Ram Chand vs Ram Swarup on 23 August, 1950

Equivalent citations: AIR1952ALL654, AIR 1952 ALLAHABAD 654

JUDGMENT

Seth, J.

1. The suit out of which this appeal has arisen was instituted in the Court of a Munsif to evict the appellant from an accommodation, occupied by him in the town of Baldeo as a tenant of the plffs.-respondents. It is not necessary to recapitulate the pleas raised in defence. It is sufficient to state that the Munsif overruled all of them & decreed the suit. The U.P. (Temporary) Control of Rent & Eviction Act, III (3) of 1947, hereinafter referred to as 'the Act', was extended to the town of Baldeo during the pendency of the appeal by the deft, against the decree of the Munsif in the lower appellate Court. This enabled the deft, appellant to set up, in the lower appellate Court, an additional plea based on Section 15 of the Act which reads :

> "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."

It was contended on his behalf that as the suit was not filed on any ground mentioned in Section 3 of the Act, a decree for eviction could not be passed against him therein. The lower appellate Court repelled all the contentions raised on behalf of the appellant & dismissed the appeal. As regards the plea based on Section 15 it held, relying on a single Judge decision of this Court in 'Northern India Coal Company v. Mst. Bitti Kuer', 1949 A W R 539, that the provisions of that section do not apply to appeals pending on the date of the commencement of the Act.

2. Learned counsel for the appellant contends that this view of the lower appellate Court is erroneous & relies upon 'Niranjan Lal v. Mt. Ram Kali', AIR (37) 1950, All 396, in support of his contention. He submits that the section has not been correctly construed in 'Northern India Coal Co's.', case & that even if I do not accept this submission, I am bound to follow 'Niranjan Larv. Mt. Ram Kali Devi.'

3. 'Niranjan Lal's' case is a direct authority in support of the proposition that 'suit' in Section 15 of the Act refers to a suit while it is before the Court of first instance as well as while it is before the appellate Court & that a tenant is entitled to claim the benefit of that section in an appeal pending on the date when the Act came into force. It is unfortunate that the aforesaid single Judge decision was not brought to our notice when we decided 'Niranjan Lal v. Mt. Ram Kali Devi', although it had been published before then. Nevertheless it is not possible to hold that its authority has not been overruled by the decision of a Bench in 'Niranjan Lal Bhargava's', case. I am, therefore bound to follow the construction approved in 'Niranjan Lal's case & to reject the construction approved in

'Northern India Coal Company's case. Notwithstanding this, the desire to ascertain whether anything said in that case would have induced us to hold otherwise, has led me to examine critically the reasoning upon which my learned brother Mushtaq Ahmad has based his conclusion.

4. On an examination of the judgment in. 'Northern India Coal Co's.' case, it transpires that it was thought by my learned brother that certain words of Section 15 suggest that it was not intended to apply to appeals, for he observes.

> "..... the words 'no decree for eviction shall be passed except on one or more of the grounds mentioned in Section 3 clearly suggest that they have reference to a stage before the passing of a decree in the suit."

As my learned brother has not indicated how the words quoted by him suggest what he thinks they do, the only way in which the validity of his conclusion may be examined is to guess & consider the reasons which might have led him to it.

5. The mere use of the future tense in 'no decree for eviction shall be passed' does not in any way indicate that the section was not intended to apply to appeals, for, so long as an appeal remains pending, a decree yet remains to be passed therein in the future, & unless the claim of the plff. is disallowed, the decree to be passed will always be a decree for the eviction of a tenant & no other decree, whether it be in affirmance or reversal of the decree of the Court of First instance.

6. There is nothing in the reference to Section 3 also to make the section inapplicable to appeals, although that section refers to suits only & does not refer to appeals at all & the grounds mentioned therein are only those grounds on which a suit for the eviction of a tenant may be filed. A similar expression, on any of the grounds mentioned in Section 3, occurs in Section 14 of the Act also, which relates to the execution of decrees of original & Appellate Courts both. At any rate, so far as Section 14 is concerned, it is obvious that the grounds mentioned in Section 3 have been referred to therein only for the sake of achieving brevity by avoiding a repetition of all that has been said in detail in the six grounds lettered as (a) to (f) in Section 3 of the Act. I have failed to discover any reason to consider that they have been referred to in Section 15 with any other object or otherwise than as a compendious substitute for the subject-matter of those six grounds. It would thus appear that there is nothing in the words quoted by my learned brother which may be understood to suggest that the section is inapplicable to appeals.

7. If it was thought by my learned brother that the opening words of the section, 'in all suits for eviction', suggest that it is inapplicable to appeals, & if he meant to lay emphasis on the word 'suit', he has not given any indication of it. It seems to me, however, that these words, neither by themselves nor when they are read with the words quoted by my learned brother, do in any way suggest that the section does not apply to appeals, unless it be assumed that the decree of an Appellate Court cannot be considered to be a decree passed in a suit. Such an assumption, would be entirely unjustified.

8. As observed by Bhashyam Ayyangar, J., in 'Kristnama Chariar v. Mangammal', 26 Mad 91 (P B):

> "When an appeal is preferred from a decree of a Court of First Instance, the suit is continued in the Court of Appeal & re-heard either in whole or in part, according as the whole suit is litigated again in the Court of Appeal or only a part of it. The final decree in the appeal will thus be the-final decree in the suit, whether that be one confirming, varying or reversing the decree of the Court of first instance."

9. These observations were quoted with approval & the nature of an appeal critically examined by Sundara Ayyar, J., in 'Atchayya v. Venkata Seetharamachandra', 39 Mad 195, where the conclusion reached by the learned Judge after an exhaustive review of the relevant provisions of the Civil P. C. was expressed thus:

> "It is quite clear that the Civil P. C. has accepted & carried out the well-established principle that an appeal is the continuation of the proceedings in the original Court that those proceedings are removed to the Court of Appeal & that the proceedings in the Appellate Court are in the nature of a re-hearing."

10. The P. C. has also taken the same view of the nature of an appeal in 'Shyamakant v. Rambhajan', 1939 F C R 193, & 'Lachmeshwar Prasad v. Keshwar Lal, 1940 P C R 84, the observations of Bhashyam Ayyangar, J., quoted above, have been approved by Varadachariar, J. in the last mentioned case. According to these two decisions of the P. C. under the processual law of this country an appellate' Court is not merely a Court of error & an appeal is by way of a re-hearing, so that on an appeal being preferred, the subject-matter of the suit becomes 'sub judice' once again & the controversies that had occupied the attention of the Court of first instance are re-opened, requiring to be set at rest finally by the decree to be passed by the Court of Appeal

11. It will thus appear that an appeal is not a proceeding distinct from a suit but a further continuation of the proceedings started in the Court of first instance & that when an appeal is filed against a decree passed by the Court of first instance in a suit the suit is removed to the Court of Appeal & continued & re-heard there subject to such limitations as are prescribed by Civ. P. C. Such being the nature of an appeal, an appellate decree also is a decree passed in a suit though by the Court of appeal.

12. This conclusion is fortified by a reference to the definition of 'decree' contained in the Civ. P. C. which makes no distinction between appellate decrees & those of Original Courts, so that according to it even an appellate decree expresses an adjudication on all or some of the matters in controversy in a suit & in no other proceeding.

13. It may not be very evident that the decree of an appellate Court is a decree passed in a suit, if attention is confined to decrees passed in such 'appeals only as have been dismissed; but as soon as attention is turned to a decree passed in an appeal, which has been allowed, it will be seen at once, that an appellate Court cannot merely allow an appeal, without also passing some decree with reference to the suit itself, which clearly indicates that it cannot be predicated of an appellate decree that it is not a decree passed in a suit.

14. The assumption that an appellate decree cannot be considered to be a decree passed in a suit, on which alone may be rested the conclusion that an appeal is outside the purview of the section, having thus been found to be baseless it follows that the conclusion cannot stand. I consider, therefore, that there is nothing in the opening words of the section from which it may be inferred that it was not intended to apply to appeals. It seems to me that the opening words were intended to indicate the nature of proceedings contemplated by the section & not any particular stage of such proceedings.

15. It was also thought by my learned brother that to apply Section 15 of the Act to appeals will result in giving retrospective effect to it. With due deference to him I find myself unable to concur in this view. So long as an appeal remains pending a decree yet remains to be passed therein &, therefore, to apply the section to such appeals will be to apply it prospectively to something to be done after the date of the commencement of the Act & not retrospectively to anything already done before that date. It is only on the assumption that a Court of Appeal is merely a Court of error, bound to confirm the decree of the lower Court, if it happens to be correct according to the law as it existed on the day on which it was passed, that it may be thought that the application of the section to pending appeals results in retrospectively affecting the decrees which would not have been affected otherwise. As this assumption is not permissible in view of the authorities already referred to, the conclusion which is based upon it cannot be accepted as correct.

16. Thus, I have been unable to discover anything in the reasoning of my learned brother which may induce me to accept the construction placed upon the section in 'Northern India Coal Co's.' case or which may induce me to think that 'Niranjan Lal Bhargava's case has not been correctly decided & requires reconsideration. I, therefore, uphold the contention of the learned counsel that the benefit of Section 15 of the Act may be claimed even in an appeal & that the provisions of that section apply also to appeals which were pending on the date of the commencement of the Act. The acceptance of this contention, however, does not help the appellant in any way. The section applies to such suits only as were pending on the date of the commencement of the Act, which, according to Section (3) of the Act, is to be deemed to be 1-10-1946. In the present case, the suit itself was filed after that date & therefore, falls outside the purview of the section. Section 15, therefore, does not afford any protection to the appellant.

17. Having thus failed in his attempt to support the appeal by reference to Section 15 of the Act, the learned counsel for the applt. falls back on Sections 1 (3) & 3 of the Act. He submits that as soon as the Act was extended to the town of Baldeo the whole of it, including its Section 1 (3), became applicable to that area & that, therefore, the Act should be deemed to have come into force in that area also on 1-10-1946, & to have been in force there when the suit was instituted. He points out that the suit was not filed either with the permission of the District Magistrate or on any one or more of the grounds mentioned in Section 3 of the Act & contends that it should be dismissed on the ground that it was filed in contravention of the provisions of that section & was, therefore, not validly instituted.

18. The contention is not sound. Section 1 (3) of the Act merely fixes the date of the commencement of the Act by providing that it shall be deemed to have come into force on 1-10-1946. It has no

reference to the applicability of the Act to any particular area. Therefore, all that can be argued on the basis of Section 1 (3) is, that after the extension of the Act to the town of Baldeo, in all proceedings within the purview of the Act, relating to accommodations situate in that town, it should be held that the Act itself had come into force on 1-10-1946, & that every question depending for its decision on the date of the commencement of the Act should be decided with reference to that date. For example, when in a proceeding relating to the town of Baldeo a question arises under Section 14 or 15 of the Act, whether a decree was passed before the date of the commencement of the Act or whether a suit was pending on the date of the Act, such a question will have to be decided with reference to Section 1 (3) of the Act & on the assumption that the Act had come into force on 1-10-1946.

19. It does not, however, follow from this that, from the date on which the Act was extended to the town of Baldeo, it shall be deemed to have been applicable to that town with effect from the date mentioned in Section 1 (3). When the learned counsel submits that Section 1 (3) of the Act having been applied to the town of Baldeo with the rest of it, the Act shall be deemed to have been in force in that town also from 1-10-1946, he is right to the sense that at Baldeo also it shall be deemed that the Act itself had come into force on that date; but he is not right when he intends to convey by that expression that the Act shall be deemed to have been applicable to that town also from that day. Herein lies the fallacy of his argument.

20. The law which governs the institution of suits is the law in force at the place where it is instituted on the day when it is instituted, although subsequent proceedings therein may be governed by the law which may be in force on the day when Such proceedings are taken. I had occasion to consider this question in 'Rup Lal v. Bam Swarup", 1950 A L J R 345, wherein also I have expressed the same view. I have been unable to discover anything in the able arguments of Dr. Asthana to induce me to depart from that view. When the present suit was instituted the Act was not applicable to the town of Baldeo. The validity of its institution could, therefore, not be questioned then, for it was validly instituted according to the law applicable to the town of Baldeo at that time. There is nothing In Section 1 (3) of the Act or in any other provision of it, which requires me to hold that it was not validly instituted. Of course, every suit, instituted after the Act had become part of the law applicable to Baldeo, must satisfy the requirements of Section 3 of the Act before it can be considered to have been validly instituted. I therefore, overrule the second contention also.

21. No other point was argued. The appeal is dismissed under Order 41, Rule 11, Civil P. C.