President, Shri Kaushiki Bal Vikas Shikshan Samiti Bishrampur, Satpata Vs Jagpat Singh

Court: Chhattisgarh High Court

Date of Decision: Aug. 19, 2019

Acts Referred: Code Of Civil Procedure 1908 â€" Section 96, Order 41 Rule 27
Registration Act, 1908 â€" Section 17(1)(d)
Evidence Act, 1872 â€" Section 66, 116
Transfer Of Property Act, 1882 â€" Section 106

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Ravindra Agrawal, Shashi Bhushan Tiwari, Sharmila Singhai

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 26.03.2007 passed by Second

Additional District Judge (F.T.C.), Surajpur, District- Surguja (C.G.) in Civil Suit No. 3A/2004, wherein the said court decreed the suit filed by the

respondent/ plaintiff/ landlord for eviction of the appellant/ defendant/ tenant from suit premise of 5 rooms situated in Khasra No. 168/2 at village-

Satpata and for arrears of rent to the tune of Rs. 1,87,500/- and for future rent.

2. Heard on application dated 13.07.2014 filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 by the appellant seeking to file documents

of inspection report for recognition of school and map with related documents.

3. Learned counsel for respondent opposes the application.

4. It is pleaded that the documents specially the map is necessary for disposal of the instant appeal and the appellant was unable to produce the

documents before the trial court even after exercise of due diligence. It is also pleaded that the documents are required bonafidely and the same is

necessary for just and proper adjudication of the appeal.

5. To decide the application filed under Order 41 Rule 27 of the Code of Civil Procedure may be read as under:

The parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary, in the Appellate Court. But if -

(a) The Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (aa) The party seeking

produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within the knowledge of could not,

after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment,or for any other

substantial cause, the Appellate court may allow such evidence or document to be produced, or witness to be examined.

6. It is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court. Hence, in the absence

of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of

remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample

opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal.

7. The two tests for admissibility of additional evidence, is whether the appellate court is able to pronounce judgment on the material before it, without

taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examine the evidence, as it stands the

court comes to the conclusion that some inherent lacuna or defects becomes apparent to the court. It is only for removing a lacuna in the evidence,

that the appellate court is empowered to admit additional evidence. When a party failed to discharge its onus before the trial court, he is not entitled to

a fresh opportunity to produce evidence.

8. The trial court has provided full opportunity to the appellant to produce the documents, therefore, it is not a case where lacuna in the evidence

should be removed by the court.

9. In view of the above, the application is liable to be and is hereby rejected.

10. As per the appellant, the respondent/ plaintiff filed a suit for eviction and for payment of remaining rent on the ground that the land bearing Khasra

No. 168/2 area admeasuring 0.11 acres is purchased by the respondent/ plaintiff and his brother namely Shesh Narayan Kshtriya from vendor Suresh

Kumar through registered sale-deed. Both have raised super structure on the land comprised with 10 big rooms and all the expenses towards

construction was shared by both equally. Thereafter, one society was constituted which is the appellant and one school was opened. The rent

agreement was executed on 20.05.1999 and it was let out to the appellant. Rate of monthly rent was Rs. 15,000/- from 01.07.1999. The rent was not

paid that is why notice was issued to the appellant and on non-payment of the rent, the suit was filed. As per the appellant, the respondent is not

owner of the property in question and Shesh Narayan Kshtriya is only owner of the property and no rent agreement was executed between the

parties. Though, it is pleaded that Rs. 1,23,413/- was given by the respondent to his brother to raise the super structure, but the same was given in

order to help him. The trial curt after hearing both sides, decided that the respondent is landlord and the appellant is lessee and decreed the suit filed by

the respondent.

11. Learned counsel for the appellant submits as under:-

(i) Earlier the suit was filed against Har Prasad in his personal capacity and later on, the appellant was made party on 28.02.2003.

(ii) Notice to the appellant was not issued, therefore, the committee is not represented and he has not been provided proper opportunity.

(iii) Other shareholders of the property is not party in the suit, therefore, he had no occasion to say which portion is allotted to the present appellant.

(iv) The property for which the suit was filed is not identifiable because the description of the property is not given.

(v) The map was not attached to the plaint and the same was produced by Gendlal Paikra (PW-2) who was employee of the education department.

(vi) The map which is not agreed between the shareholders cannot form the part of the decree.

(vii) The trial court awarded decree on presumption that 5 rooms of North direction was owned by the respondent.

(viii) The document (Ex.P/3) which is alleged to be rent note, is for 5 years, therefore, it ought to have been registered as per Section 17(1)(d) of the

Registration Act, 1908.

(ix) Section 66 of the Indian Evidence Act, 1872 is not complied for proving document Ex.P/3 which is affidavit for rent, therefore, finding of the trial

court regarding Ex.P/3 is erroneous.

(x) In the present case, notice was issued to Harprasad Kshtriya, not to the education society, therefore, provisions of Section 106 of the Transfer of

Property Act, 1882 is not complied with. The finding arrived at by the trial court is liable to be set aside.

12. Learned counsel for the appellant placed reliance in the matter of Ambanna Vs. Ghanteappa, reported in AIR 1999 Kar 421, Wadi Vs. Amilal &

others, reported in (2015) 1 SCC 677, Om Prakash & others Vs. Chhaju Ram, reported in AIR 1992 P&H 219, Dorab Cawasji Warden Vs. Coomi

Sorab Warden & others, reported in (1990) 2 SCC 117, Muthu alias Vava Vs. Ammalu & others, reported in AIR 1993 Ker 272, Kanakarathanammal

Vs. V.S. Loganatha Mudaliar & another, reported in AIR 1965 SC 271 & FA No. 195 of 2011 [Sushila Tripathi (Dead) through Lrs. Vs. Anurag

Singh & others] decided by this Court on 12.10.2018.

13. On the other hand, learned counsel for the respondent submits as under:-

(i) Harprasad Kshtriya and Shesh Narayan Kshatriya have been examined before the trial court and Harprasad Kshatriya (DW-1) admitted in his

cross-examination (Para 13) that the property in question belongs to the respondent and Shesh Narayan Kshtriya.

(ii) Shesh Narayan Kshtriya (DW-2) deposed (Para 68) that he has not returned the money shared by the respondent in construction of premise in

question and he is not seeking any relief in the present case, therefore, he is not a necessary party.

(iii) Dhaneshwar Prasad Dubey (PW-3) deposed in his cross- examination (Para 3) that the original rent note was submitted in the office of District

Education Officer. Gendlal Paikra (PW-2) produced the map of school (Para 5).

(iv) The respondent has filed the suit for all the 10 rooms, but the trial court awarded the decree for eviction of only 5 rooms.

(v) The finding arrived at by the trial court is based on factual matrix and legal aspect of the matter and the same does not warrant any interference of

this court with invoking jurisdiction of the appeal.

14. Learned counsel for the respondent placed reliance in the matter of Narendra Kumar Vaish Vs. Smt. Shyama Agrawal, reported in AIR 2000

Madhya Pradesh 253 & Ajay Kumar Banerjee Vs. Commissioner M.P. Housing Board & others, reported in 2001 (I) MPJR SN 20.

15. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

16. First question for consideration before this Court is whether the appellant is tenant of the respondent. From record, it appears that earlier one Civil

Suit No. 98A/2000 was filed before the court of Civil Judge Class-I, Surajpur in which Harprasad Kshtriya who was earlier president of the appellant

institution admitted in his written statement (Ex.P/6) that the respondent is owner of the land and the appellant society is tenant. Once the president of

the appellant society admitted that it is a case of lease, the appellant cannot go beyond their admission and they shall be estopped from challenging the

right of lessor as per Section 116 of the Indian Evidence Act, 1872.

17. The trial court has elaborately discussed the issue regarding purchase of land and construction of super structure over it and recorded finding that

the respondent has purchased the land and invested money for construction of building in which school is running. After reassessing the evidence, this

Court has no reason to record contrary finding.

18. Second question for consideration before this Court is as to what was the nature of tenancy. From evidence of the respondent (PW-1), it is

established that the premise in question was rented @ Rs. 15,000/- per month. After assessing the evidence, the trial court opined that the rent note is

in possession of the appellant and he has not produced the same, therefore, permission of secondary evidence is granted and as per the document,

monthly rent is Rs. 15,000/-. The appellant side has not rebutted the evidence that monthly rent was settled for some different amount, therefore, the

trial court is right in holding that it is monthly lease for Rs. 15,000/-.

19. Third question for consideration before this Court is whether the lease is terminated as per Section 106 of the Transfer of Property Act, 1882. The

legal notice is Ex. D/6 and as per this notice, tenancy was terminated from 01.09.2000. The arrears of rent was Rs. 3,75,000/- from 01.07.1999 to

31.07.2001. The other shareholder are working with the appellant institution, therefore, the trial court opined that the respondent is entitled for half of

the rent which comes out to Rs. 1,87,500/- and he is also entitled for future rent in that ratio. The respondent being landlord/ lessor has all the right to

terminate the tenancy, therefore, the trial court is right in holding that the tenancy is terminated by the respondent.

20. Learned counsel for the appellant submits that there is no partition between two shareholders of the property, therefore, the decree passed by the

trial court is not liable to be sustained. In view of this Court, it is not a suit for partition. Admittedly, the respondent is lessor and the appellant is lessee.

The lessor has all the right to terminate the tenancy. In the present case, the other shareholder is working with the appellant institution, therefore, he is

not inclined to be with the respondent, but that does not mean the respondent has no right to take legal action for the right vested with him as lessor.

21. The respondent has filed the suit for eviction of 10 rooms, but the trial court awarded decree for 5 rooms. Looking to the facts and circumstances

of the case, it cannot be termed as improper use of discretion. Argument advanced on behalf of the appellant is not sustainable. The case laws cited

by learned counsel for the appellant are clearly distinguishable from the facts and circumstances of the present case.

22. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellant and in favour of the respondent on the following terms

and conditions:-

(i) The appeal is dismissed with cost.

(ii) The appellant to bear cost of the respondent throughout.

(iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.

(iv) A decree be drawn accordingly.