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Gauhati High Court (Agartala Bench)

Case No: F.A. No. 60 of 1997

Niharedu Majumder	APPELLANT
Vs	
State of Tripura and Others	RESPONDENT

Date of Decision: Dec. 2, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 3, Order 1 Rule 9(10)

Citation: (2005) 1 GLR 661

Hon'ble Judges: H.N. Sharma, J

Bench: Single Bench

Advocate: B. Das, R.C. Debnath and N. Majumdar, for the Appellant; D. Chakraborty, for the Respondent

Final Decision: Allowed

Judgement

H.N. Sharma, J.
This first appeal arises out of the judgment and decree dated 24.7.1996 and 29.7.1996 respectively by the learned Civil Judge (Senior Division), Court No. 1, West Tripura at Agartala dismissing the Money Suit No. 6 of 1990 filed by the plaintiff-appellant.

2. The appellant and plaintiff filed the aforesaid suit for recovery of rent with interest from the defendants. The case of the plaintiff-appellant is that he is the owner and possessor of a holding at Ramnagar Road No. 7 as described in the schedule of the plaintiff. The said holding contains 2 buildings and one of the said buildings was leased out to the District Inspector of Social Education, Government of Tripura on monthly rental basis with effect from 1-1-1986. The parties entered into an agreement containing necessary stipulation of them lease, according to which the rent of the building would be fixed as per assessment as well as fair rent certificate to be issued by the Public Works Department, Government of Tripura. It is the further case of plaintiff-appellant that the plaintiff-appellant on good faith lease out the building to the defendants thinking that the

assessment could be made by the Public Works Department with a reasonable time. But no such assessment having been made, the plaintiff-appellant was paid provisional rent at the rate of 600/- per month for the period from 1-1-1986 to 15-9-1989. The plaintiff-appellant further averred that as per the prevalent rate, the fair rent of the building leased out to the defendants would be at least Rs. 2,500 per month and the defendants are liable to pay the monthly rent at the aforesaid rate for use and occupation of the tenanted building for the period of occupation. The plaintiff-appellant also averred that the defendants have caused damage of the leased hold building during the tenancy period and they are liable to pay compensation for the damage of the building caused by the defendants. There was an amendment of the plaint vide order passed by the learned trial court on 5.3.1992 by which paragraphs 13(a) to 13(i) were incorporated. In the said amended paragraphs the plaintiff has averred that during the pendency of the suit the plaintiff was offered a sum of Rs. 13,501.55 paise as rent for the premises but this amount is far less than which the plaintiff is entitled. That during the pendency of the suit the Public Works Department made an assessment of the fair rent and also made assessment of valuation of the land over which the building is situated and the said assessment i much below than the prevalent market price. It is further stated that in the nearby places land has been valued at Rs. 12,00,000 per kani by the Public Works Department whereas the land of the plaintiff has been valued at Rs. 4,70,000 per kani during the year 1987 and for the year 1986 the land was valued only at Rs. 3,00,000 per kani whereas the land at Ramnagar Road No. 8 has been assessed and valued at Rs. 8,00,000 per kani during the year 1988. In the aforesaid premises, the plaintiff made the following prayers : -

(a) Pass a decree for recovery of rent with interest at compound rate to the tune of Rs. 1,38,254/- (Rupees one lakh thirty eight thousand two hundred fifty four) only till 28.2.1990;

(b) Pass a decree for further interest for period from 1.3.1990 till payment of the decretal amount by the defendants to the plaintiff, for which the plaintiff would pay further court fee;

(c) Grant cost of and incidental to this suit to the plaintiff;

(d) Grant such further or other relief or reliefs to which the plaintiff is entitled having regard to the facts and circumstances involved in the matter.

3. In the instant suit the plaintiff impleaded the State of Tripura, the Director of Social Education and Social Welfare, Government of Tripura, Agartala and the District Inspector of Social Education, West Tripura, Agartala as Defendant Nos. 1, 2 and 3 respectively.

4. The defendants contested the suit and filed a joint written statement and denied the claim of the plaintiff. The defendants did not deny the taking of the building in-question on rent but it was averred that the terms and conditions of the tenancy would be guided as

per the written agreement between the parties and as per the said agreement the rent would be assessed by the Public Works Department and would be paid to the plaintiff and the Public Works Department having assessed the rent, the same has been paid to the plaintiff and there is no occasion for filing of the suit by the plaintiff and accordingly prayed for dismissal of the same.

5. Upon pleading of the parties, the learned trial court framed the following issues :-

(a) Whether the suit is maintainable in its present form?

(b) Whether the defendants took lease of the suit premises from the plaintiff. For their own purpose and if so whether the defendants paid rent to the plaintiff according to the assessment of rent by the PWD?

(c) Whether the plaintiff is entitled to have any relief and if so, up to what extent?

6. During the course of trial, the plaintiff examined 2 witnesses where the defendants examined Joint Director of Social Welfare as D.W. 1.

7. The plaintiff also exhibited a sale deed dated 9.3.1989 as Ext. 1 and another sale deed dated 24.2.1988 as Ext. 2. The plaintiff also exhibited another sale deed dated 9.3.1998 as Ext. 3 through his witness PW- 2.

8. The learned trial court, after hearing the learned counsel for the parties, dealt with the issues separately. In dealing with the issue of maintainability, the learned trial court found that the suit is not maintainable inasmuch as the plaintiff did not implead the Public Works Department as defendant in the suit and according to the learned trial court the plaintiff again aggrieved by the decision of the Collector and the Public Works Department. These authorities should have been impleaded as party and by not impleading them it was held that the suit is not maintainable in its present form.

9. While deciding the issue No. (b), the learned trial court held that the defendants have paid rent to the plaintiff as assessed by the plaintiff and answered the issue in affirmative. Ultimately, in view of the findings as aforesaid, the learned trial court vide its judgment and order dated 24-7-1996 dismissed the suit of the plaintiff. Against the aforesaid judgment and decree passed thereon the present appeal is filed.

10. I have heard Mr. B. Das, the learned senior counsel assisted by Mr. N. Majumdar, the learned counsel appearing on behalf of the appellant as well as Mr. D. Chakraborty, the learned counsel appearing on behalf of the respondents.

11. Mr. Das, the learned senior counsel led me to the various materials and different exhibits on record and has submitted that the learned trial court committed a grave error, both in law and in facts, in passing the impugned judgment and decree. Mr. Das has submitted that the learned trial court has dismissed the suit of the plaintiff on technical

ground only and failed to address himself properly to the issue involved in the suit and in fact, no proper issues have been framed. It was further submitted by Mr. Das that the Public Works Department during the pendency of the suit having assessed the fair rent of the building only on the basis of the report submitted by the Collector and the Collector having submitted the said report by mentioning the value of the land had grossly lowered the rate than that of the prevailing one and the Public Works Department not having arrived at any independent finding regarding the assessment, the so called fair rent fixed by the Public Works Department cannot be accepted and the learned trial court failed to consider this vital aspect of the matter which goes to the root of the dispute. Controverting the aforesaid submission, Mr. D. Chakraborty, the learned counsel appearing on behalf of the respondents has submitted that the parties before entering into the transaction made a bifurcate agreement between them and it is the terms of the said agreement which will the relation between the parties including the fixation of rent and as per the terms of the said agreement/ lease deed the plaintiff is bound to accept the fair rent fixed by the Public Works Department. It is further submitted by Mr. Chakraborty that the defendant having paid rent to the plaintiff as fixed by the Public Works Department, there is no basis for the suit and the same has been rightly dismissed by the trial court. Mr. Chakraborty further submitted that the plaintiff cannot now turn around to the agreement to which he himself is a party and take a different stand.

12. I have gone through the records, perused the impugned judgment as well as other materials and evidence on record. In order to find out the legality of the decision arrived at by the learned trial court in deciding the issue No. (a), it is seen from the plaint that the prayer of the plaintiff in the suit is for realisation of a sum of Rs. 1,38,254 as house rent in respect of the suit house. The said rent is claimed from the defendants who have been impleaded as party to the suit. No relief has been claimed against the Public Works Department or Collector in any manner. Under Order 1 Rule 3 of CPC all persons may be joined in one suit as defendants where any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative. In the instant case, the plaintiff has sought the relief primarily against the Defendant Nos. 2 and 3 who took the house of the plaintiff on rent. There is no claim made in the plant against the Public Works Department or the Collector. In this connection Mr. Das, the learned senior counsel appearing on behalf of the appellant has relied on a decision of the Apex Court in the case of Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, and submits that the Public Works Department and the Collector are not necessary party in the realm of the suit as claimed by the plaintiff. In the said case, the Apex Court at para 7 of the judgment has laid down the test of necessary party as follows : -

"To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled : it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made

but whose presence is necessary for a complete and final decision on the question involved in the proceeding."

13. The test of determination is to whether a party is a necessary party or not came up for consideration in the case of Hardeva v. Ismail and Ors. reported in AIR 1970 Rajasthan, 167. At para 4 of the aforesaid judgment the Full Bench answered the question as follows : -

"Two tests have been laid down by the Full Bench decision of the Allahabad High Court in the Benares Bank Ltd. v. Bhagwan Das AIR 1947 All 18 (FB) for determining the question who is a necessary party to a proceeding and these two tests are firstly there must be a right to some relief against such party in respect of the matter involved in the proceedings in question and secondly it should not be possible to pass an effective decree in the absence of such a party. Their Lordships of the Supreme Court in Deputy Commissioner, Hardoi, in charge Court of Deputy Commr., Hardoi, in charge Court of Wards, Bharawan Estate Vs. Rama Krishna Narain and Others, approved of the law laid down by the Full Bench of the Allahabad High Court in this respect. The principle is enunciated in Rule 9 (10?) of Order 1 Civil P.C. and in the instant case it cannot be said that no effective decree can be passed in favour of the plaintiffs in the absence of Poonam Chand Vs. Motilal, was referred by Dwivedi J. In Ram Gopal Vs. Jhau Lal and Others, and was dissented from by the learned Judge in view of the Full Bench authority of the Allahabad High Court and the law laid down by the Supreme Court."

14. I am in respectfully agreement with the aforesaid decisions. Mr. Chakraborty, the learned counsel for the respondents also does not dispute the legal provision as alluded hereinabove. In view of the aforesaid discussions, I am of the opinion that the findings of the learned trial court at issue No. (a) is not sustainable and accordingly the same is set aside.

15. So far as the decision in issue No. (b) is concerned, it is seen that the trial court has not answered the real dispute that arose between the parties in the instant case whether the plaintiff is entitled to recover the amount claimed in the suit as fair rent. Mr. Chakraborty in his usual fairness did not dispute this position and has fairly submitted that the learned trial court ought to have decided this question and ought to have given the specific finding but that has not been done in the instant case.

16. The materials on records of the case, particularly Exts. 4, 5, 7, 8, 9, 11, 12 and 13 were not at all considered by the learned trial court and in fact, the learned trial court in deciding the suit has mis-directed himself from the real issue and arrived at an incorrect finding.

17. In view of my discussion and decisions, the impugned judgment and decree is set aside and the case is remanded back to the trial court for fresh disposal in accordance with law taking into consideration of the evidence and materials on record. In remanding

the matter the trial court will decide the following issue as an additional issue.

"Whether the plaintiff is entitled to recover a sum of Rs. 1,38,254 from the defendants as fair house rent in respect of the suit premises?"

18. In the result, the appeal is allowed to the extent as indicated above.

No costs.