Praful Manohar Rele vs Krishnabai Narayan Ghosalkar & Ors on 3 January, 2014

Author: T.S. Thakur

Bench: Vikramajit Sen, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 50 OF 2014
(Arising out of S.L.P. (C) No.4719 of 2010)

Praful Manohar Rele …Appellant

Versus

Smt. Krishnabai Narayan
Ghosalkar & Ors. …Respondents

J U D G M E N T

T.S. THAKUR, J.

1. Leave granted.

2. This appeal arises out of a judgment and order dated 16th October, 2009 passed by the High Court of Judicature at Bombay whereby the High Court has allowed Civil Second Appeal No.90 of 1992 set aside the judgment and decree passed by the Additional District Judge in Civil Appeal No.33 of 1987 and restored that passed by the Trial Court dismissing Regular Civil Suit No.87 of 1984. The factual backdrop in which the dispute arose may be summarized as under:

3. Manohar Narayan Rele owned a house bearing Panchayat No.105 situate in village Ravdanda, Taluka Alibag, District Raigad, in the State of Maharashtra. In RCS No.87 of 1984 filed by the said Shri Rele before the Civil Judge (Junior Division), Alibag, the plaintiff prayed for a decree for possession of the suit premises comprising a part of the house mentioned above on the ground that the defendants who happened to be the legal heirs of one Shri Narayan Keshav Ghosalkar, a Goldsmith by profession, residing in Bombay was allowed to occupy the suit premises as a gratuitous licensee on humanitarian considerations without any return, compensation, fee or charges for such occupation. Upon the demise of Shri Narayan Keshav Ghosalkar in February 1978, the defendants who stepped into his shoes as legal heirs started abusing the confidence reposed by the plaintiff in the said Ghosalkar and creating nuisance and annoyance to the plaintiff with the result that the plaintiff was forced to terminate the licence granted by him in terms of a notice

assuring for delivery of vacant possession of the premises w.e.f. 1st February, 1984. Upon receipt of the notice, the defendants instead of complying with the same sent a reply refusing to vacate the premises on the false plea that they were occupying the same as tenants since the time of Shri Narayan Keshav Ghosalkar and were paying rent although the plaintiff had never issued any receipt acknowledging such payment. In a rejoinder sent to the defendants, the plaintiff denied the allegations made by the defendants and by way of abundant caution claimed possession of the suit premises even on the grounds permitted under the Rent Control Act of course without prejudice to his contention that the defendants could not seek protection under the Rent Act. Time for vacation of the premises was also extended by the said rejoinder upto the end of April, 1984.

4. The defendants did not vacate the premises thereby forcing the plaintiff to file a suit for possession against them on the ground that they were licensees occupying the premises gratuitously and out of humanitarian considerations. It was alternatively urged that the plaintiff was entitled to vacation of the premises on the ground of bona fide personal need, nuisance, annoyance and damage allegedly caused to the premise and to the adjoining garden land belonging to him.

5. In the written statement filed by the defendants they stuck to their version that the suit property was occupied by Shri Narayan Keshav Ghosalkar as a tenant and upon his demise the defendants too were in occupation of the same as tenants.

6. On the pleadings of the parties the Trial Court framed as many as eight issues and eventually dismissed the suit holding that the plaintiff had failed to prove that the defendants were gratuitous licensees. The Trial Court also held that the defendants had proved that they were occupying the premises as tenants on a monthly rent of Rs.13/- and that the plaintiff had failed to prove that he required the premises for his bona fide personal use and occupation. Issues regarding the defendants causing nuisance and annoyance to the plaintiff and damage to the property were also held against the plaintiff by the Trial Court while declining relief to the plaintiff.

7. Aggrieved by the judgment and decree passed by the Trial Court, the plaintiff preferred Civil Appeal No.33 of 1987 before the Additional District Judge, Alibag who formulated six points for determination and while allowing the appeal filed by the plaintiff decreed the suit in favour of his legal representatives as the original plaintiff had passed away in the meantime. The First Appellate Court held that the plaintiff had successfully established that the suit premises was occupied by Shri Narayan Keshav Ghosalkar on gratuitous and humanitarian grounds. It also held that the defendants-respondents had failed to prove the existence of any tenancy in their favour and that since the license granted to the defendants had been validly terminated, the legal heirs substituted in place of the original plaintiff were entitled to a decree.

8. Second appeal No.90 of 1992 was then filed by the respondent against the judgment of the First Appellate Court before the High Court of Judicature at Bombay which was allowed by a Single Judge of that Court in terms of its judgment impugned in the present appeal. Apart from three substantial questions of law which the High Court had formulated for consideration, it framed a fourth question for consideration which was to the following effect:

> "Whether the plaintiff could raise two contradictory pleas in the plaint, namely, that (i) the defendants were permitted to occupy the suit premises gratis; and (ii) that the defendants should be evicted from the suit premises under the provisions of the Bombay Rent Act?"

9. Significantly, the decision rendered by the High Court rests entirely on the fourth question extracted above. The High Court has taken the view that while the plaintiff could indeed seek relief in the alternative, the contentions raised by him were not in the alternative but contradictory, hence, could not be allowed to be urged. The High Court found that the plaintiff's case that the defendant was a gratuitous licensee was incompatible with the plea that he was a tenant and, therefore, could be evicted under the Rent Act. The High Court observed:

> "It is now well settled that a plaintiff may seek reliefs in the alternative but in fact the pleadings are mutually opposite, such pleas cannot be raised by the plaintiff. There is an essential difference between contradictory pleas and alternative pleas. When the plaintiff claims relief in the alternative, the cause of action for the reliefs claimed is the same. However, when contradictory pleas are raised, such as in the present case, the foundation for these contradictory pleas is not the same. When the plaintiff proceeds on the footing that the defendant is a gratuitous licensee, he would have to establish that no rent or consideration was paid for the premises. Whereas, if he seeks to evict the defendant under the Rent Act, the plaintiff accepts that the defendant is in possession of the premises as a tenant and liable to pay rent. Thus, the issue whether rent is being paid becomes fundamental to the decision. Therefore, in my opinion, the pleas that the defendant is occupying the suit premises gratuitously is not compatible with the plea that the defendant is a tenant and therefore can be evicted under the Rent Act."

10. We have heard learned counsel for the parties at length. The case of the plaintiff appellant herein primarily was that the original defendant and even his legal representatives were occupying the suit premises as gratuitous licensees upon termination whereof the plaintiff was entitled to a decree for possession. While the Trial Court found that the defendants were tenants and not licensees as alleged by the plaintiff the First Appellate Court had recorded a clear finding to the contrary holding that the defendants were indeed occupying the premises as licensees whose license was validly terminated by the plaintiff. Whether or not the defendants were licensees as alleged by the plaintiff was essentially a question of fact and had to be answered on the basis of the evidence on record which the First Appellate Court had reappraised to hold that the defendants were let into the suit property by the plaintiff on humanitarian grounds and as gratuitous licensees. Absence of any rent note evidencing payment of rent or any other material or circumstance to suggest that the relationship between the parties was that of landlord and tenant, abundantly supported the conclusion of the First Appellate Court. That finding also negatived the defence of the defendants-respondents that they were occupying the premises as tenants which assertion of the defendant- respondent was held not proved by the First Appellate Court. There is no gainsaid that while considering the question whether the relationship between the parties was that of licensor and licensee as alleged by the plaintiff or landlord and tenant as asserted by the defendants, the First

Appellate Court took into consideration the totality of the evidence on record with a view to finding out as to which of the two versions was factually correct. That doubtless was the correct approach to adopt in a suit based on an alleged license where the defendant's logical defence was bound to be that he is in occupation not as a licensee but as a tenant. There was, in that view, nothing special or novel about the plea raised in defence by the defendants-respondents. What is important is that the First Appellate Court on facts found that the defendants and even their predecessor were licensees in the premises which stood validly terminated. The High Court could not have interfered with that finding of fact leave alone on the ground that since the alternative case set up by the plaintiff in the plaint was contradictory to the primary case pleaded by him, he was entitled to relief even on proof of the primary case.

11. That apart the alternative plea of the plaintiff and the defence set up by the defendants was no different from each other. The only question that would fall for determination based on such a plea was whether the plaintiff had made out a case on the grounds permissible under the Rent Control Act. An adjudication on that aspect would become necessary only if the plaintiff did not succeed on the primary case set up by him. The alternative plea would be redundant if the plaintiff's case of the defendants being gratuitous licenses was accepted by the Court. That is precisely what had happened in the instant case. The First Appellate Court accepted the plaintiff's case that defendants were in occupation as licensees and not as tenants. The High Court has not set aside that finding of fact on its merits. It may have been a different matter if the High Court had done so for valid reasons and then declined to entertain the alternative case set up by the plaintiff based on tenancy. One could in that case perhaps argue that the Court had declined to go beyond the principal contention to examine the alternative plea which was contradictory to the principal plea. That, however, is not what the High Court has done. Without finding fault with the findings recorded by the First Appellate Court on the question of a license and its termination the High Court has dismissed the suit simply because the plea of tenancy was, in its opinion, contradictory to the plea of license set up in the earlier part of the plaint. That was not, in our opinion, a proper approach or course to follow.

12. The upshot of the above discussion is that the order passed by the High Court cannot be sustained. Having said that we may deal with the question whether the plea of license and tenancy could be together urged by the plaintiff for grant of relief in a suit for possession.

13. The general rule regarding inconsistent pleas raised in the alternative is settled by a long line of decisions rendered by this Court. One of the earliest decisions on the subject was rendered by this Court in Srinivas Ram Kumar v. Mahabir Prasad and Ors. AIR 1951 SC 177, where this Court observed :

> "It is true that it was no part of the plaintiff's case as made in the plaint that the sum of Rs. 30,000 was advanced by way of loan to the defendant second party. But it was certainly open to the plaintiff to make an alternative case to that effect and make a prayer in the alternative for a decree for money even if the allegations of the money being paid in pursuance of a contract of sale could not be established by evidence. The fact that such a prayer would have been inconsistent with the other prayer is not really material...An Appellant may rely upon different rights alternatively and there is

> nothing in the Civil Procedure Code to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative."

14. In Bhagwati Prasad v. Chandramaul AIR 1966 SC 735 the plea of licence was accepted against the plea of tenancy although the plea of licence was not set up by the appellant. The appellant in that case contended that the land and the construction over the land belonged to him and that he had let the constructed portion to the respondent on a monthly rental basis. The respondent, however, alleged that although the land belonged to the appellant the building standing over the same was constructed by the respondent out of his own money and, therefore, he was entitled to occupy the same till his money was recovered from the appellant. Since the plea of tenancy set up by the appellant could not be proved, the Court held that the respondent was staying in the house with the leave and licence of the appellant. What is important is that the Court clearly recognised the principle that if the plea raised by the tenant in his written statement was clear and unambiguous in a suit where one party alleged the relationship between the two to be that of licensor and licensee, while the other alleged the existence of a tenancy, only two issues arose for determination, namely, whether the defendant is tenant of the plaintiff or is holding the property as a licensee. If the Court comes to the conclusion after the parties lead their evidence that the tenancy had not been proved then the only logical inference was that the defendant was in possession of the property as a licensee. This Court said:

> "In such a case the relationship between the parties would be either that of a landlord and tenant, or that of an owner of property and a person put into possession if it by the owner's license. No other alternative is logically or legitimately possible. When parties led evidence in this case, clearly they were conscious of this position, and so, when the High Court came to the conclusion that the tenancy had not been proved, but the defendant's argument also had not been established, it clearly followed that the defendant was in possession of the suit premises by the leave and license of the plaintiff..... In our opinion, having regard to the pleas taken by the defendant in his written statement in clear and unambiguous language, only two issues could arise between the parties: is the defendant the tenant of the plaintiff, or is he holding the property as the license ,subject to the terms specified by the written statement?.... we are unable to see any error of law in the approach by the High Court in dealing with it." (emphasis supplied)

15. In G. Nagamma and Anr. v. Siromenamma and Anr. (1996) 2 SCC 25, this Court held that the plaintiff was entitled to plead even inconsistent pleas especially when, they are seeking alternative reliefs.

16. To the same effect is the decision of this Court in B.K. Narayana Pillai v. Parameswaran Pillai 2000(1) SCC 712. In that case the appellant- defendant wanted to amend the written statement by taking a plea that in case he is not held to be a lessee, he was entitled to the benefit of Section 60(b) of the Indian Easements Act, 1882. Allowing the amendment this Court held that the plea sought to be raised was neither inconsistent nor repugnant to the pleas raised in defence. The Court further declared that there was no absolute bar against taking of inconsistent pleas by a party. What is

impermissible is taking of an inconsistent plea by way of an amendment thereby denying the other side the benefit of an admission contained in the earlier pleadings. In cases where there was no inconsistency in the facts alleged a party is not prohibited from taking alternative pleas available in law.

17. Reference may also be made to the decision of this Court in J.J. Lal Pvt. Ltd. and Ors. v. M.R. Murali and Anr. (2002) 3 SCC 98 where this Court formulated the following tests for determining whether the alternative plea raised by the plaintiff was permissible:

> "To sum up the gist of holding in Firm Sriniwas Ram Kumar's case: If the facts stated and pleading raised in the written statement, though by way of defence to the case of the plaintiff, are such which could have entitled the plaintiff to a relief in the alternative, the plaintiff may rely on such pleading of the defendant and claim an alternate decree based thereon subject to four conditions being satisfied, viz., (i) the statement of case by defendant in his written statement amounts to an express admission of the facts entitling the plaintiff to an alternative relief, (ii) in granting such relief the defendant is not taken by surprise, (iii) no injustice can possibly result to the defendant, and (iv) though the plaintiff would have been entitled to the same relief in a separate suit the interest of justice demand the plaintiff not being driven to the need of filing another suit."

18. The plaintiff-appellant in the case at hand had set up a specific case that the defendant as also his legal representative after his demise were occupying the suit premises as licensees which licence had been validly terminated. In the reply to the notice the case of the defendants was that were in occupation of the suit premises not as licensees but as tenants. The plaintiff was, therefore, entitled on that basis alone to ask for an alternative relief of a decree for eviction on the grounds permissible under the Rent Control Act. Such an alternative plea did not fall foul if any of the requirements/tests set out in the decision of this Court in J.J. Lal's case (supra). We say so because the written statement filed by the defendant contained an express admission of the fact that the property belonged to the plaintiff and that the defendants were in occupation thereof as tenants. At the trial Court also the question whether the defendants were in occupation as licencee or as tenants had been specifically put in issue thereby giving the fullest opportunity to the parties to prove their respective cases. There was no question of the defendants being taken by surprise by the alternative case pleaded by the plaintiff nor could any injustice result from the alternative plea being allowed and tried by the Court. As a matter of fact the trial Court had without any demurrer gone into the merits of the alternative plea and dismissed the suit on the ground that the plaintiff had not been able to prove a case for eviction of the defendants. There was thus not only a proper trial on all those grounds urged by the plaintiff but also a judgment in favour of the defendant respondents. Last but not the least even if the alternative plea had not been allowed to be raised in the suit filed by the appellant he would have been certainly entitled to raise that plea and seek eviction in a separate suit filed on the very same grounds. The only difference may have been that the suit may have then been filed before the Court of Small Causes but no error of jurisdiction was committed in the instant case as the finding recorded by the Civil Court was that the defendants were licensees and not tenants. Superadded to all these factors is the fact that the appellate Court had granted relief to the appellant

not in relation to the alternative plea raised by him but on the principal case set up by the plaintiff. If the plaintiff succeeded on the principal case set up by him whether or not the alternative plea was contradictory or inconsistent or even destructive of the original plea paled into insignificance.

19. In the result, this appeal succeeds and is, hereby allowed, the impugned judgment passed by the High Court is set aside and that passed by the first appellate Court is restored. The respondents are granted time till 30th April 2014 to vacate the premises subject to their filing undertakings on usual terms before this Court within six weeks from today. In case the undertakings are not filed, as directed, the decree passed in favour of the appellant shall become executable forthwith. No costs.

.....J. (T.S. THAKUR) .....J. (VIKRAMAJIT SEN) New Delhi January 3, 2014