Hira Lal Vs Ratan Lal

Court: Allahabad High Court

Date of Decision: April 6, 1944

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 151
Criminal Procedure Code, 1898 (CrPC) â€" Section 540

Citation: AIR 1944 All 293 : (1944) 14 AWR 192

Hon'ble Judges: Verma, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

Verma, J.
This application for revision must be allowed. The applicants were the defendants in a suit which was brought by the opposite

party in the Munsif''s Court in respect of a plot No. 218 jim in the abadi of a village called Ramnagar Khandauli on the allegations that the plaintiff

was the owner of a half share in mahal Shib Lal, that the whole of the plot No. 218, or a portion of it - it has not been made clear to me what

precisely was the plaintiff''s case on this point - appertained to that mahal, that he had been in possession of the whole plot for over 25 years and

that the defendants had interfered with his possession by cutting certain trees and in various other ways. The plaintiff prayed for a perpetual

injunction, for the recovery of Rs. 70 on account of the price of the trees, and for other reliefs. Among other pleas, the defendants alleged that the

plaintiff was not the owner of the plot in question and had not been in possession of it. Several issues were framed for trial and issue 2 was as

follows : ""Whether the plaintiff is in possession or owner of the land in suit?"" The suit came up for trial before a Civil and Sessions Judge. He took

up issue 2 first and, after discussing certain evidence, he recorded his finding on the issue in these words:

I therefore hold that plaintiff has failed to prove that he is the owner of the abadi land of mahal Shiva Lal. Plot in dispute lies in the abadi and

consequently he cannot be paid to be the owner of the land in suit. The present suit for permanent injunction and for a decree for the cost of the

nim trees on grounds mentioned in the plaint can be brought about by the owner of land only. As plaintiff is not the owner of the land in suit, the

present suit must fail.

In view of this finding on issue 2 the learned Civil and Sessions Judge did not decide the other issues and dismissed the suit. The plaintiff appealed

and the appeal was heard by an Additional District Judge. His decision may be stated in his own words:

The evidence on the record is adequate only to make it appear highly probable that the plaintiff is a joint owner of the plot in suit and yet is not

adequate for holding with a reasonable degree of certainty that the plaintiff is a joint owner of the plot.

He then made this observation:

Consequently it is, in my opinion, necessary, in the interest of justice, that the issue should be retried, both parties being given a chance to lead

evidence on the issue.

Purporting to act u/s 151, Civil P.C., he set aside the decree appealed against and remanded the suit to the trial Court. He directed that Court to

order the plaintiff to file copies of certain documents

so that it might have before it material from which it can decide whether the plot in suit belongs to mahal Shib Lal and whether the plaintiff is a co-

sharer in that mahal.

He also directed the trial Court to try the remaining issues and then to dispose of the case. There has been some discussion at the bar as to

whether an appeal lay against the order of the lower appellate Court and there, fore the revision petition was not entertain-able. If the learned

Judge below was right in thinking that Section 151 of the Code, authorised an appellate Court in the circumstances of this case to pass an order of

remand of the nature described above, no appeal lay and the only remedy, if any, that the defendants could have was to file an application for

revision. If, on the other hand, the order in question could be passed under Order 41, Rule 23 of the Code, the mere fact that the learned Judge by

mistake invoked the aid of Section 151 would not make the order unappealable and an appeal from the order under the provisions of Order 43,

Rule 1(u) was the proper remedy. This leads to the further questions whether the trial Court had disposed of the suit upon a preliminary point

within the meaning of Order 41, Rule 23, and, if not, whether the lower appellate Court had an inherent power of remand independently of the

provisions of Order 41, Rule 23. There are numerous judgments printed in the reports, authorised and unauthorised, in which these and cognate

questions have been considered. By way of example, I may refer to the decision of a Full Bench of the Calcutta High Court in Ghuznavi v.

Allahabad Bank, Ltd. AIR 1917 Cal. 44 and to the observations of Piggott J. in his judgment in Gokul Prasad v. Ram Kumar AIR 1922 All. 254.

I do not, however, consider it necessary in the present case to enter into a discussion of these questions as I have come to the conclusion that the

order of the lower appellate Court is a wrong order and must be set aside, whether it is looked upon as one passed under Order 41, Rule 23, or

as one passed in the exercise of an inherent jurisdiction conferred upon it by Section 151 of the Code, in other words, whether the petition filed in

this Court is treated as an appeal from an order in accordance with Order 43, Rule 1(u), or as a petition for revision u/s 115 of the Code. The

applicants, of course, had to file a petition for revision because the lower appellate Court stated in so many words that the order was passed in the

exercise of the inherent powers conferred upon it by Section 151. If the order of the Court below can be brought within the four corners of Order

41, Rule 23, there is no difficulty in treating this petition as a memorandum of an appeal from order. The court-fee payable on such a memorandum

of appeal is less than the court-fee payable on a petition for revision u/s 115 of the Code, which is the court-fee that has been paid on this petition

for revision. If, on the other hand, the order does not come within the purview of Order 41, Rule 23, then the Court below either had an inherent

jurisdiction or it had not. If it had no such jurisdiction, the order must on that ground alone be set aside. If it had such a jurisdiction, I have no

hesitation in holding that it acted in the exercise of that jurisdiction illegally and with material irregularity within the meaning of Clause (c) of Section

115 and that it is the duty of this Court to set aside that order. It will be convenient here to summarise the reasons given by the learned Judge for

his order. After stating the facts and examining the allegations of the parties, he referred to certain pieces of documentary evidence and expressed

the view that

if the finding of the learned lower Court, that the plaintiff has no proprietary rights in the plot in suit, is allowed to stand, that will most probably lead

to a miscarriage of justice.

2. He then turned to a consideration of the manner in which the plaintiff had conducted his case in the trial Court and remarked as follows:

I must remark here that the plaintiff conducted his case in the lower Court in an extraordinary careless manner. He did not for some obscure

reason file copies of current revenue papers. He also withheld his own title deeds. His conduct in doing so obviously caused the learned lower

Court great difficulty in deciding the issue whether or not the plaintiff had any proprietary rights in the plot in suit.

3. The learned Judge then made the following observations:

I might, however, point out that this is one of those cases where, in my opinion, the Court itself should have exercised its power to call for

documents. It might be noted that in calling for the copies of current revenue papers and in calling for the copies of the sale certificate and the

dakhalnama the Court would not have caused any injustice to either party because the papers called for would have been copies of public

documents which might or might not have supported the plaintiff''s case.

4. He then made the two observations quoted by me in the second paragraph of this judgment, and expressed the opinion that this inadequacy of

evidence was ""the result of not getting these papers brought on the file"". Learned Counsel for the plaintiff opposite party has not been able to refer

me to any provision of law in support of the opinion of the learned Judge that either a power is conferred, or a duty is cast, upon a civil Court

trying a suit ""to call for documents"" - whether they are copies of public documents or are of some other nature - when the Court finds that the party

on whom the burden of proof lies has not adduced sufficient evidence in support of its claim. It is possible that the learned Judge was thinking of

Section 540, Criminal P.C. It is, however, not suggested that any provision of that nature is to be found in the CPC or in any other law by which

civil Courts are governed. It appears to me to be quite clear that the learned Judge''s opinion was wrong. The view that there had been a

miscarriage of justice owing to the failure of the trial Court in doing what, according to the learned Judge, was its duty being based upon this

opinion, and that view being the sole foundation on which the order of remand rests, the order cannot be upheld. The position really is this. In the

opinion of the learned Judge below the plaintiff had failed to prove his title but, according to the learned Judge, there was some law which cast on

the trial Court the duty to call for certain documents in order that the plaintiff''s title might be established. There is no such law. There is also no law

which can justify an appellate Court in remanding the case to the trial Court in order that a party who in the opinion of the appellate Court - right or

wrong - has failed to discharge the burden that lay on him, may be enabled to have another opportunity of producing evidence. The case must,

therefore, go back to the lower appellate Court with the direction that the appeal be. fore it be reheard and disposed of on the materials already on

the record. There has, in my opinion, been no proper trial of the appeal in the Court below.

5. I should like to make it clear that I am expressing no opinion as to whether the decision of the trial Court, that the plaintiff had failed to prove his

title, was right or wrong. None of my observations made in this judgment should be taken as expressing any opinion on the merits of the case or on

the value of the evidence adduced by the plaintiff. It will be for the lower appellate Court to decide these matters upon a consideration of the

evidence which is on the record. I must also make it clear that all I am doing is to hold that the order of remand against which this petition is

directed is an improper order, not warranted by law and to set it aside. I am not expressing any opinion upon any other point. The petition for

revision is allowed, the order of the Court below is set aside and the case is sent back to that Court with the direction that it shall reinstate the

appeal before it to its original position in the file of pending cases and will proceed to hear and dispose of it according to law. The applicants are

entitled to their costs in this Court. The costs in the Courts below will abide the event.