Madan Mohanji Maharaj vs Sunder Lal on 7 September, 1951

Equivalent citations: AIR1953ALL554, AIR 1953 ALLAHABAD 554

JUDGMENT

Desai, J.

1. This and the connected Civil Revisions Nos. 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, and 1102 are from an order of the Civil Judge, Aligarh, refusing to review a judgment of his predecessor. The parties in all the revision applications are same; they relate to different parcels of land. The applicant was the plaintiff before the trial Court and the opposite party was' the defendant. Ten suits were instituted under Section 180, U. P. Tenancy Act, in the trial Court which was that of an Assistant Collector, First Class, by the applicant, claiming to be a 'sarbarakar', for ejectment of the opposite party alleged to be a trespasser upon the lands in dispute. The suits were contested by the opposite party on the ground that he, and not the applicant, was the 'sarbarakar' and that he was not liable to be ejected. The trial Court decreed the suits holding that the applicant was the 'sarbarakar' and not the opposite party and that the latter was a trespasser. It did not treat the dispute between the parties as one raising a question of proprietary interest and did not refer it to a civil Court for its finding (as contemplated by Section 286, UP. Tenancy Act). The opposite party filed appeals from the decrees passed by the Assistant Collector in the Court of the District Judge who transferred them to the Civil Judge. It was contended before the learned Civil Judge on behalf of the applicant that he had no jurisdiction to hear the appeals because no question of proprietary right was decided by the trial Court.

2. It is laid down in Section 284(4), U.P. Tenancy Act, that an appeal from a decree of a revenue Court passed in a suit in which an issue involving a question of proprietary right has been decided by a civil Court under Sub-s. (2), shall lie to the District Judge. The opposite party filed the appeals in the Court of the District Judge purporting to act under this provision. Ordinarily an appeal from a decree passed under Section 180, U.P. Tenancy Act, would lie to the Commissioner, and not to the District Judge. The learned Civil Judge held that he had jurisdiction to hear the appeals and also that the question raised by the opposite party was not a question of proprietary right. He allowed the appeals on the ground that the opposite party was the 'sarbarakar' and not the applicant. The applicant did not file appeals from the decree passed by the learned Civil Judge but instead filed applications for review. The applications were filed before the Civil Judge who had passed the decrees but have been disposed of by his successor-in-office. The review applications were based solely on the ground of an apparent error on the face of the record.

3. It was contended in the review applications on behalf of the applicant that when the learned Civil Judge held that no question of proprietary right was raised between the parties in the trial Court, no appeal from the decrees passed under Section 180, U. P. Tenancy Act could lie to him and that it was

an apparent error on the face of the record for him not on]y to entertain the appeals but also to decree them. The learned Civil Judge refused to review the decree passed by his predecessor, being of the view that there was no error apparent on the face of the record. The applicant comes to this Court in revision from his orders.

4. I find that these applications cannot succeed. It was for the learned Civil Judge to decide whether there was any apparent error on the face of the record or not, when he found that there was no apparent error on the face of the record, it would not be competent for this Court to say that there was and to review the decrees passed by his predecessor. The intention of the legislature seems to be that the power of reviewing a judgment on the ground of an apparent error on the face of the record, should vest in the Court which has passed the order and not in a superior Court. The pre-I sent case must be distinguished from a case in which a Court grants a review, on any ground whatever, or refuses to review on the ground of want of jurisdiction. This Court may revise an order passed by a subordinate Court allowing review even on the ground of an apparent error on the face of the record, or refusing to review on the ground that it had no jurisdiction to review; but the present is not such a case. Here the learned Civil Judge has not refused to review on the ground that he had no jurisdiction to review; he has refused to review on merits on the ground that no case for review was made out. This would be clear from the following observations made by him in his order :

> "The contention of the learned counsel for the applicants is not tenable and not so easy as to make it an error apparent on the face of record so as to make the review application entertainable and successful.** *** Whatever the merits of one's (?) opinion may be there can be little doubt that the point is debatable and not free from difficulty. I, for one think there is no difficulty in deciding the points as it has been decided by the learned District Judge and myself and I have not much hesitation in saying that if the point comes up again, I will decide it in the same way.** * * * The applications for review apart from being infructuous are not maintainable as no apparent error on the face of the record has been shown." , If the Court which has passed the order itself says that there was no apparent error on the face of the record, in the very nature of the things, his finding must be held to be final. The very attribute of an error on the face of the record is, that it must be apparent to everyone including the Judge who has passed the order. If the Judge, even on being told that there was an error, holds that there was no error, then even if there was in fact an error, it was certainly not an error apparent on the face of the record. In this view, it would not be open to this Court to say that there was an apparent error in the decrees passed by the learned Civil Judge and to grant review or to remand the cases to him to allow review.

5. The cases cited by Mr. Gaur are not at all helpful. He has not cited any authority of this Court, or for that matter of any other Court, showing that a High Court can review a judgment of an inferior Court on the ground of an error apparent on the face of the record even though the inferior Court had decided that there was no such error and refused to review.

In -- 'Ram Lal v. Ratan Lal', 26 All 572 (A) a Bench of this Court held that a High Court cannot revise an order of an inferior Court declining to review its judgment. That case was distinguished in -- 'Akbar Khan v. Muhammad Ali Khan', 31 All 610 (B) and --'Wills v. Jawad Husain', 29 All 468 (C); in both of, which it was held that when an inferior Court rejects an application for review on the ground that it had no jurisdiction, its order cannot be revised by the High Court under Section 115, Civil P. C. Both these cases dealt with refusal of an inferior Court to review its previous order on the ground of want of jurisdiction and not on the ground of want of merits. In the case of -- 'Akbar Khan' (B) the inferior Court had refused to entertain the application for review on the ground that it did not lie because the same matter was pending for decision before the Court of appeal. That view was wrong and this Court revised its order on the ground that it had failed to exercise the jurisdiction vested in it. It stressed the fact that the inferior Court had not considered whether there were sufficient grounds for a review. In the 'case of Willis' (C) also this Court stressed the fact that the inferior Court had rejected the application for review without going into its merits. That application was rejected on the ground that sufficient court-fee was not paid on the application. Had it dismissed the application for review on merits, this Court would have had no hesitation in rejecting the application in revision. In the present case, the learned Civil Judge has not refused to exercise jurisdiction; he has assumed jurisdiction but refused to review the judgments because he did not find any merits in the applications. His view that there was no error apparent on the face of the record might be erroneous but he was entitled to entertain that view and it cannot be said that he acted illegally or with material irregularity in entertaining it.

6. Therefore, these applications cannot succeed and are hereby dismissed.