Sobha Nath vs Ram Baran And Anr. on 25 February, 1954

Equivalent citations: AIR1954ALL493, AIR 1954 ALLAHABAD 493

JUDGMENT

Randhir Singh, J.

1. This is a second appeal which has been referred to us by one of us sitting singly and before whom the appeal originally came up for hearing as it appeared that the authorities on the points of law involved in this case were not all clear and consistent.

2. The appeal arises out of a suit for possession instituted by one Ram Baran against Sobha Nath and Bam Bilas on the allegations that Ram Baran and Ram Bilas, defendant No. 2, were joint tenants of plot No. 958, having an area of 9 biswas, situate in village Kakrapur, district Paizabad and that defendant No. 1 was a licensee on behalf of the plaintiff and defendant No. 2. This licence was, according to the plaintiff, revoked in 1353 Fasli but defendant No. 1 did not relinquish the land. The plaintiff also claimed a sum of Rs. 15/- as damages.

3. Defendant No. 1 contested the suit mainly on the ground that it was he who was the tenant of the land and that the plaintiff or defendant No. 2 were not the tenants. An issue of tenancy was framed and was then referred to the revenue court for a finding. The revenue court held that the plaintiff and defendant No. 2 were not the tenants. On receipt of this finding the learned Munsif dismissed the suit on the 9-10-1946.

4. The plaintiff then went up in appeal. The learned Civil Judge who heard the appeal, however, disagreed with the view taken by the trial Court and allowed the appeal, holding the plaintiff and defendant No. 2 joint tenants of the plot in dispute. Dissatisfied with the decree passed in appeal defendant No. 1 has now come up in second appeal.

5. The first point which has been urged on behalf of the appellant is that the amendment of the U. P. Tenancy Act made by Act 10 of 1947 which came into force on the 14-6-1947 had made an alteration in the law which should be given effect to by setting aside the decree passed earlier by the trial Court Prior to the amendment of the U. P. Tenancy Act by Act 10 of 1947 the law, so far as it governed Avadh, was that suits by tenants against trespassers could be maintained only in the civil court. The suit instituted by Ram Baran on the 26-10-1945 in the civil court was, therefore, validly instituted in the proper forum.

The effect of the amendment, which came into force on the 14-6-1947, was that all suits by tenants against trespassers were also to be instituted only in the revenue court.

It is now urged that, even though the suit had been instituted in the proper forum on the date when it was filed, the decree being in appeal in this Court, the amended law should be given a retrospective effect, and a fresh decree should be passed giving effect to the law as it stood now.

Reliance has been placed on the two rulings -- 'Shyamakant Lal v. Rambhajan Singh', AIR 1939 FC 74 (A) and -- 'Lachmeshwar Prasad v. Keshwar Lal', AIR 1941 FC 5 (B) for the proposition that once an appeal is instituted, the case has to be re-heard and a decree has to be passed in accordance with the provisions of law as they stood on the date of the hearing of the appeal.

We have carefully gone through the two rulings cited above, and it appears to us that the principles of law enunciated in these two rulings have hardly any application, to the facts of the present case.

Both the reported cases relate to Bihar Money Lenders Act (7 of 1939). Under the Bihar Money Lenders Act certain rights of debtors qua money lenders in respect of debts were determined and such rights were also given a retrospective effect. These rights had to be recognised not only in decrees to be passed in future but also in decrees which had already been passed. Therefore once the appellate Court came to the conclusion that the decree as passed was not a good decree in view of the amendment in law and a fresh decree should be substituted, it became necessary to examine the law as it stood on the date when the fresh decree was to be passed.

None of these two cases is an authority for the proposition that the mere institution of an appeal. against a decree would automatically result in a re-hearing of the suit as if it were pending in. the trial Court. A decree is a good decree till it is set aside in appeal, and in fact no confirmation of a decree in appeal is necessary in order to give validity to it. The question as to what law should be given effect to would arise in an appeal only if the decree was not a good decree or had ceased' to be a good decree & the appellate Court decides to set aside the decree passed by the trial Court, but if it is found that the decree already passed had been passed by a competent court and would also be a good decree on the merits under the law as it stood on the date when the appeal came up for hearing, such a decree would not be affected by any amendment of the procedural law made subsequent to the passing of the decree.

6. It has been argued on behalf of the appellant that an amendment in procedural law takes a retrospective effect and would, therefore, affect suits instituted before the date of the amendment.

There is no doubt that so far as substantive law goes, no retrospective effect can be given to it unless there is a clear provision to that effect in the Amending Act, but so far as laws of procedure are concerned, an amending act shall have a retrospective effect but only in so far as it does not affect the rights already created or vested.

In two other cases reported in -- 'Soman v Kedar Nath', AJB 1953 All 254 (C) and -- 'Bhikham v. Natha', AIB 1952 All 188 (D), it was held by this Court that suits, which were pending on the date when the Amending Act 10 of 1947 came into force, would be governed by the procedure laid down in the amending law. There can be no doubt that amendment of procedural law takes effect immediately and also retrospectively to the extent that all pending suite would be governed in the

matter of procedure by the amending law unless a contrary intention appears from the amending law itself or there is some sort of vested interest acquired by a party under the procedure prescribed by the law as it stood originally which was taken away by the Amending Act.

In the present case a decree had already been passed in favour of the plaintiff by a competent Court, and so long as the decree stood as a good decree on merits, the decree-holder had a subsisting right to execute the decree and to this extent he had also acquired a vested interest. The rulings referred to above are no authority for the proposition propounded on behalf of the appellant that a decree passed by a competent Court would lose its effect if by a subsequent amendment of the law the jurisdiction to entertain the suit is vested in another Court of the same status.

7. No authority has been cited in support of the contention that a decree passed before the amendment came into force would be set aside merely because an amending act, prescribing a different forum for suits had been passed after the decree had been obtained. We have, on the other hand, before us the contrary view taken by a Division Bench of this Court -- 'Basdeo Singh v. Bharat Singh', AIR 1949 All 542 (E). It was held in that case that a decree passed by a Civil Court before Act 10 of 1947 came into force, even though it may be in appeal, would not be affected merely because a different forum had been prescribed for such suits. We respectfully agree with the views expressed by the learned Judges in that case. It is unfortunate that this ruling was not cited at the time when the reference was made by one of us.

8. Apart from the view we have taken of the general effect of an amendment of the procedural law, a plain reading of Section 31 of Act 10 of 1947, also shows that it was not the intention of the legislature that the decrees passed in civil cases pending in appeal at the time of the amendment should be reviewed in the light of the procedural amendment.

In -- 'Bhagwati Chaube v. Ram Adhar Chaube', AIR 1953 All 219 (P), a similar question came up for decision before a learned Judge of this Court, and it was held that Section 31 of the Amending Act 10 of 1947 did not take away the jurisdiction of civil Courts even in respect of suits pending in the civil courts.

The question as to whether the general principles governing the effect of amendment of a procedural law apart from Section 31 of that Act, would or would not affect suits, pending in the civil Courts at the time of the amendment was, however, not raised or considered in that appeal and the authority of that ruling may be restricted to the application of Section 31 of the Amending Act 10 of 1947.

9. We are, therefore, clearly of opinion that an amendment of procedural law, though it has a retrospective effect, will not affect the validity of decrees already passed by a competent Court, only on the ground that the law of procedure, as subsequently amended, had prescribed a different forum for the institution of such suits. We are therefore unable to agree with the contention raised by the iearned counsel for the appellant that the decree passed by the lower appellate Court in this case should be set aside on this ground.

10. The only other point which has been urged in arguments is that the appellant had been in possession of the plot for over 12 years before the suit was instituted by the respondent and as such a suit was barred.

The lower appellate Court has found as a matter of fact that the plaintiff had been in possession of the plot within 12 years before the suit and that the defendant had not been in possession of the plot for over 12 years when the suit was instituted. This is a finding of fact and is binding on us in second appeal. The point of limita-tion raised by the learned counsel has, also there-fore, no force.

11. No other point has been pressed in arguments before us.

12. As a result, the appeal fails and is dismissed with costs to the respondents.