Ubaiba vs Damodaran on 15 April, 1999

Equivalent citations: 1999(108)ELT14(SC), JT1999(9)SC115, 2000(1)KLT24(SC), (1999)5SCC645

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Bench: N. Santosh Hegde

ORDER

JUDGMENT

1. Leave granted.

2. In this appeal the short question that arises for consideration is whether the High Court in exercise of its revisional jurisdiction under the Kerala Buildings (Lease and Rent Control) Act, 1965 could have interfered with the finding of the appellate authority by reappreciating the evidence on record. The appellant landlord filed the application for eviction and payment of rent alleging that the tenant was in arrears of rent from 26-1-1990. The respondent tenant took the stand that there does not exist any relationship of landlord-tenant between the parties and therefore the application is not maintainable. The Controller on consideration of the evidence placed before him came to the conclusion that there does not exist any relationship of landlord-tenant between the parties and accordingly dismissed the application without going into the question as to the alleged arrears of rent. The landlord carried the matter in appeal and the appellate authority reappreciated the evidence on record and came to hold that there exists a relationship of landlord-tenant between the parties. But as there was no finding of the Controller on the question of quantum of rent he remitted the matter to the Controller for redetermination on that score. The tenant carried the matter in revision. By the impugned judgment the High Court after reappreciating the entire evidence came to hold that the witnesses of the landlord are not reliable and therefore the appellate authority committed an error in relying upon their testimony and accordingly set aside the finding as to the existence of relationship of landlord-tenant between the parties and affirmed the finding of the Controller on that score and allowed the revision partition and hence the present appeal.

3. Mr. K. Sukumaran, the learned Senior Counsel appearing for the appellant contended that however wide the jurisdiction of the revisional court under the Act in question may be, but it cannot have jurisdiction to reappreciate the evidence and substitute its own finding upsetting the finding arrived at by the appellate authority and therefore the impugned order of the High Court is unsustainable in law. In support of this contention reliance has been placed on a decision of this Court in the case of Rukmini Amma Saradamma v. Kallyani Sulochana JT 1992 Supp. SC 314 whereunder the selfsame provision of the Kerala Act was under consideration. This Court after noticing the word "propriety" used in Section 20 came to the conclusion that the approach of the High Court was totally wrong and even the wider language of Section 20 of the Act cannot enable

the High Court to act as a first or a second court of appeal. Otherwise the distinction between appellate and revisional jurisdiction will get obliterated. The Court also further observed "even by the presence of the word 'propriety' it cannot mean that there could be any reappreciation of evidence". The learned Counsel for the respondent on the other hand contended that the aforesaid decision will have no application to the case in hand where the dispute involved relates to a jurisdictional fact and according to the learned Counsel where the dispute is in relation to a jurisdictional fact there should not be any fetter on the power of the revisional court even to reappreciate the evidence and come to its own conclusion. On being asked to support the aforesaid proposition no authority could be placed though on first principle learned Counsel for the respondent argued as aforesaid. Having examined the rival submission and having gone through the decision of this Court referred to earlier we are of the considered opinion that though the revisional power under the Rent Act may be wider than Section 115 of the CPC it cannot be equated even with the second appellate power conferred on the civil court under the CPC. Notwithstanding the use of the expression "propriety" in Section 20, the revisional court therefore will not be entitled to reappreciate the evidence and substitute its own conclusion in place of the conclusion of the appellate authority. On examining the impugned judgment of the High Court in the light of the aforesaid ratio of this Court it is crystal clear that the High Court exceeded its jurisdiction by reappreciating the evidence and in coming to the conclusion that the relationship of landlord-tenant did not exist. In the circumstances, the impugned revisional order of the High Court is wholly unsustainable and we set aside the same and the order of the appellate authority is affirmed. The Controller would now determine the quantum of rent, as directed by the appellate authority. The appeal is accordingly allowed. No costs.