(2017) 12 RAJ CK 0021

RAJASTHAN HIGH COURT

Case No: 122 of 1999

Banshilal Alias Banshidhar s/o Rikhab Dasji		APPELLANT
	Vs	
Lrs Of Ranamal s/o Tulsidas: (Lunkaran s/o Ranamal)		RESPONDENT

Date of Decision: Dec. 7, 2017

Acts Referred:

- Code of Civil Procedure, 1908, Section 100, Section 152 -
- Rajasthan Premises (Control of Rent and Eviction) Act, 1950, Section 13, Section 13(1)(f), Section 13(5)

Hon'ble Judges: Virendra Kumar Mathur

Bench: SINGLE BENCH

Advocate: Banshi Lal, Manish Shishodia

Final Decision: Dismissed

Judgement

1. This Civil Second Appeal under sec.100 CPC has been filed against judgment & decree dated 22.03.1999 in Civil Appeal No.03/1996 (Banshi Lal v. LRs of Ranamal) passed by Additional District Judge, Barmer, whereby the appeal was dismissed and the judgment & decree dated 23.12.1995 passed by Additional Civil Judge (JD) No.1, Barmer in CO No.22/1983 (Ranamal v. Messers Pokardas Rikhabdas) was affirmed.

2. Briefly stated, deceased Rana Mal, who is now represented by respondents, filed a suit for eviction and for arrears of rent for use & occupation against the defendant-appellant on 04.05.1977, on the grounds of arrears of rent and for ejectment. Later the suit was amended on 17.10.1977 and a new para 5 was added and grounds under sec.13(1)(f) of the Rajasthan Premises (Control of Rent &

Eviction) Act 1950 {herein after ''the Act of 1950''} were also added.

3. It was averred that the premises (shop) was given on rent on 03.11.1972 at the rate of Rs.125/- per month and a rent deed was executed for 11 months. The shop was given on rent from Kartik Krishna triyodashi Samvat 2029 to Aswin Krishna Baras Samvat 2030. It was also averred that even after expiry of period, the suit shop was not vacated and the tenant continued in occupation and because of use & occupation, damages were being paid. It was further averred that damages for use & occupation were given up to 12.12.1975 and after Kartik Badi 13 Samvat 2032 no rent was paid and damages being not paid, therefore, the tenant has become defaulter. It has also been averred that because of use & occupation of the suit shop, rent paid up to 12.12.1975 and rent being not paid after that date, the plaintiff is entitled for Rs.2250/- at the rate of Rs.125/-. It was also averred that the defendant has renounced the character of tenant and the plaintiff has not waived the character of renouncement.

4. The defendant filed written statement and alleged that the suit shop was taken on rent for 11 months. It was further alleged that on expiry of 11 months, suit shop was vacated and possession was handed over back. It was further submitted that no rent was given on 22.12.1975 as suit shop was not in his possession. He is not defaulter and the plaintiff is not entitled for Rs.2250/-.

5. In additional pleas, the defendant averred that on expiry of 11 months in Samvat 2030 Asoj Bad 12, vacant shop was handed over. It was further averred that the shop, which was earlier with defendant, plaintiff gave it on rent to Ashok Kumar & Company. On 22.12.1975 rent was received by the plaintiff from Ashok Kumar & Company by cheque of State Bank of Bikaner & Jaipur. It was also averred that before this also, by Cheque No.33023 dated 28.11.1974 of Bank of Rajasthan, the plaintiff received Rs.1000/- as rent.

6. On the basis of pleadings of parties, four issues were framed. After trial, the trial court by its judgment & decree dated 23.12.1995 decreed the suit and decided all issues against defendant. Being aggrieved by the judgment & decree dated 23.12.1995, defendant filed a First Appeal. Learned Additional District Judge dismissed the appeal vide its judgment dated 22.03.1999 and affirmed the judgment & decree passed by the trial court. Aggrieved of the judgment & decree dated 22.03.1999 passed by the learned Additional District Judge, the appellant- defendant has preferred this Second Appeal.

7. This Court while admitting the appeal framed following substantial questions of law:

> 1. Whether, if there was any clerical mistake in the decree disclosing name of Ranmal, deceased instead of his legal representatives, the decree was required to be amended as contemplated under Sec.152 of the Code of Civil

Procedure. If the decree is not so amended, what would be its effect?

2. Whether in the present case, admission of a co-plaintiff in writing is binding to other co-plaintiffs and both the courts below have committed substantial error of law in refusing to extend its effect on remaining co-plaintiffs?

3. Whether a suit for eviction filed by plaintiff landlord against the tenant defendant on ground of clause (a) of sub-section (1) of Section 13 of the Rajasthan Premises (Control F Rent and Eviction) Act, 1950 (hereinafter referred to as ''the Act, 1950''), can be ipso facto decreed because the defence of the tenant defendant has been struck off within the meaning of sub-section (5) of the aforesaid Section or even if the defence of the tenant defendants is struck off within the meaning of sub-section (5) of Section 13, even then the plaintiff landlord is required to establish that the tenant has neither paid, nor tendered the amount of rent due from him for six months at the time of institution of the suit?

4. Whether in the present case, no ground of eviction as envisaged under clause (f) of sub-section (1) of Section 13 of the Act of 1950 is made out and both the courts below have committed error in decreeing the suit for eviction on the aforesaid ground?

8. Heard learned counsel for the parties on substantial questions of law framed by this Court.

9. The first question of law framed is - "Whether, if there was any clerical mistake in the decree disclosing name of Ranmal, deceased instead of his legal representatives, the decree was required to be amended as contemplated under Sec.152 of the Code of Civil Procedure. If the decree is not so amended, what would be its effect". On perusal of record, it is evident that Suit No.22/1983 was filed by the respondent-plaintiff Chhagni Devi w/o Rana Mal for arrears of rent, stating therein that a shop was given on rent on 05.11.1972 at the rate of 125/- per month. It was stated that the rent was not paid after 22.12.1975 and thus, plaintiff-respondent filed suit for eviction against the appellant. In the written statement filed by appellant-defendant Banshi Lal, he denied averments and it was stated that he was not tenant in the suit property and also not in possession of the suit property but the firm is in possession of the suit shop. In that case, provisional rent was determined under sec.13(3) of the Act of 1950 and appellant-defendant was directed to deposit a sum of Rs.4475.62 as arrears of rent and Rs.125/- per month. On 14.12.1981, defence was struck off under sec.13(5) of the Act on account of failure of

appellant to deposit rent. On 23.12.1995, the trial court decreed the suit in favour of plaintiff-respondent for eviction of the shop and further directed for payment of Rs.2250/- by way of damages, Rs.4475.62 by way of arrears of rent and Rs.125/- per month by way of mesne profit until delivery of possession. The court further directed eviction from suit shop within two months.

10. Against judgment & decree dated 23.12.1995, the appellant preferred an appeal (No.03/1996) before first appellate court, which dismissed the first appeal vide judgment dated 22.03.1999 and affirmed the findings given by the trial court.

11. So far as sec.152 CPC is concerned, it contemplates correction of clerical mistake and it reads as under:

> 152. Amendment of judgments, decrees or orders.- Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties.

12. In the present case, admittedly, plaintiff Ranamal had died during pendency of the suit, his legal representative was substituted and amended cause title was filed. Consequently, merely because the decree suffers a clerical mistake, the same does not give rise to a substantial question of law by virtue of secs.152 and 153 CPC, which empowers the lower appellate court as well as this Court to make such corrections as may be necessary. At any rate, the appellate court has corrected the cause title and the trial court''s decree has already merged in appellate court''s judgment. Thus, concurrent findings of fact recorded by two courts below need not be interfered with.

13. In support of their arguments, respondents have placed reliance on 2001 (4) SCC 181 { Jayalakshmi Coelho vs Oswald Joseph Coelho } and contended that under sec.152 CPC, mistakes resulting from arithmetical or clinical errors or accidental slip in judgment or decree, which may prejudice the cause of any party, must be rectified but such rectification must be limited to something originally intended to be included and which is erroneously left out or something which has been included contrary to the original intention. Section 152 does not empower court to have second thoughts on merits of the matter nor does it give a litigant right to improve upon his case.

14. In view of this position of law, on question No.1 no case for interference in the judgment of appellate court is made out.

15. So far as question No.2 viz. "whether in the present case, admission of a co-plaintiff in writing is binding to other co- plaintiffs and both the courts below have committed substantial error of law in refusing to extend its effect on remaining

co- plaintiffs", on perusal of the pleadings and record, it is evident that there is no admission of co-plaintiffs as alleged. After death of original plaintiff, four respondents were substituted in place of deceased plaintiff and therefore, merely because one of respondents has compromised with appellant, though same is not true, that would not bind other respondents who were substituted in equal capacity having equal share in the property.

16. On perusal of order-sheets of the trial court dated 05.07.1980, 02.08.1980, 06.09.1980 and 24.10.1980, it has come out that the appellant by way of application under Order 23 CPC was trying to avoid striking out of defence, having failed to deposit arrears of rent and had tried to insert false plea of compromise at that stage. Perusal of appellate court''s order, on internal pages 2, 3 & 4, shows that no compromise took place whatsoever.

17. The respondents also placed reliance on AIR 1969 SC 1118 (Rani Bai vs Shri Yadunandan Ram & Anr) and contended that a perusal of Order 23 CPC will show that a partial compromise prejudicial to interests of other parties not joining the same can not be recognized. Four LRs were substituted in place of deceased plaintiff and compromise by one person can not separate their joint interest. Such compromise, if any, is neither binding nor enforceable against other legal representatives. Tenancy of the appellant has been determined and all co-owners have been substituted as landlords and therefore, unless & until compromise, if any, is executed by all the four co-owners, same was not binding and enforceable and therefore, rightly rejected by both the courts below. Therefore, on question No.2 no case for interference in the judgment of appellate court is made out.

18. So far as question No.3- "Whether a suit for eviction filed by plaintiff landlord against the tenant defendant on ground of clause (a) of sub-section (1) of Section 13 of the Rajasthan Premises (Control F Rent and Eviction) Act, 1950 (hereinafter referred to as ''the Act, 1950''), can be ipso facto decreed because the defence of the tenant defendant has been struck off within the meaning of sub-section (5) of the aforesaid Section or even if the defence of the tenant defendants is struck off within the meaning of sub- section (5) of Section 13, even then the plaintiff landlord is required to establish that the tenant has neither paid, nor tendered the amount of rent due from him for six months at the time of institution of the suit"; admittedly defence has been struck off under sec.13(5) of the Act of 1950 and therefore, the suit was required to be decreed on the ground of default. The respondents placed reliance on judgment of this Court reported in 2014 (3) DNJ (Raj) 1165 {Tulsi Ram v. Mohan Lal Dashora} holding that delay in deposit of rent can not be condoned and the defence is liable to be struck off and 2007 (2) DNJ (Raj) 1054 { Usha Jain (Smt) v. Trilok Chand Jain } holding that eviction decree can be passed immediately in view of provisions of sec.13(5) of the Act on failure to deposit determined rent.

19. In the present case also, admittedly the appellant has not deposited single penny during pendency of the suit and therefore also, the appeal deserved to be

dismissed. Hence, on question No.3 no case for interference in the judgment of appellate court is made out.

20. Question No.4 framed by this Court is "Whether in the present case, no ground of eviction as envisaged under clause (f) of sub-section (1) of Section 13 of the Act of 1950 is made out and both the courts below have committed error in decreeing the suit for eviction on the aforesaid ground". In the present appeal, indisputably the appellant has denied title and both the courts below have decided issue No.4 against defendant-appellant. While deciding issue No.4 against the appellant, the courts below observed that the appellant has totally disowned the tenancy by taking plea that it is not the appellant who is tenant but one Ashok Kumar and Company is the tenant. The appellant produced no documentary proof nor any document to show existence of said firm Ashok Kumar & Company.

21. The respondents in support of their contention placed reliance on AIR 1995 Raj 87 {Sheo Naraian alias Saon v. Janki Prasad (dead) through LRs Radhey Shyam & ors.} and contended that even if there is no plea in the plaint and no specific issue is framed on the point of denial of title still the court is justified in passing a decree of eviction on the ground of denial of title. If a tenant denies title even part of the rented premises, still he can be evicted on the ground of denial of title. It is not necessary that the denial of title must be prior to the institution of the suit. In view of this, on question No.4 also no case for interference in the judgment of appellate court is made out.

22. In view of the ratio laid down in aforesaid decision, both the courts below have not committed any error in decreeing the suit for eviction on the aforesaid ground. There is no ground for interference in the judgment & decree dated 22.03.1999 passed by the appellate court. This Second Appeal has no substance and the same is dismissed.