Damodar Lal vs Sohan Devi And Ors on 5 January, 2016

Equivalent citations: AIR 2016 SUPREME COURT 262, 2017 (1) AJR 382, (2016) 1 MAD LJ 346, (2016) 2 CAL HN 6, (2016) 1 ALL WC 965, (2016) 1 RENTLR 120, (2016) 1 WLC(SC)CVL 467, (2016) 1 CLR 351 (SC), (2016) 4 MPLJ 57

Bench: Kurian Joseph, T. S. Thakur

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 231 OF 2015

DAMODAR LAL ... APPELLANT (S)

VERSUS

SOHAN DEVI AND OTHERS ... RESPONDENT (S)

J U D G M E N T

KURIAN, J.:

The facts unfold the plight of a poor landlord languishing in courts for over fourty years. The case gets sadder when we note that appellant had been successful both in the trial court and the first appellate court and the saddest part is that the High Court in second appeal, went against him on a pure question of fact! Issue number-3 framed in Civil Regular Suit No. 191 of 1974 for eviction on the ground of unauthorised construction/material alteration, decided on 21.12.1989 in the Court of Munsiff, Bhilwara, Rajasthan, reads as follows:

> "Whether the tenant has carried out permanent construction on the plot thereby causing a permanent change in the identity of the plot against the terms of the rent agreement?" Having analysed and appreciated the evidence of PWs-1 and 2 and also DWs- 1 to 4, the trial court came to the following finding on the issue:

"Thus all the witnesses of both sides have stated that when the plot was taken on rent, at that time, the plot was empty. The disputed plot was taken on rent. Later walls were constructed; sheets were put and were taken into use as shop and godown. Even today the plot is being used as shop and godown." Dissatisfied, the tenants took up the matter in appeal before the Court of the Additional District Judge-I, Bhilwara, Rajasthan in Civil Appeal No. 20 of 1999 (originally presented before the District Judge, Bhilwara, Rajasthan on 19.01.1990 and since transferred to the Additional District Judge). In the judgment dated 22.09.2000, the first appellate court, after re-appreciating the whole evidence, came to the conclusion that:

"... In my opinion the evidence that had been presented before the subordinate court, the subordinate court has not made any mistake in coming to the conclusion that the tenant has made structural changes in the rented accommodation. The appellant tenant has not been able to present any evidence to show that the consent of the land lord had been taken before making structural changes. ..." On such findings, the appeal was dismissed. Thus, there are two findings of fact against the tenants/respondents.

The tenants pursued the matter in Second Appeal No. 109 of 2000 before the High Court of Rajasthan which was allowed by the impugned judgment dated 27.09.2012. The following were the substantial questions of law framed in the second appeal:

" (1) Whether on the facts and in the circumstances of this case, the learned courts below have erred in granting a decree for eviction on the ground of material alteration while ignoring the relevant considerations and proceeding on irrelevant considerations.

(2) Whether on the facts of this case, the learned courts below have erred in not drawing adverse inference for non-appearance of the plaintiff Damodar Lal in the witness box?" The High Court, in the second appeal, came to the conclusion that the concurrent finding on structural change, in the absence of the statement of the plaintiff before the court, cannot be treated to be trustworthy. The High Court went further and held that adverse inference should have been drawn for the non-appearance of the plaintiff in the witness box, and in such circumstances, the finding on material alteration is totally perverse.

We feel it necessary to quote the relevant portion from the impugned judgment:

"... In the considered opinion of this Court, such finding in the statement of the plaintiff cannot be treated to be trustworthy or in consonance with law. The trial court was under obligation to draw adverse inference for the non-appearance of the plaintiff in the witness-box. On the contrary, it has relied upon the statement of P.W.-1 Rameshwar Lal who was the previous owner of the property from whom the plaintiff purchased the said property.

Therefore, the finding arrived at by the trial court on the issue of material alteration is totally perverse and not based upon sound and trustworthy evidence. The trial court has committed gross error while not drawing adverse inference for non-appearance of the plaintiff Damodar Lal because he was the only witness to prove the fact of material alteration by way of producing documentary evidence which is the registered sale-deed executed by Rameswhwar Lal in favour, so also, his oral statement." And thus, the High Court allowed the second appeal and the suit for eviction was dismissed. Aggrieved, the landlord is before us in the civil appeal.

'Perversity' has been the subject matter of umpteen number of decisions of this Court. It has also been settled by several decisions of this Court that the first appellate court, under Section 96 of The Civil Procedure Code, 1908, is the last court of facts unless the findings are based on evidence or are perverse.

In Krishnan v. Backiam and another[1], it has been held at paragraph-11 that:

"11. It may be mentioned that the first appellate court under Section 96 CPC is the last court of facts. The High Court in second appeal under Section 100 CPC cannot interfere with the findings of fact recorded by the first appellate court under Section 96 CPC. No doubt the findings of fact of the first appellate court can be challenged in second appeal on the ground that the said findings are based on no evidence or are perverse, but even in that case a question of law has to be formulated and framed by the High Court to that effect. ..." In Gurvachan Kaur and others v. Salikram (Dead) Through Lrs.[2], at paragraph-10, this principle has been reiterated:

"10. It is settled law that in exercise of power under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the finding of fact recorded by the first appellate court which is the final court of fact, unless the same is found to be perverse. This being the position, it must be held that the High Court was not justified in reversing the finding of fact recorded by the first appellate court on the issues of existence of landlord-tenant relationship between the plaintiff and the defendant and default committed by the latter in payment of rent." In the case before us, there is clear and cogent evidence on the side of the plaintiff/appellant that there has been structural alteration in the premises rented out to the respondents without his consent. Attempt by the defendants/respondents to establish otherwise has been found to be totally non-acceptable to the trial court as well as the first appellate court. Material alteration of a property is not a fact confined to the exclusive/and personal knowledge of the owner. It is a matter of evidence, be it from the owner himself or any other witness speaking on behalf of the plaintiff who is conversant with the facts and the situation. PW-1 is the vendor of the plaintiff, who is also his power of attorney. He has stated in unmistakable terms that there was structural alteration in violation of the rent agreement. PW-2 has also supported the case of the plaintiff. Even the witnesses on behalf of the defendant, partially admitted that the defendants had effected some structural changes.

Be that as it may, the question whether there is a structural alteration in a tenanted premises is not a fact limited to the personal knowledge of the owner. It can be proved by any admissible and reliable evidence. That burden has been successfully discharged by the plaintiff by examining PWs-1 and 2. The defendants could not shake that evidence. In fact, that fact is proved partially from the evidence of the defendants themselves, as an admitted fact. Hence, only the trial court came to the definite finding on structural alteration. That finding has been endorsed by the first appellate court on re-appreciation of the evidence, and therefore, the High Court in second appeal was not justified in upsetting the finding which is a pure question of fact. We have no hesitation to note that both the questions of law framed by the High Court are not substantial questions of law. Even if the finding of fact is wrong, that by itself will not constitute a question of law. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity.

In Kulwant Kaur and others v. Gurdial Singh Mann (Dead) by Lrs.[3], this Court has dealt with the limited leeway available to the High Court in second appeal. To quote paragraph-34:

"34. Admittedly, Section 100 has introduced a definite restriction on to the exercise of jurisdiction in a second appeal so far as the High Court is concerned. Needless to record that the Code of Civil Procedure (Amendment) Act, 1976 introduced such an embargo for such definite objectives and since we are not required to further probe on that score, we are not detailing out, but the fact remains that while it is true that in a second appeal a finding of fact, even if erroneous, will generally not be disturbed but where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of perversity involved therein, the High Court in our view will be within its jurisdiction to deal with the issue. This is, however, only in the event such a fact is brought to light by the High Court explicitly and the judgment should also be categorical as to the issue of perversity vis-à-vis the concept of justice. Needless to say however, that perversity itself is a substantial question worth adjudication — what is required is a categorical finding on the part of the High Court as to perversity. In this context reference be had to Section 103 of the Code which reads as below:

"103. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,—

(a) which has not been determined by the lower appellate court or by both the court of first instance and the lower appellate court, or

> (b) which has been wrongly determined by such court or courts by reason of a decision on such question of law as is referred to in Section 100." The requirements stand specified in Section 103 and nothing short of it will bring it within the ambit of Section 100 since the issue of perversity will also come within the ambit of substantial question of law as noticed above. The legality of finding of fact cannot but be termed to be a question of law.

We reiterate however, that there must be a definite finding to that effect in the judgment of the High Court so as to make it evident that Section 100 of the Code stands complied with." In S.R. Tiwari v. Union of India[4], after referring to the decisions of this Court, starting with Rajinder Kumar Kindra v. Delhi Administration, Through Secretary (Labour) and others[5], it was held at paragraph-30:

> "30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635 : 1985 SCC (L&S) 131 : AIR 1984 SC 1805] , Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429 : AIR 1999 SC 677] , Gamini Bala Koteswara Rao v. State of A.P. [(2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372 : AIR 2010 SC 589] and Babu v. State of Kerala[(2010) 9 SCC 189 :
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> (2010) 3 SCC (Cri) 1179] .)" This Court has also dealt with other aspects of perversity.

We do not propose to discuss other judgments, though there is plethora of settled case law on this issue. Suffice to say that the approach made by the High Court has been wholly wrong, if not, perverse. It should not have interfered with concurrent findings of the trial court and first appellate court on a pure question of fact. Their inference on facts is certainly reasonable. The strained effort made by the High Court in second appeal to arrive at a different finding is wholly unwarranted apart from being impermissible under law. Therefore, we have no hesitation to allow the appeal and set aside the impugned judgment of the High Court and restore that of the trial court as confirmed by the appellate court.

At this juncture, learned Counsel appearing for the respondents, praying for some reasonable time to vacate, submitted that in the nature of the timber and furniture business carried on at the premises, they require some time to find out alternate location/accommodation. Having regard to the entire facts and circumstances of the case, we are of the view that the respondents be given time up to 31st March, 2017 which is agreeable to the appellant as well, though reluctantly. The respondents are directed to file the usual undertaking in this Court and also continue to pay the use

and occupation charges at the rate of Rs.10,000/- per month. In the event of any default or violation of the terms of undertaking, the decree shall be executable forthwith, in addition to the liability for contempt of court.

The appeal is allowed as above with costs quantified at Rs.25,000/-.

.....CJI.

(T. S. Thakur) .....J. (Kurian Joseph) New Delhi;

January 5, 2016

(2007) 12 SCC 190
[2] (2010) 15 SCC 530
[3] (2001) 4 SCC 262
[4] (2013) 6 SCC 602
[5] (1984) 4 SCC 635

REPORTABLE
