Ghan Shyam Das Gupta And Anr vs Anant Kumar Sinha And Ors on 17 September, 1991

Equivalent citations: 1991 AIR 2251, 1991 SCR SUPL. (1) 119, AIR 1991 SUPREME COURT 2251, 1991 AIR SCW 2591, 1991 ALL. L. J. 958, 1991 (2) UJ (SC) 730, 1991 (4) SCC 379, 1991 UJ(SC) 2 730, 1992 (2) BLJR 747, 1992 BLJR 2 747, (1991) 4 JT 43 (SC), 1991 (2) ALL CJ 1217, (1991) 2 RENCJ 401, (1992) 1 ALL WC 243, (1991) 3 CURCC 291, (1992) 1 RENCR 42, (1991) 2 GUJ LH 317, (1992) 1 APLJ 19, (1992) 1 MAHLR 26, (1992) 1 LANDLR 73, (1991) 2 RENTLR 654

Author: L.M. Sharma

Bench: L.M. Sharma, Jagdish Saran Verma

PETITIONER:
GHAN SHYAM DAS GUPTA AND ANR.

Vs.

RESPONDENT:
ANANT KUMAR SINHA AND ORS.

DATE OF JUDGMENT17/09/1991

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
VERMA, JAGDISH SARAN (J)

CITATION:
1991 AIR 2251 1991 SCR Supl. (1) 119
1991 SCC (4) 379 JT 1991 (4) 43
1991 SCALE (2)611

ACT:
Constitution of India, 1950: Article 226--Scope of ---Jurisdiction--Exercise of---Whether justified when alternative remedy available.
Civil Procedure Code, 1908: Order XXI, Rules 97-106--Execution of decree--Whether third party, claimant objector, entitled to remedy.

HEADNOTE:

The appellants, owners of the premises in question obtained a decree of eviction against the tenant, Respondent No. 7. While the decree was under challenge before the High Court, Respondent Nos. 1 to 5 approached the High Court under Art. 226 of the Constitution, claiming that, being members of Joint Hindu Family, alongwith the lather of Respondent No. 7, they were tenants in their own right under the appellants and were not bound by the decree, since they were not parties in the eviction case. The appellants denied the claim of independent right of the respondent Nos. 1 to 5 and alleged that they had been subsequently inducted in the premises as sub-tenants by respondent No. 7.

The High Court held that since the claim of the Respondent Nos. 1 to 5 was not examined and decided in the suit and the decree was passed against Respondent No. 7 only, they could not be evicted from the premises.

Allowing the appeal preferred by the landlord-appellants, this Court,

HELD: 1.1 The remedy provided under Art. 226 is not intended to supersede the modes of obtaining relief before a civil court or to deny defences legitimately open in such actions. The jurisdiction to issue a writ of certiorari is supervisory in nature and is not meant for correcting errors like appellate Court. [122 E-F]

State of Andhra Pradesh v. Chitra Venkata Rao, [1976] 1 SCR 521; Thansingh Nathmal & Ors. v.A. Mazid, [1964] 6 SCR 654 and M. Naina Mohammed v. K.A. Natarajan & Ors., [1976] 1 SCR 102, relied on.

120

1.2 The Civil Procedure Code contains elaborate and exhaustive provisions for dealing with executability of a decree in all its aspects. The numerous rules of order XXI of Civil Procedure Code take care of different situations, providing effective remedies not only to judgment-debtors and decree-holders but also to claimant objectors as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measure and appropriate time, the answer is a regular suit in the civil court. The remedy under the Code is of superior judicial quality than what is generally available under other statutes, and the judge, being entrusted exclusively with administration of justice, is expected to do better. It will be, therefore, difficult to find a case where interference in writ jurisdiction for granting relief to a judgment-debtor or a claimant objector can be justified. Rules 97 to 106 of Order XXI envisage questions to be determined on the basis of evidence to be led by the parties and after the 1976 Amendment, the decision has been made appealable like a decree. [123C-E]

1.3 In the instant case, it was necessary to adjudicate upon the dispute between the parties and record a finding on the character of possession of Respondent Nos. 1 to 7 before

proceeding to consider whether the decree is executable or not against them and having not done so, the High Court has seriously erred in law in allowing the writ petition filed by them. The decision on the disputed issue was dependent on the consideration of the evidence to be led by the parties, and while exercising the writ jurisdiction, the High Court was not expected to go into that question and ought not to have embarked upon a decision on merits, and should have refused to exercise the special jurisdiction on the ground of alternative remedy before the civil court. [122 B-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3656 of 1991.

From the Judgment and Order dated 5.12.1988 of the Allahabad High Court in Civil Misc. Writ Petition No. 1695 of 1986.

O.P. Rana and Girish Chandra for the Appellants. B.D. Agarwal and R .D. Upadhyay for the Respondents.

The Judgment of the Court was delivered by SHARMA, J. Special leave is granted.

2. This appeal is directed against the judgment of Allahabad High Court, allowing the writ petition of the respondents Nos. 1 to 5 under Article 226 of the Constitu- tion, and directing that they shall not be evicted from the premises in dispute in pursuance of an eviction decree passed by the small causes court, Allahabad. The main ques- tion which arises for decision is whether in the facts and circumstances of the case the High Court was justified in entertaining the writ petition under Article 226 of the Constitution, and proceeding to issue the impugned direc- tion.

3. The appellants are the owners of the premises in question which according to their case was in possession of Dr. K.C. Sinha as tenant. After his death his son Prabhas Kumar Sinha, respondent No. 7, continued in possession. The writ petitioners- respondents are the sons of the brothers of Dr. K.C. Sinha, and according to their case they being members of the joint Hindu Family along with Dr. K.C. Sinha are tenants in their own right under the appellants. The case of the appellants is that they were subsequently in- ducted in the premises as sub-tenants by Prabhas Kumar Sinha and did not have any independent right.

4. The eviction suit in the small causes court was filed by the appellants against Prabhas Kumar Sinha for his evic- tion, without impleading the writ petitioners, and the decree passed therein is under challenge by the judgment- debtor Prabhas Kumar Sinha in revision before the High Court. In this background the respondents No. 1 to 5 ap- proached the High Court under Article 226 of the Constitu- tion, claiming that they, not being parties in the eviction case, are not bound by the decree.

5. The appellants in support of their denial of the claim of independent right as tenants of the writ petition- ers, pleaded supporting facts and circumstances in detail, inter alia alleging that the writ petitioners have deliber- ately concealed the fact they were parties in an immediately preceding case under the provisions of the Rent Act for release of the premises in favour of the landlord-appellants and that the release order was ultimately made by the dele- gated authority overruling their objection.

6. The High Court has held that since the claim of the writ petitioners was not examined and decided in the suit and the decree was passed against Prabhas Kumar Sinha only, they cannot be evicted from the premises unless a decree is expressly passed against them. It has been observed that the appellants must proceed to file a suit against the writ petitioners and obtain a decree against them if they intend to eject them.

7. It has been contended, and in our view correctly, that if the claim of the writ petitioners of being in pos- session of the premises as tenants in their own right is rejected and they are held to have been inducted by Prabhas Kumar Sinha or his father Dr. K.C. Sinha, they are liable to be evicted in execution of the present decree. It was, therefore, necessary to adjudicate upon the dispute between the parties and record a finding on the character of posses- sion of the writ petitioners, before proceeding to consider whether the decree is executable or not against them, and having not done so, the High Court has seriously erred in law in allowing the writ petition by the impugned judgment. The decision on the disputed issue was dependent on the consideration of the evidence to be led by the parties, and while exercising the writ jurisdiction the High Court was not expected to go into that question. In the circumstances, the Court ought to have refused to dispose of the writ petition on merits, leaving the writ petitioners to avail of the remedy before the civil court. The error in the judgment as pointed out earlier was the consequence of the initial mistake in entertaining the petition.

8. The principle as to when the High Court should exercise its special jurisdiction under Article 226 and when to refuse to do so on the ground of availability of an alternative remedy has been settled by a long line of cases. The remedy provided under Article 226 is not intended to supersede the modes of obtaining relief before a civil court or to deny defences legitimately open in such actions. As was observed in State of Andhra Pradesh v. Chitra Venkata Rao [1976] 1 SCR 521 the jurisdiction to issue a writ of certiorari is supervisory in nature and is not meant for correcting errors like an appellate court. In Thansingh Nathmal and Ors. v.A. Mazid: [1964] 6 SCR 654 a case dealing with liability to pay sales tax, the appellants without following the statutory remedy under the Sales Tax Act, moved the High Court under Article 226 on the ground that the Act was ultra vires. The challenge was rejected. Another contention, namely, that the finding of the Commissioner that the goods were actually within the State at the time of the contract was based on no evidence and was purely specu- lative, was also raised. This ground also failed before the High Court and the writ petition was dismissed. Approving the decision, this Court observed that if the appellants had persued the statutory remedy under the Act and the question had been referred to the High Court, the Court could have appropriately advised the Commissioner, but not having done so the High Court could not be asked to assume the role of an appellate court over the decision of the Commissioner either on a question of fact or even of law. Again when a learned Single Judge of the

High Court and on appeal a Division Bench proceeded to examine the correctness of an order in relation to grant of a permit to ply a vehicle under the Motor Vehi- cles Act, it was observed by this Court in M. Naina Mohammed v. K.A. Natarajan & Ors., [1976] 1 SCR 102, that the power under Article 226 is supervisory in nature and the Judges at both the tiers had unwittingly slipped into the subtle but, fatal, error of exercising a kind of appellate review. So far the question of executability of a decree is concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all its aspects. The numerous rules of order XXI of the Code take care of differ- ent situations, providing effective remedies not only to judgment-debtors and decree-holders but also to claimant objectors as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measure and appropriate time, the answer is a regular suit in the civil court. The remedy under the Civil Procedure Code is of superior judicial quality than what is generally available under other stat- utes, and the Judge being entrusted exclusively with admin- istration of justice, is expected to do better. It will be, therefore, difficult to find a case where interference in writ jurisdiction for granting relief to a judgment-debtor or a claimant objector can be justified. The rules 97 to 106 of order XXI envisage questions as in the present appeal to be determined on the basis of evidence to be led by the parties and after the 1976 Amendment, the decision has been made appealable like a decree. The High Court, in the present case, therefore, ought not to have embarked upon a decision of the writ petition on merits, and should have refused to exercise its special jurisdiction on the ground of alternative remedy before the civil court.

9. We, accordingly, set aside the impugned judgment and dismiss the writ petition of the respondents without exami- nation of the merits of the rival cases of the parties. The appeal is allowed with costs, assessed at Rs.2,000.

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N.P.V. Appeal allowed.