L. Ganga Prasad vs Mst. Saroop Dei on 20 December, 1950

Equivalent citations: AIR1951ALL568, AIR 1951 ALLAHABAD 568

JUDGMENT

P.L. Bhargava, J.

1. Sm. Sarup Dei, the pltf-resp. is the owner of a shop in village Dhanaura, pargana Hasanpur, in the Moradabad District. On 6-5-1945, she had let out the shop to Ganga Prasad, the deft-applt. for one year on a yearly rental of Rs. 125/-. After the expiry of the term of the lease the shop was not vacated by the deft. Accordingly, on 9-8-1946, the pltf instituted the suit, which has given rise to this-appeal, for ejectment of the deft from the shop; On 29-3-1947, the trial Ct dismissed the suit for ejectment on the ground that it was barred' in view of the provisions of Section 3, United Provinces (Temporary) Control of Rent and Eviction Act III (3) of 1947.

2. The pltf thereupon filed an appln for review, on 2-4-1947. She pointed out that Act III (3) of 1947 had not been made applicable to Dhanaura, where the shop was situate. As the suit was not, in fact, governed by the provisions of the said Act, the trial Ct granted the appln for review, set aside the dismissal of the suit & decreed the same.

3. The deft preferred an appeal, which came-up for hearing before the learned Civil Judge of Moradabad. That appeal was dismissed; hence this appeal.

4. Learned counsel for the applt has, in the first place, contended that the appln for review was not properly presented, inasmuch as it was presented to the Munsarim of the Ct., while, under Rule 2 of Order 47, C. P. C., it should have been made to the Presiding Officer of the Ct. In this connection reliance has been placed upon a decision of this Ct in 'Munro v. The Cawnpore Municipal Board', 12 All 57: (1889 AWN 197). I, however, see no force in this contention -- firstly, because there is nothing on the record to show that the appln was presented to the Munsarim. On the other hand, the order sheet goes to show that the appln was presented in Ct & it was ordered to be put-up in the presence of the counsel for the parties. The deft filed an objection on the same day, viz. 2-4-1947. On the next day, the Ct fixed a date for the disposal of the appln.

5. Learned counsel for the applt has pointed out that in the Ct below it was admitted that the appln for review was presented to the Munsarim, but there is no reference to any such admission in the judgment of the learned Civil Judge. It appears that the learned Judge proceeded to dispose of the argument advanced on behalf of the applt in regard to the proper presentation of the appln on the assumption that it had been presented in the office & not in Ct.

6. Secondly, even if it were to be assumed that the appln for review, which was addressed to the "Judge who passed the decree" was put-up before him, through the official channel --the Munsarim

& the Reader -- it is not possible to hold that on that account the appln was not properly presented. All that Rule 2 of Order 47, C. P. C. requires is that an appln for review of a decree upon some ground other than the discovery of such new & important matter or evidence as is referred to in Rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to & disposed of by the Judge who passed it & not by his successor, except in cases where notice has been ordered to be issued by the Judge who passed the decree.

7. In 'Munro's case', (12 All 57: 1889 AWN 197), no doubt, there is an observation at p. 59 that "the appln should have been presented to the Judge & not to the Munsarim", but those observations were made in entirely different circumstances. In that case, an appln for review had been presented to the Munsarim within 90 days of the decree. The appln was insufficiently stamped. The Munsarim reported that the stamp on the appln was insufficient. There was some dispute between the Govt pleader & the Munsarim as to whether or not the stamp was sufficient. In the mean time the period of ninety days expired. After the proper stamp duty had been paid a question arose whether there was a proper presentation within 90 days. It was pointed out that the appln was not fit to be received within ninety days by reason of the deficiency of stamp & it was barred by limitation, under the circumstances, after ninety days.

8. In the next place, it has been argued on behalf of the applt that no appln for review could be entertained or granted to correct an. "error of law". Reliance has been placed on, the following decisions: 'Chajju Bam v. Neki',. A I R (9) 1922 P C 112: (3 Lah 127); 'Balkrishan v. Mt. Bundia', A I R (20) 1933 All 274 : (55 All 196); 'Kishun Chand v. Makund Sarup', A I R (25) 1938 All 308: (175 I C 586) & 'Ranbir Prasad v. Sheobaran Singh', A I R (26) 1939 All 619: (186 I C 885).

9. In 'Chajju Ram's case', (A I R (9) 1922: P C 112: 3 Lah 127) review of judgment was sought on the ground that the learned Judges ought not to have admitted the additional ground of appeal & that they were misled into holding that the facts found by them disentitled the pltfs to a decree. The review was granted by Judges who had not decided the appeal in the first instance. Their lordships of the P. C., while interpreting the words "any other sufficient reason" appearing in Order 47, Rule 1, C. P. C., pointed out that they meant a reason sufficient on grounds at least analogous to those specified immediately previously.

10. In the next case of 'Balakrishna', (A I R (20) 1933 All 274: 55 All 196), the review was sought on the ground that, when the pltfs released a part of the property mortgaged from their claim, they were not entitled to put the entire burden of the mtge debt on the other property. This was a new proposition of law, which was sought to be argued in review. The learned Judges, who decided that case, observed that the point of law, which was sought to be raised, was a point which could only be established after argument & reference to authorities, & that it was not a point which was apparent on the face of the record, nor was the point so simple as to carry conviction when stated.

11. In 'Kishun Chand Singh's case', (A I R (25) 1938 All 308: 175 I C 586) it was pointed out by this Ct, that an erroneous view of law on a debatable point or wrong exposition of the law or a wrong application of the law cannot be considered a mistake or an error apparent on the face of the record.

12. In the last case of 'Ranbir Prasad', (A I R (26) 1939 All 619: 186 I C 885), it was held that the fact that a different view on certain questions of law is possible is hardly any ground for review.

13. In this case, the trial Ct, when it delivered its first judgment, overlooked the express provisions of Sub-section (2) of Section 1, U. P. (Temporary) Control of Rent and Eviction Act, 1947, that the Act was applicable to Municipal & Cantonment Areas, to Notified Areas contiguous to such Areas & to accommodation situated within one mile of such Areas & it could be made applicable by the Provincial Govt to other areas by a notification issued in the Official Gazette; & the fact that Dhanaura, which is a Notified Area, is not contiguous to any Municipal or Cantonment Area, & the Act had not till then been made applicable thereto. The omission was due to an oversight; &, as soon as the Ct's attention was invited to the provisions aforesaid it became obvious that there was a mistake apparent on the face of the record, within the meaning of Rule 1 of Order 47, C. P. C. It was not an error of the kind referred to in any of the authorities relied upon by the applt's learned counsel. It was an error which was obviously due to an oversight & which the Ct was entitled to correct upon an appln for review, or even in exercise of its inherent powers. In 'Kamta Chaudhuri v. Lal Chandra', I L R (1945) All 680: (A I R (32) 1945 All 284) it was pointed out that "if the mistake is an obvious one due to failure to notice a particular section of an Act or part of such a section, it would be too much to say that the obvious error could not be corrected by the Ct."

14. In an earlier decision of this Ct in 'Parmarath Gir v. Krishna Dayal', AIR (20) 1933 All 517 (145 I C 607) it was observed:

> "For the revocation of an erroneous order no sufficient cause other than the irregularity of the order itself need be considered, & the Ct has inherent power to rectify its own errors inadvertently committed."

15. In Mt. Jamna Kuer v. Lal Bahadur', 1950 S C J 117: (AIR (37) 1950 F C 131) it has been held by the P. C. that "When an error is found to be one apparent on the face of the record, whether it occurred by reason of the counsel's mistake or had crept in by reason of an oversight on the part of the Ct is not a circumstance which could affect the exercise of jurisdiction of Ct to review its decision.....Where the Ct finds that a mistake has in fact crept into a judgment it would be appropriate for it to correct it on a petn for review rather than drive a party to an appeal to a higher Ct."

16. I, therefore, see no force in the second contention either.

17. Apart from the fact that there is no merit in the second contention, I may say that the order granting the appln on the ground that there was an error apparent on the face of the record could not be objected to in appeal. Rule 7 of Order 47 of the Code allows an appeal against an order granting an appln on the ground that the appln was: (a) in contravention of the provisions of Rule 2. (b) in contravention of the provisions of Rule 4; or (c) after the expiration of the period of limitation prescribed therefor & without sufficient cause. None of these conditions exists in the present case. In this connection I may refer to a decision of this Ct in 'Ali Akbar v. Khurshed Ali', 27 All 695: (2 A L J 465) where an appln for review of judgment had been granted for "any other sufficient reason" & the

sufficiency or otherwise of the reason for granting it was not considered a ground of appeal within the meaning of Section 629, C. P. C. 1882, which corresponds to Rule 7 of Order 47 of the present Code.

18. Lastly, it has been pointed out by the applt's learned Counsel that during the pendency of this appeal, the U. P. (Temporary) Control of Rent & Eviction Act, 1947, was made applicable to Dhanaura &, as such, in view of the provisions of Sections 14 & 15 of the said Act, no decree for eviction can be passed. Section 14 only lays down that "No decree for the eviction of a tenant from any accommodation passed before the date of commencement of this Act shall, in so far as it relates to the eviction of such tenant, be executed against him as long as this Act remains in force, except on any of the grounds mentioned in section 3."

That stage has not yet reached & Section 14 has no bearing on the point raised by the learned counsel. Section 15 lays down:

> "In all suits for eviction of a tenant from any accommodation pending on the date of the commencement of this Act, no decree for eviction shall be passed except on one or more of the grounds mentioned in section 3".

19. The section refers to suits which were pending on the date of the commencement of this Act, viz. October 1, 1946 & in which a decree for eviction had to be passed The present suit was, no doubt, pending on 1-10-1946, but it was not governed by the said Act when the decree for eviction was passed. The fact that during the pendency of this appeal the provisions of the Act have been made applicable to Dhanaura cannot affect the decree for eviction which has already been passed. In my opinion, Section 15 of the Act cannot help the applt. That Section 15 does not apply to cases of this nature has been held by this Ct in a recent decision in 'Rup Lal v. Ram Swarup', 1950 A L J 345: (A I R (37) 1950 All 504).

20. For the reasons stated above, I see no force in this appeal & dismiss it with costs.