Bishambhar Dayal vs Girdhar Lal Odhavji on 28 October, 1952

Equivalent citations: AIR1953ALL158, AIR 1953 ALLAHABAD 158

ORDER

Chaturvedi, J.

1. This is a plaintiff's application in revision from the part of the order, passed by the First Civil Judge of Kanpur, holding that he had no jurisdiction to deal with the claim, for recovery of arrears of rent.

2. The suit was by the landlord for the enhancement of rent under Section 5(4), U.P. Temporary Control of Rent and Eviction Act (3 of 1947), (hereinafter called the Act). The plaintiff wanted the rent to be fixed at a sum of Rs. 50/- per mensem and valued the suit at Rs. 600/-, the amount of rent for one year. He also claimed Rs. 900/- as arrears of rent for eighteen months at the same rate of Rs. 50/-per mensem. One of the pleas taken in defence was that the claim for recovery of arrears of rent was not cognizable by the learned Civil Judge and such a claim could not be joined to a suit for fixation of rent under Section 5(4) of the Act. This is the only point with which I am concerned in this revision.

3. The learned Civil Judge framed issue No. 4 on the point but, as he himself has remarked, the issue is not happily worded, still the parties knew what it meant and the learned Civil Judge has decided only this issue by his order under revision. The learned Civil Judge has held that the claim for recovery of arrears of rent would be cognizable by a court of small causes and not by his court, and that Act 3 ot 1947 did not contemplate a suit for arrears of rent. He further held that in the valuation of the suit for determination of rent and for recovery of arrears of rent had exceeded Rs. 5000/-, he might have had jurisdiction to entertain both the claims; but, as the total valuation of both the claims is less than Rs. 5000/-, he came to the conclusion that the claim for recovery of arrears of rent was not cognizable by him. The plaintiff has, accordingly, come up in revision to this Court under Section 115, Civil P.C. and has challenged the correctness of the decision of the learned Civil Judge.

4. The learned counsel for the defendant opposite party has raised a preliminary objection to the maintainability of this revision. His contention is that only an issue in the suit has been decided and this decision does not amount to the decision of any 'case' within the meaning of the word as used in Section 115, Civil P.C. In my opinion, this preliminary objection is not well founded. The result of the order of the court below is that a part of the claim has gone out of the suit and with respect to this part it cannot be said that no case has been decided.

5. The learned counsel drew my attention to the Full Bench case of -- 'Suraj Pali Mt. v.

Ariya Pretinidhi Sabha, U. P.', 1936 All L J 923 (FB). This case is an authority for the proposition that a revision is not maintainable from an order refusing to amend the pleadings.

At the end of the judgment the learned Judge.

delivering the judgment of the court, has said:

> "Cases where the amendment comes under some other order of the Code, for example, the addition or substitution of parties, or striking off a pleading may amount to a case decided; but an order passed purely under Order 6, Rule 17 is not."

In my opinion, the above decision does not touch the point in question before me; if anything, it only suggests that a decision concerning a point like the present one may amount to a 'case decided'. I, therefore, think that there is no force in the preliminary objection.

6. The contention of the learned counsel for the applicant on the main issue arising in this revision is that the learned Civil Judge had jurisdiction to decide the claim for arrears of rent also, and such a claim could be joined to a suit for determination of a rent filed under Section 5(4) of the Act. Learned counsel has relied on the provisions of Section 18, Bengal, Agra and Assam Civil Courts Act, which provides that a Civil Judge will have jurisdiction to try any suit irrespective of its valuation, subject to the provisions of any other enactment which may be in force. His contention, therefore, was that the learned Civil Judge had jurisdiction to try a suit the valuation of which was less than Rs. 5,000/-. This contention appears to be somewhat inconsistent with the provisions of Section 15, Civil P.C. which provides that a suit shall be instituted in the court of the lowest grade competent to try it.

With respect to this provision the contention of the learned counsel for the applicant was that the section did not mean that the Court of a higher grade had no jurisdiction to try a suit which was also maintainable by a Court of a lower grade. The section was said to be merely a procedural provision, and it did not purport to take away the jurisdiction of a higher Court to try and decide a suit of smaller-valuation. In support of this argument the learned counsel cited the case of Nidhi Lal v. Mazhar Husain, 7 ALL 230 (F.B.) and also the case of Matra Mondal v. Hari Mohun, 17 cal. 155. These cases, in my opinion, fully boar out the contention of the learned counsel that Section 15, Civil P.C. contains merely a procedural provision and its object is not to oust the jurisdiction of a Court of higher grade to try and dispose of a suit of smaller valuation. The contention of the learned counsel was that the learned Civil Judge had the jurisdiction to try the suit and there could be no doubt that the point that the joinder of these two reliefs was permissible, under the Code of Civil Procedure. In any case, it was not prohibited by any provision of the Control of Rent and Eviction Act. I may mention in this connection that the plaintiff has claimed arrears of rent at the same enhanced rate of RS. 50 per mensem, which he wants the learned Civil Judge to fix for future also. Sub-section (5) of Section 5 of the Act further provides that the rent fixed by the Court under Sub-section (4) shall be

payable from such date as the Court may direct. This provision leads to the conclusion that the Court is authorised to fix the enhanced rate from a date prior to the date of the institution of the suit. If the Court is authorised to fix the rent from such date as it may think proper, I find it very difficult to hold that it could not pass a decree for recovery of rent at the enhanced rate, from the date the Court thinks it proper that it should be paid.

7. It is certainly more convenient that the Court which fixes the rate of rent, and which also directs that the rent is to be paid at that rate from a back date, should also have the power to actually pass a decree for the recovery of the amount which it thinks the tenant is liable to pay.

8. The position, therefore, is that the joinder of the two claims is permissible under the Code of Civil Procedure and it is not prohibited by any provision of the Control of Rent and Eviction Act. It further appears, from what has been stated above, that the learned Civil Judge had the jurisdiction to try the claim for recovery of less than Rs. 5,000 also; and I, therefore, think that the two claims can be joined together in a suit instituted under RULE 5 (4) of the Act.

9. The learned Civil Judge has mentioned in his judgment that the claim for recovery of rent is triable by a Court of small causes and he appears to be correct so far; but it does not mean that, if the suit for fixation of rent has been properly filed before the learned Civil Judge, a claim for recovery of arrears of rent, at the rate to be fixed, could not be added to the claim for enhancement. Reference may also be made in this connection to Sections 15 and 16, Provincial Small Cause Courts Act. Section 16 provides that a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes. What this section prohibits is the institution of a suit in any other Court, if the entire suit as it stood was triable by a Court of small causes. The present suit as a whole was certainly not cognizable by any Court of small causes and the suit as it stood was not of a Small: Cause Court nature. We find that in ordinary suits for recovery of possession of immovable property a prayer is also added for recovery of certain sums of money as damages for use and occupation. If the latter relief alone formed the subject-matter of the suit, it would certainly be cognizable exclusively by a Court of Small Causes, but the section does not prohibit the inclusion of a relief like that, to a Suit brought properly for another relief in the appropriate Court.

10. The learned counsel for the opposite party has contended that the Court of the Munsif or of the Civil Judge, trying a suit under Section 5, Control of Rent and Eviction Act, is a persona designata; the said officer has been conferred a particular jurisdiction by this special Act. He can, therefore, try only a suit as provided by the special Act and not any other claim made in that suit. I do not find it possible to agree with the learned counsel in his submission that the learned Munsif or the learned Civil Judge is a persona designata when trying a suit under Section 5 (4). In my opinion, only an additional jurisdiction has been conferred on the ordinary civil Courts, to try suit under the Bent Control and Eviction Act also. It is the same kind of power which has been conferred on these Courts by the different provisions of the Agriculturists' Relief Act, the Debt Redemption Act, and numerous other enactments. The legislature was probably conscious of the fact that a decree passed by a Court under Section 5 (4) would ordinarily be appealable and it, therefore, considered it necessary to provide that no appeal would lie from a decree passed under Section 5 (4) of the said Act. Simply

because a special enactment confers jurisdiction on ordinary civil Courts to decide certain additional matters, it does not follow that the said Courts have been made "persona designata" for the purposes of that case. In this connection the learned counsel for the opposite party cited two cases before me. These cases are reported in -- 'Mrs. Davies v. Brock Smith', 8 Ind. Cas. 1158 (Lah.) and -- 'Municipal Corporation of Rangoon v. M. A. Shakur', A.I.R. 1926 Rang. 25 (F.B.). In my opinion these cases deal with very different facts and have no application to the circumstances of the present case.

11. The learned counsel for the opposite party next contended that a special jurisdiction has been conferred on the Civil Judge to try a suit of the nature mentioned in Section 5 (4) and, therefore, no other cause of action can be joined to that prayer. I do not find any force in this contention either, because the fact that the court has been conferred a special jurisdiction, does not mean that the ordinary jurisdiction of the court has been taken away. The court will determine the rate of rent as provided by the provisions of the Control of Rent and Eviction Act, and at the same time can pass a decree for that amount under its ordinary jurisdiction,

12. The learned counsel for the opposite party further contended that if a claim for recovery of arrears of rent is permitted to be added to a claim for determination of rent, it would lead to a serious anomaly, inasmuch as an appeal would lie from the decree granting the arrears of rent, but no appeal would lie from the part of the decree determining the rate of rent. I do not think there would "be any serious anomaly if one part of the decree is made appealable and the other part of the decree is not made appealable. The appellate court will not be able to hold that the rate of rent fixed by the trial court was not correct and it will only be in a position to hear the appeal on a supposition that the rate of rent fixed could not be challenged before it. If there are certain pleas of payment or other such matters, the appellate court would be able to deal with those points and those points only. In any case, a consideration like this cannot be allowed to affect the jurisdiction of the court, if the court otherwise is entitled to try and determine both the claims.

13. The learned counsel for the parties have not cited before me any case of this Court or any other court in which a question like this was considered and decided. I have, therefore, given this case a most careful consideration. In my opinion, a prayer for recovery of arrears of rent at the same rate at which the plaintiff seeks to have the rent fixed by the court, can be joined to the claim for fixation of rent. Such a procedure is certainly permitted by the Code of Civil Procedure; it avoids multiplicity of suits and at the same time is not prohibited by any provision of law. It further prevents a great hardship, which might otherwise be caused to the landlord, if he has to wait for filing a suit for recovery of rent till the rent has been finally determined under Section 5 (4) of the Act. The civil suits sometimes take long to come up for decision, and meanwhile the plaintiff's claim for recovery of arrears of rent for several years might get barred by time. Such a situation should be avoided if it legally can be avoided; and, as I have stated above. I think there is nothing illegal in permitting the two claims to be joined together and in asking the same court to adjudicate upon both of them in the same suit. For the reasons given above. I think the present application in revision should be allowed.

14. I, accordingly, set aside the order under revision, and direct the court below to entertain and decide the claim for the recovery of arrears of rent also.

15. The applicant will have his costs of this revision from the opposite party.