with law.

19. It is an admitted fact that the appellant/plaintiff - Trust was not a registered public Trust under the Act on the date of filing the civil suit. It is also an admitted fact that the appellant-plaintiff, therefore, got the Trust registered as required under the Act only on 07.02.2013 during the pendency of this appeal.

20. Section 29 of the Act, which applies to this case, reads as under:

“Section 29. Bar against suits by un-registered trust-(1) No suit to enforce a right on behalf of a public trust which is required to be registered under this Act but has not been so registered shall be heard or decided in any Court.

(2) The provisions of Sub-section(1) shall apply to claim of set off or other proceeding to enforce a right on behalf of such public trust.”

21. Section 29 creates a bar "for hearing and deciding a suit" filed by the public Trust for enforcement of any of their rights, if the said Trust is not registered under the Act. The bar, therefore, applies for "hearing and deciding" a suit and not in filing the suit. In other words, suit can be filed by the unregistered Trust but such suit will neither be heard nor decided by the Court unless and until the Trust is registered under the Act. Section 29 is, therefore, operates as stay of proceedings in the suit so long as the Trust does not get itself registered under the Act.

22. A fortiori, the moment the Trust is registered under the Act, the Trial Court would assume the jurisdiction to hear and decide the suit on merits. The bar created under Section 29 of the Act for "hearing and deciding" the suit is then lifted and ceases to apply to the proceedings in the suit.

23. As mentioned supra, since the appellant (plaintiff) - Trust was registered under the Act on 07.02.2013, they acquired a right to prosecute the suit on merits against the respondents. The bar created under Section 29 then would no longer operate to the proceedings in the suit.

24. In our opinion, the Trial Court was, therefore, wholly unjustified in proceeding to hear and decide the suit on merits by passing a judgment/decree. It failed to see the rigor of Section 29 which had taken away the jurisdiction of the Trial Court in hearing and deciding the suit.

25. Similarly, the first Appellate Court and the High Court also erred in straightaway dismissing the appellant's suit. Having held and indeed rightly that the Trust was unregistered, instead of deciding the appeal and dismissing the suit should have stayed the proceedings by granting some reasonable time to the appellant/plaintiff-Trust to get their Trust registered under the Act. If despite granting time, the Trust had failed to obtain the Registration Certificate then in such eventuality, the first Appellate Court could have dismissed the suit.

26. Be that as it may, now that the appellant/plaintiff has obtained the necessary registration certificate in relation to their Trust under the Act, which is also taken on record, their suit can now be heard and decided on merits by the Trial Court. The bar operating under Section 29 of the Act for hearing and deciding the suit would no longer apply to the suit and the Civil Court would now assume jurisdiction to try the suit on merits.

27. Learned counsel for the appellant (plaintiff), however, submitted that the matter be remanded to the first Appellate Court to decide the appeal filed by the respondent on merits because the Trial Court has already decided the suit on merits in their favour. The submission is devoid of any merit for more than one reason.

28. First, the decree passed by the Trial Court was on the face of it without jurisdiction having been passed in contravention of Section 29 of the Act; second, the Civil Court had no power to hear and decide the suit by virtue of the bar created under section 29 of the Act; and third, admittedly the Trust was not registered on the date of filing of the suit and remained un-registered till the judgment was delivered by the Trial Court. It is for these reasons, the decree passed by the Trial Court is without jurisdiction and has to be set aside.

29. In view of foregoing discussion, the appeal is allowed in part, impugned judgments as also the judgment/decrees of the Trial Court are set aside. The matter is remanded to the Trial Court for hearing and deciding the suits on merits in accordance with law. Parties are granted liberty to amend their pleadings and also file additional documents including the certificate of registration of the Trust to enable the Trial Court to decide the suits as directed. The Trial Court shall decide the suits within six months uninfluenced by any of our observations on merits because we have not expressed our opinion on any of the issues touching the merits of the controversy. Parties to appear before the Trial Court on 21.08.2017 to enable the Trial Court to proceed with the trial.

30. The Registry is directed to send back the original record of the case to the Trial Court forthwith, if it is requisitioned, and also send one copy of this order to the Trial Court for information and record. In S.L.P.(c) Nos. 10949, 11138 and 14325 of 2008 Leave granted. In view of the judgment passed in Civil Appeal No. 3034 of 2008, these appeals are allowed in part on the same terms.