
(2011) 04 AHC CK 0243

Allahabad High Court

Case No: Writ - A. No. 61040 of 2010

Gopal Krishna
Maheshwari

APPELLANT

Vs

Satish Maheshwari

RESPONDENT

Date of Decision: April 19, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 141
- Provincial Small Cause Courts Act, 1887 - Section 18

Hon'ble Judges: Rakesh Tiwari, J

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard counsel for the parties and perused the record.

2. This is a tenant's petition praying for calling of the record from the Court below and for setting aside the impugned order dated 18.09.2007 passed by III Additional District Judge in S.C.C. No 4 of 2002 Satish Maheshwari Vs. Gopal Krishna Maheshwari with costs. A writ of mandamus has also been prayed for implementing the impugned order dated 19.09.2007 passed in the aforesaid SCC suit no. 4 of 2002, which has been marked as paper no. 97Ga.

3. The facts in brief are that petitioner is a tenant of the residential house since 01.01.1984 situated in Maheshwari Chowk, Village Rabupura District Gautam Budha Nagar (herein after referred to as the accommodation in dispute). The SCC Suit No. 4 of 2002 has been filed for eviction of the petitioner/tenant on the ground of arrear of rent. The suit was decided by the tenant by filing written statement inter alia stating that there is no default in payment of rent and as such the suit is liable to be dismissed. The parties have earlier adduced the evidence which had been closed. Thereafter the plaintiff/respondent filed Misc. Application dated 07.11.2006, marked as paper no. 85Ga, for expert opinion in respect of rent receipts filed by the applicant, marked as paper no.

44Ga and its comparison with the signature marked as paper nos. 62Ga and 63Ga. Both were filed by the petitioner/tenant to the application dated 07.11.2006 aforesaid challenging its maintainability on the ground of closer of evidence by the parties.

4. It appears from the photocopy of the endorsement made on the application filed as Annexure no. C.A.2 in the writ petition that an endorsement had been made which reads thus:

" Sir,

The application no. 85Ga filed on behalf of plaintiff is being withdrawn as not pressed subject to file a fresh application.

Sd. Illegible.

09.03.2007."

5. The trial court vide order dated 09.03.2007 rejected the plaintiff/respondent's application as has not pressed. Order of the court below dated 09.03.2007 is as under: " "

6. It appears that after close of the evidence by the parties, the case was fixed for final argument. The plaintiff/respondent in the meantime moved an application, paper no. 97Ga, supported by an affidavit dated 10.04.2007, for expert opinion of comparison of signatures on rent receipts with paper no. 96Ga which is an adoption deed. The petitioner/tenant objected to the aforesaid application dated 10.04.2007 on the ground that evidence had already been closed. However, the trial court vide impugned order dated 18.09.2007 allowed the application marked as paper no. 97Ga rejecting the objection of the petitioner/tenant. Aggrieved the petitioner has come up in this writ petition.

7. The contention of the counsel for the petitioner is that the parties had closed their evidence. The application of the petitioner for expert opinion filed earlier had already been dismissed as not pressed by order dated 09.03.2007. Hence any subsequent application to the same purpose i.e. of comparison of the signatures of the rent receipts with " Adoption Deed" is not maintainable being barred by principle of constructive resjudicata.

8. He further urged that there is no provision under the Code of Civil Procedure for permitting a party to reopen the evidence. It is stated that the provision contained under Order XVIII Rule 17A of the C.P.C. were amended vide Code of Civil Procedure (Amendment) Act No. 104 of 1996 w.e.f. 1st February, 1977 by which the Rule 17A of Order XVIII has been omitted by Amendment Act no. 46 of 1999 dated 30.12.1999. Therefore, there is no provision for the purpose of fresh evidence which was not previously produced before the trial court as such the trial court has committed a gross illegality in allowing the application of the landlord and the view taken by the courts below in this regard can not be sustained in the eyes of law.

9. Counsel for the petitioner has referred to the following operative portion of the impugned order, allowing the application of the landlord for comparison of the signatures of the adoption deed and the rent receipts.

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10. Per contra learned counsel for the respondent has submitted that though prayer in the earlier application no. 85Ga is similar, as in the application subsequently filed as paper no. 96Ga, but these applications had been filed for comparison of different documents and that the paper no. 85Ga earlier filed by the landlord was not decided on merits but was subject to filing of a fresh application.

11. He has then relied upon paragraph no. 14 of the Judgment rendered in Salem Advocate Bar Association Vs. Union of India reported in (2005) AIR, SCW page 3827 and submits that in similar circumstances the Apex Court had considered the question raised by the petitioner in the present case regarding omission of Rule 17A of the C.P.C. Paragraph 14 of the aforesaid judgment reads thus:

" 14. In Salem Advocates Bar Association's case, it has been clarified that on deletion of Order XVIII Rule 17A which provided for leading of additional evidence, the law existing before the introduction of the amendment, i.e. 1st July, 2002, would stand restored. The Rule was deleted by Amendment Act of 2002. Even before insertion of Order XVIII Rule 17A, the Court had inbuilt power to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. Order XVIII Rule 17A did not create any new right but only clarified the position. Therefore, deletion of Order XVIII Rule 17A does not disentitle production of evidence at a later stage. On a party satisfying the Court that after exercise of due diligence that evidence was not within his knowledge or could not be produced at the time the party was leading evidence, the Court may permit leading of such evidence at a later stage on such terms as may appear to be just."

12. He lastly submitted that the adoption deed was a registered document on which Smt. Teeja Devi the landlord had put her thumb impression in token of acknowledgement whereas rent receipts contain her forged signature. Hence, comparison of the two is necessary and essential for just decision in this case by the court below.

13. He further relied upon paragraph nos. 3, 4 and 5 of the judgment rendered by the Supreme Court reported in 2008 AIR SCW 6507, Damara Venkata Murali Krishna Rao Vs. Guruujupalli Satvathamma.

14. In that case, the Apex Court was considering the provisions of Section 45 of the Indian Evidence Act with regard to the question of comparison of signatures by an expert on an application after the close of the evidence. In that case, in a suit for recovery of money, the defendant had taken plea that he had paid the amount under Exs. B 1 and B 12 to the son of the plaintiff when the case came up for argument; the defendant's application to summon the plaintiff's son was dismissed by the trial court. The revision

preferred against the order was allowed by the High Court and the son of the plaintiff was examined as C.W.1. He denied the signature for comparison to Exs. B 1 and B 12. Thereafter, the case was posed for argument. The application at that time was moved under Section 45 of the Indian Evidence Act for comparison of the signatures which was dismissed by the Court. The revision preferred was also dismissed by the High Court that application was moved after close of the evidence.

15. Considering the legality of the application, the Apex Court held that:

"According to the appellant, the occasion for making the application arose only after examination of C.W.1 has cross examined. As such, the High Court was not right in holding that this question for making application to protract the litigation."

16. After hearing counsel for the parties and on perusal of record as well as judgment relied upon by them, it is apparent that in the present case the court has allowed the application for comparison of the signatures as Smt. Teej Devi. It was contended by the landlord in the court below that the signatures on the rent receipts had been forged. Pursuant to paragraph 14 of the judgment passed in Salem Advocate Bar Association's case the court below has rightly allowed the application for expert opinion on the disputed signatures in exercise of inherent power under Section 141 of the C.P.C..

17. The other leg of contention of the petitioner regarding allowing the application after closing the evidence of parties is also answered by the Supreme Court in other judgment relied upon by the counsel for the petitioner in Damara Venkata Murali Krishna Rao's case (supra).

18. No other points except aforesaid two contentions has been raised by counsel for the petitioner and the legal points raised by the petitioner appears to have have been answered by the Supreme Court in the judgments cited above in the judgment.

19. In my opinion, as no dispute was finally adjudicated or decided in the earlier application for comparison of signatures, the principles of constructive resjudication would not be attracted. There appears no illegality or infirmity in order impugned.

20. For all the reasons stated above, the writ petition is dismissed.

21. However, it is submitted that as the suit is an old one having been filed in the year 2002 and is pending for a long time, the court below is requested to decide the same within a period of three months from the date of production of certified copy of this judgment by either of the parties.

22. No order as to costs.