

GAHC010013042013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/397/2013

BIVAS DUTTA and 4 ORS
S/O- LT. MADHUSUDAN DUTTA, R/O and P.O. - GRAHAMBAZAR, P.S. and
DIST.- DIBRUGARH, ASSAM.

2: LAKHI DUTTA @ LAKSHMI DUTTA
D/O- LT. MADHUSUDAN DUTTA
R/O- GRAHAMBAZAR
P.O.- GRAHAM BAZAR
P.S. and DIST.- DIBRUGARH
ASSAM.

3: MANJU DUTTA @ MAJU NANDI
W/O- NITYARANJAN DUTTA
D/O- LT. MADHUSUDAN DUTTA
R/O- GRAHAMBAZAR
P.O. - GRAHAMBAZAR
P.S. and DIST.- DIBRUGARH
ASSAM.

4: ANNIE DUTTA @ ANIMA DUTTA
D/O- LT. MADHUSUDAN DUTTA
R/O and P.O.- GRAHAMBAZAR
P.S. and DIST.- DIBRUGARH
ASSAM.

5: ANJU DUTTA @ ANITA DUTTA @ ANITA BOSE
D/O- LT. MADHUSUDAN DUTTA
R/O and P.O.- GRAHAMBAZAR
P.S. and DIST.- DIBRUGARH
ASSAM

VERSUS

AHMED TEA COMPANY PVT. LTD.

A COMPANY DULY CONSTITUTED AND REGISTERED UNDER THE INDIAN COMPANIES ACT, OWING AND POSSESSING LANDS AND HOUSES BESIDES OTHERS HAVING ITS REGISTERED OFFICE AT K.N.C.B. PATH, BOIRAGIMATH, DIBRUGARH TOWN, DIST.- DIBRUGARH, ASSAM, PIN- , REP. BY ITS DIRECTOR MRS. NAZRANA A. ISLAM.

Advocate for the Petitioner : MRM R ADHIKARI

Advocate for the Respondent : MS. S SARMA

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGEMENT AND ORDER (CAV)

Date : 24-04-2024

Heard Mr. R.P. Sarma, learned Senior counsel, assisted by Mr. A.R. Tahbildar, learned counsel for the petitioners. Also heard Ms S. Sharma, learned counsel for the respondent.

2. This revision has been preferred u/s 115 of Cr.P.C. against the Judgment and decree dated 11/07/2011 passed by learned Civil Judge, Dibrugarh in Title Appeal No. 12/2010, whereby the appeal has been dismissed filed by the petitioner and upheld the judgment and decree dated 04/02/2010 passed by the learned Munsiff No. 1 Dibrugarh in Title Suit No. 75/2006.

3. The factual matrix leading to this revision is that the respondent as plaintiff has filed the title suit being T.S. no. 75/2006, in the court of learned Munsiff No. 1, Dibrugarh, against the present petitioner as defendants for a decree of khas possession of suit premises and recovery of monthly rent and other reliefs. The suit premises involved in the aforesaid title suit is a house measuring 12 ft X 16 ft, covered by holding No. 273 (old) and 249 (new) part of Dibrugarh town

Mouja.

4. The petitioners as defendants on receipt of summons contested the title suit by filing a written statement. In their written statement, the defendants contended that their predecessor late Madhusudhan Dutta came to occupy a part of Assam type premises at monthly rent of Rs. 20. Subsequently, the rent was increased by mutual agreement and fixed at Rs. 100 per month. Due to some misunderstanding in between their predecessor and land lord, one title suit bearing no. 120/1963 was filed in the court of Sadar Munsiff at Dibrugarh by the landlord for recovery of possession and arrear rents. However, both the parties entered into a compromise and the matter was over on the basis of such settlement. It is also stated in the written statement that the respondent/plaintiff has enough landed properties in Dibrugarh town and if they are evicted they will die in starvation with their family members.

5. On the pleadings of the parties, seven issues were framed by the trial court and the respondent/plaintiff examined two witnesses and exhibited some documents. On the other hand, petitioners/defendants also adduced three nos. of witnesses and exhibited some rent receipts. After hearing the learned counsel for the parties, the trial court has come to the conclusion that the plaintiff is entitled to recover khas possession of the suit property and the defendants were directed to hand over the peaceful vacant possession of the suit premises by removing their belongings to the plaintiff/respondents.

6. On appeal by the petitioners before the first appellate court, it was decided that the provisions of Assam Urban Areas Rent Control Act is the basis of the suit being filed by the plaintiff/respondents and not the Companies Act. As regards the boundary of the land which was being encroached by the appellant, the exact area is not relevant as the area has already been stated in the plaint

and houses stand in the name of the owner of the garden. In the suit, the appellant being proved to be defaulters, they are to vacate the land and or /houses in their occupation as per the decree. Accordingly, the first appellate court found no merit in the appeal and affirmed the judgment of the trial court. Hence, this revision.

7. Now, the question comes whether the revision filed by the petitioners is maintainable ?

8. It was urged by the learned Senior counsel representing the petitioners that there is no categorical findings recorded by the first appellate court on due appreciation of the evidence on record. Affirmation of the decree of eviction passed by the learned trial court is absolutely illegal in as much as there cannot be a decree of ejectment under the Rent Control Act, without there being a categorical finding on the question of defaulter. Thus, the impugned judgment and decree passed by the first appellate court is bad in law and is liable to be set aside.

9. It is also the submission of the learned Senior counsel for the petitioners that both the trial court and the first appellate court committed illegality and acted with material irregularity in decreeing the suit of respondent/plaintiffs as the plaintiff stated two patta nos. and dag nos. of the suit land and premises but could not confirm how much land was covered by the said dag no, as such the scheduled premise appears to be an unidentified one and as such the execution of any decree is not possible.

In support of his submission, learned counsel has placed reliance on the following case laws –

(i) (2022) 8 SCC 261 [Somakka (dead) by legal representatives vs. K.P.

Basavaraj (dead) by legal representatives].

(ii) (2005) 3 GLT 284 [Prasanna Kumar Khemani vs. Biswanath Cherenia].

(iii) (1990) 1 GLR 416 [Ranjit Kumar Paul and others vs. M/s P.Sen and Company].

(iv) AIR 2020 SC 925 [Malluru Mallappa (dead) their Lrs vs. Kuruvathappa]

10. On the other hand, learned counsel for the plaintiff/respondent has submitted that it is a settled position of law that under section 115 of the CPC, the High Court cannot re-appreciate the evidence and cannot set aside the concurrent findings of the courts below by taking different view on the evidence. The High court is empowered to interfere with the findings of fact, if the findings are perverse or there has been a non appreciation or non consideration of the material evidence on record by the courts below. Simply, because another view of the evidence may be taken is no ground by the High court to interfere in its revisional jurisdiction.

In support of her submission, learned counsel has cited the following case laws –

(i) (2014) 9 SCC 78 (H. P.C. Ltd vs. Dilbahar Singh)

(ii) AIR 2023 SC 4810 (Appaiya vs. Andimuthu @ Thangapandi)

11. I have considered the submissions of the learned counsel for the parties. I have also perused the judgment of the trial court and the first appellate court.

12. The admitted position of the fact is that the respondent/plaintiffs are the owner of the land including the suit premises and the petitioners/ defendants are the tenants, occupied the said premises by paying the rent.

13. The revisional jurisdiction has been conferred on the High court by section

115 CPC in these terms –

“Section 115 CPC – (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit: Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation--In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.”

14. On a bare look at the provision, it seems that while exercising jurisdiction

under section 115 CPC, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. The words 'illegally' and 'with material irregularity' as used in Clause (c) of this section do not cover either errors of fact or law. They do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decisions and not errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power u/s 115 of the CPC.

15. In the case of ***M.I.G. vs. Arijit Prasad Tarway***, reported in **1972 (3) SCC 195**, it was held that –

“The High Court had no jurisdiction to interfere with the order of the first appellate court. It is not conclusion of the High Court that the first appellate court has no jurisdiction to make the order that it made. The order of the first appellate court may be right or wrong; may be in accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoiced its jurisdiction u/s 115 of CPC. The High court can interfere only if first appellate court acts illegally or with material irregularity.”

16. In the case of ***Mahendra land and building corporation Ltd vs. Bhutnath Banerjee***, reported in **AIR1964 SC 1336** and ***Vora Abbasbhai Alimahomad vs. Haji Gulamnabi Haji Safibhai*** reported in **AIR 1964 SC**

1341 observed that a distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation or are concerned with the jurisdiction of the said court and errors of law which have no such relation or connection.

17. In ***Vishesh Kumar v. Shanti Prasad***, reported in ***AIR 1980 SC 892***, the Hon'ble Supreme Court has considered the revisory power of the High Court under Section 115 CPC which is reproduced as follows-

“A schematic analysis of the judicial hierarchy within a State indicates that the High Court, as the apex court in the hierarchy, has been entrusted, not only with the supreme appellate power exercised within the State but also, by virtue of S. 115, the power to remove, in order to prevent a miscarriage of justice, any jurisdictional error committed by a subordinate court in those cases where the error cannot be corrected by resort to its appellate jurisdiction. The two salient features of revisional jurisdiction under S. 115 are, on the one hand, the closely limited grounds on which the court is permitted to interfere and on the other, the wide expanse of discretion available to the court, when it decides to interfere, in making an appropriate order. The intent is that so serious an error as one of jurisdiction, if committed by a subordinate court, should not remain uncorrected, and should be removed and record healed of the infirmity by an order shaped to reinstate the proceeding within the proper jurisdictional confines of the subordinate court.”

18. Reverting to the case in hand, as I have already stated that the petitioners were the tenant under the respondent and as the petitioners failed to pay the rent in time, they became the defaulters. The trial court has decreed the case in favour of the respondent/plaintiff which was affirmed by the first appellate court. In reversing the conclusion of the first appellate court, it is not competent for the High Court to correct errors of fact or even the errors of law unless the

said errors have relation to the jurisdiction of the court to try the dispute itself. No such jurisdictional point has been raised by the learned counsel for the petitioner in this revision.

19. In the light of the aforesaid legal proposition, having regard to the facts and circumstances of the case, this Court is of the view that while exercising jurisdiction u/s 115 CPC, this court has no such jurisdiction in reversing the finding of the first appellate court as to the effect of the decree in question.

20. In the result, the revision is dismissed. There is no order as to cost.

21. Trial court record be returned back.

JUDGE

Comparing Assistant