

Shri K. Chellaiah Vs Shri Sasivarnam

Court: Calcutta High Court (Port Blair Bench)

Date of Decision: Dec. 16, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) â€™ Order 20 Rule 12

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Anjili Nag, for the Appellant;

Final Decision: Allowed

Judgement

Prasenjit Mandal, J.

This second appeal is directed against the order dated March 22, 2011 passed by the learned Additional District

Judge, Andaman and Nicobar Islands, Port Blair in the Other Appeal Nos. 36 of 2010 and 35 of 2010 thereby dismissing the O.A. No. 36 of

2010 and modifying the O.A. No. 35 of 2010 arising out of the judgement and decree dated October 14, 2009 passed by the learned Civil Judge,

Senior Division at Port Blair in Other Suit No. 53 of 2004.

2. The short fact necessary for the disposal of this second appeal is mentioned below:

3. The plaintiff of the original title suit being Other Suit No. 53 of 2004 prayed for a decree of declaration of adverse possession over the suit

property, a decree of declaration of possessory right over the suit property, permanent injunction and other reliefs against the defendant/appellant

herein.

4. The defendant/appellant herein contested the said suit denying the material allegation raised in the plaint along with a counter claim against the

plaint contending that the plaintiff was the tenant in respect of the suit property and he was paying rent to the defendant, along with assertion of

other rights against the plaintiff. The parties adduced evidence in support of their respective contentions and upon analysis of evidence, the learned

trial Judge dismissed the title suit on contest. At the same time, the learned trial Judge granted the reliefs of the counter claim to the effect that the

defendant do get a decree for recovery of Khas possession of the suit property by evicting the plaintiff therefrom. The plaintiff/tenant was also

directed to deliver the peaceful possession of the suit property in favour of the defendant within three months from the date of the judgement and

decree failing which, the defendant shall have the liberty to get the decree executed through the Court.

5. Being aggrieved by said judgement and decree, both the plaintiff and defendant filed two separate other appeals being Other Appeal No. 36 of

2010 by the plaintiff and the Other Appeal No. 35 of 2010 by the defendant respectively.

6. By the impugned judgment and decree, the first appellate court dismissed the Other Appeal No. 36 of 2010 filed by the plaintiff and allowed the

Other Appeal No. 35 of 2010 filed by the defendant with modification. The learned first appellate court granted the relief in favour of the

defendant/appellant herein to the effect that the defendant/appellant herein is further entitled to get a decree in terms of prayer No. (B) in the

counter claim directing the plaintiff that he must pay the arrears of rent within two months from the date of receipt of the copy of the judgement and

decree by the lower court, in default, the defendant/appellant herein shall have the liberty to realize the same by way of execution as per law.

7. Being not satisfied with such judgement and decree passed by the first appellate court, the defendant/appellant has preferred this second appeal

which was admitted by this Hon"ble Court.

8. At the time of admission of the second appeal, this Hon"ble Court framed the following substantial questions of law for decision in the appeal:-

(1) Was the learned trial Judge right in decreeing the counter claim by the defendant in the suit without adjudicating the claim for damages as

claimed in clause(c) of the counter claim"

(2) Was the learned appellate court right in not adjudicating the claim for damages as claimed in clause (c) of the counter claim in affirming the

decree of the learned trial court when this was the specific grounds on which the appeal was preferred by the appellant namely, the defendant in

the suit"

9. Upon hearing the learned advocate for the appellant and on perusal of material on record, I find that the appellant herein has claimed inter-alia

damages by way of pendente lite and future rent @Rs. 1000/- per month till date. This relief was not at all considered by the learned first appellate

court although there is evidence on record in this regard. By the order dated 06.07.2007, the learned trial judge directed the plaintiff/respondent to

deposit the entire arrears of rent pending since April, 1999. The plaintiff/respondent herein was further directed to deposit future rent @Rs. 2500/-

per month. This was an interlocutory order with regard to the application filed by the defendant, but the judgment passed by the learned trial Judge

does not reflect such reliefs. While disposing of the first appeal, the lower appellate court granted further relief to the effect that the appellant herein

was entitled to get a decree in terms of prayer (b) of the counter claim which relates to recovery of arrears of rent. But the decree passed by the

first appellate court is totally silent about mesne profits. For that reason this second appeal has been preferred.

10. While the PW-1 was cross examined on May 09, 2009, he admitted clearly that he had stopped making payment of rent to the defendant for

the last one year. He admitted further that for the last 10 to 15 years, the defendant asked him to vacate the premises but he refused to do the

same. In spite of the order of the court, he had not paid the rent to the defendant. The plaintiff further admitted that the neighbours of the locality

had knowledge to the fact that the defendant asked him to vacate the suit property and he refused to do the same. Therefore, from the order dated

06.07.2007 and above admission of the plaintiff in his cross examination, it has been duly proved that the defendant/appellant herein is also entitled

to get decree for mesne profits under Order 20 Rule 12 of the CPC. Both the courts below have failed to consider such reliefs and as such, I am

of the opinion that the appellant herein is entitled to get a decree for mesne profits under Order 20 Rule 12 of the CPC from the date of institution

of the suit till recovery of possession for which the defendant/appellant herein is entitled to lodge a separate proceeding. The appellant is also

required to pay the adequate court fees over the quantum of mesne profits to be determined by the learned trial Judge. The substantial questions of

law as framed in this second appeal are answered accordingly in favour of the appellant.

11. The second appeal is, therefore, allowed. The appellant do get a decree of mesne profits from the date of institution of the suit till the recovery

of possession of this suit property under Order 20 Rule 12 of the CPC and for that reason, he shall have to pay additional court fees over the

quantum of mesne profits to be determined by the learned trial Judge. The judgment and decree passed in Other Appeal No. 35 of 2010 is

modified to this extent.

12. Urgent Xerox certified copy of this judgement be supplied to the parties, if applied for, after observing required formalities.