Sadhan Kumar Das Vs Amiya Bhusan Ghosh

Court: Calcutta High Court

Date of Decision: July 1, 1975

Acts Referred: Calcutta Thika Tenancy Act, 1949 â€" Section 28
Civil Procedure Code, 1908 (CPC) â€" Section 105(2), 115, 23
Constitution of India, 1950 â€" Article 226, 227
Government of India Act, 1915 â€" Section 108
Transfer of Property Act, 1882 â€" Section 115
West Bengal Premises Tenancy Act, 1956 â€" Section 17(2)

Citation: (1976) 1 ILR (Cal) 139

Hon'ble Judges: S.K. Bhattacharyya, J; Chittatosh Mookerjee, J

Bench: Division Bench

Advocate: Lala Hemanta Kumar, Mohanlal De and Biswajit Ghosh, for the Appellant;R.P. Roy and Arunendu Nath Basu, for the Respondent

Final Decision: Dismissed

Judgement

Chittatosh Mookerjee, J.
The present Appellant as Plaintiff instituted an ejectment suit against the Respondent in the City Civil Court at

Calcutta in respect of the property described in the schedule to the plaint. His case was that one Hamid Ali was a monthly tenant under Hamir

Chandra Mullick in respect of one shop-room in the ground floor of premises No. 158 Bepin Behari Ganguly Street. The said room was

partitioned into two compartments. The Defendant was a monthly tenant under Hamid Ali in respect of one of the compartments of the said shop-

room. On February 1, 1965, Hamid Ali had surrendered his tenancy along with sub-tenancies in favour of the Plaintiff to the said Hamir Chandra

Mullick. By reason of such surrender the Defendant became a monthly tenant under the Plaintiff in respect of the suit premises at Rs. 50 per month

according to English calendar. The Defendant had allegedly committed default since February 1971 and he was not entitled to any protection for

eviction under the West Bengal Premises Tenancy Act, 1956.

2. The Defendant (the present Respondent in this appeal) filed an application u/s 17(2) of the West Bengal Premises Tenancy Act denying that

there was any relationship of landlord and tenant between the Plaintiff arid the Defendant. He prayed that the said dispute be determined according

to law. The Defendant in his written statement apart from taking other defences denied that he was a monthly tenant under the Plaintiff. He further

pleaded that there could be no valid surrender by Hamid Ali in favour of the superior landlord and in any event, after the alleged surrender the

Defendant had become a tenant directly under the superior landlord at a rent of Rs. 60 per month.

3. The trial Court by its Order No. 31 dated November 27, 1967, disposed of both the application u/s 17(2) filed by the Defendant and also the

preliminary issue No. 3 framed regarding relationship of landlord and tenant between the Plaintiff and Defendant. The Defendant who is the

Respondent in this appeal, being aggrieved by the said decision obtained C.R. No. 121 of 1968. On May 22, 1968, Bijayesh Mukherji J. made

the said Civil Rule absolute and set aside the above Order No. 31 dated November 27, 1967. Thus, Bijayesh Mukherji J. disposed of the issue

No. 3 in favour of the Defendant-tenant.

4. The learned Judge held that there was no relationship of landlord and tenant between Sadhan Kumar Das, the Plaintiff, on the one hand and

Amiya Bhusan Ghosh, the Defendant, on the other. The learned Judge in course of his judgment, inter alia, found that u/s 115 of the Transfer of

Property Act the Defendant had been automatically elevated to the status of the lessee of the first degree directly under the landlord Hamir

Chandra Mullick. After the matter went back, the trial Court by its Order No. 39 dated August 28, 1968, took up further hearing of the suit after

hearing the lawyers of both parties dismissed the suit by holding, inter alia, as follows:

The learned lawyer for the Plaintiff submits that he is ready to proceed with the suit, but in view of the finding of the High Court that the Plaintiff is

not competent to maintain the suit, it is not open to the Plaintiff to proceed with the suit and the suit will fail. In face of the finding of the High Court

that the Plaintiff has no locus standi to maintain the suit, the suit fails.

The Plaintiff has preferred the present appeal against the above judgment and decree of the trial Court dismissing his suit.

5. Mr. Lala Hemanta Kumar, learned Advocate for the Appellant, tried to contend before us that the decision of Bijayesh Mukherji J. in C.R. No.

121 of 1968 was erroneous and submitted that we should hold that there was, in fact, relationship of landlord and tenant between the Plaintiff and

the Defendant. Thus, Mr. Lala has sought to challenge not only the decree passed by the trial Court but also the decision of Bijayesh Mukherji J. in

the above Revision case regarding the issue No. 3.

6. We are of the view that the Plaintiff is not entitled to challenge before us the propriety and legality of the order of Bijayesh Mukherji J. in C.R.

No. 121 of 1968. The Supreme Court in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, , pointed out that--

When the aid of the High Court is invoked on the revisional side it is done because it is a superior Court and it can interfere for the purpose of

rectifying the error of the Court below. Section 115 of the CPC circumscribes the limits of that jurisdiction but the jurisdiction which is being-

exercised is a part of the general appellate jurisdiction of the High Court as a superior Court. It is only one of the modes of exercising power

conferred by the statute; basically and fundamentally, it is the appellate jurisdiction of the High Court which is being invoked and exercised in a

wider and larger sense.

7. In Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, , their Lordships held that an order of the appellate authority under the

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, had merged in a revisional order passed by the High Court of Bombay and

therefore, the same appellate order could not be thereafter challenged by another set of proceedings in the High Court under Article 226 or 227 of

the Constitution. The Supreme Court in Shankar v. Krishnaji (Supra) gave another reason why the High Court should decline to grant relief in such

circumstances, it was pointed out that in consonance with the anxiety of the Court to prevent abuse of process as also to respect and accord

finality to its own decision, a party should not be allowed to invoke the jurisdiction of the High Court when one of the modes, had been chosen by

a party and exhausted.

8. In our view, the above reasonings would equally apply in the instant case. Therefore, the Appellant is disentitled from challenging before us the

correctness of the revisional order passed by Bijayesh Mukherji J. Clause 36 of the Letters Patent of this Court, inter alia, declared that any

function which is directed to be performed by this said High Court in exercise of its original or appellate jurisdiction may be performed by any

Judge or by any Division Bench appointed or constituted for such purpose u/s 108 of the Government of India Act, 1915.

9. We are exercising a co-ordinate jurisdiction and in the facts of this case, the present Division Bench cannot dispose of the revision case. Both

the Single Bench who heard the revision case and the present Division Bench hearing appeal from the decree of the City Civil Court are parts of

the same High Court exercising the jurisdiction vested in that Court. Benches are constituted according to the Rules framed by this Court regarding

constitution of Benches and Powers of Benches (vide Chap. II of the Rules of the High Court Appellate Side). Therefore, in our view, it is not

open to us to sit upon the judgment upon correctness or propriety of the order of Bijayesh Mukherji J. in the above revision case.

10. Amir Ali J. in Hafiz Aminuddin v. G.L. Garth 3 C.W.N. 91 (96), pointed out that the Chief Justice of the High Court has power to determine

what Judge in each case shall sit alone and what Judges of the Court with or without the Chief Justice shall constitute several Division Courts. All of

them are integral parts of the same Court and the Original Side cannot be regarded as subordinate to the Appellate Side.

11. The above view is also supported by the observations of Rankin C.J. and C.C. Ghosh J. in Hyat Mahomed and Others Vs. Shaikh Mannu

and Others, , who dismissed an application u/s 23 of the CPC for transfer of a suit from the Original Side of this Court to the Court of Arrah on

the ground that a learned Single Judge of the Original Side was not a Court subordinate to the High Court. Their Lordships held:

He is the High Court and in my judgment, we would be going contrary to authorities and upsetting well-settled principles if we entertained the

present application. It may be that one consequence of this ruling is that there is no machinery provided by express terms in the Civil P.C. for the

particular occasion which has arisen....

12. Mr. Roy, appearing on behalf of the Respondent, drew our attention to a Division Bench of the Hyderabad High Court in Laxminarayan v.

Sultan Jehan Begum AIR 1951 Hyd. 132 (134). Siddiqi J. pointed out that a Division Bench of the said High Court in revision had already

dismissed a revision application on the ground that the decision of the trial Court with regard to the question of burden of proof was a right one.

Therefore, the learned Judges were not authorized to reconsider or interfere with the said judgment as the said order was not liable to be treated as

an order of a Subordinate Court. The learned Judges declined to follow the ruling of the Madras High Court in T.S. Pichu Ayyangar Vs. Sri

Perarulala Ramanuja Jeer Swamigal, Dharmakartha and Manager of Sri Alagia Nambirayar Temple, , which was relied upon by Mr. Lala

appearing on behalf of the Appellant in this appeal before us. In our view, the Division Bench decision of the Madras High Court in the above

Pichu Ayyangar''s case does not support the extreme contention that a Division Bench hearing an appeal is a Court superior to a Single Judge who

had finally decided a part of the case in a revision case at an earlier stage. The Division Bench in Pichu Ayyangar''s case had rejected the

contention raised on behalf of the Respondent that the appeal from a decision of the Subordinate Court holding that the suit was not maintainable

did not at all lie on the ground that previously a Single Judge of the Madras High Court in a revision case had decided that the Subordinate Court

had erred in deciding that the suit was maintainable. The learned judges who decided the said case did not lay down that in such circumstances a

Division Bench shall be considered a higher Court or a Court superior to the Single Judge.

13. The Supreme Court decision in Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, , which was relied upon by Mr. Lala,

really was in fact against his contentions. In the said case an application u/s 28 of the Calcutta Thika Tenancy Act was filed which was resisted by

the landlords decree-holders. The learned Munsif held that the Applicants were not thika tenants within the meaning of the Thika Tenancy Act and

as such, the decree was not liable to be rescinded. This Court had disposed the revisional cases on the basis that Section 28 was applicable, set

aside the orders of the learned Munsif and remanded the cases to the learned Munsif for disposal in accordance with law. After remand the

learned Munsif had rescinded the decree. The landlord''s application u/s 115 of the CPC was rejected by the High Court. The attempt of the

landlord to raise before the High Court again, the question of applicability of Section 28 was unsuccessful, on the ground that the question as

between the parties was res judicata. Das Gupta J., who delivered the judgment of the Supreme Court in Satyadhan v. Sm. Deoranjin Debi

(Supra) (945), held that the principles of res judicata in the facts of the case were not attracted. It was held that in the said case since no appeal lay

to the Supreme Court against the revisional order of this Court remanding the application u/s 28, of the Thika Tenancy Act for hearing, Sub-

section (2) of Section 105 of the CPC was not applicable. The said order also did not operate as res judicata as the said order did not terminate

the proceedings. Therefore, the Supreme Court was of the view that the correctness of the remand order made by the High Court on the earlier

occasion could be challenged before the Supreme Court in the appeal from the final order. The learned Judge clearly pointed out that:

The very fact that in future litigation it will not be open to either of the parties to challenge the correctness of the decision on a matter finally decided

in a past litigation make it important that in the earlier litigation on the decision must be final as regards that Court. Should it always be treated as

final in later stages of the proceeding in a higher Court which had not considered it at all merely on the ground that no appeal lay or on appeal was

preferred?

14. Thus, when a fact or question has been decided between the parties in a suit, the same attains finality in the same Court and liable to be

impugned only in a higher or superior Court. This aspect of the matter was emphasised by a Full Bench of the Patna High Court in Bandhu Kunjra

v. Rahman Kunjra AIR 1966 Pat 2009 (214). U.N. Sinha J. (as he then was) thus observed with reference to the decision in Satyadhan v.

Deoranjin Debi''s case (Supra):

It is clear that their Lordships of the Supreme Court were considering the question of finality or otherwise of an order of a Court vis-a-vis the

power of the higher Court.

15. The Supreme Court in two latter decisions in Dewaji Vs. Ganpatlal, and Thevar v. N. Devasthanam AIR 1969 S.C., dealt with the cases

where interlocutory orders were challenged in appeals preferred from the final orders or decrees. In Dewaji''s case Sikri J. (as he then was)

pointed out that the appellate Bench hearing a Letters Patent appeal from the final decree was a Court superior to a Single Judge and therefore,

not only the final order but also interlocutory orders passed by a Single Judge could be challenged in such an appeal.

16. This Court is not hearing any appeal from a decision of the learned Single Judge, but we are examining the correctness and propriety of the

decision of the City Civil Court. As no appeal lies against the decision of Bijayesh Mukherji J., obviously we cannot arrogate to ourselves the

powers which legitimately might belong only to a superior Court so far as the order of Bijayesh Mukherji J. in the above revisional case is

concerned. We, accordingly, refrain from going into the merits of the order of Bijayesh Mukherji J. So long as the said order stands, it is not open

to us to take any other view regarding the decision on the issue No. 3 framed in the suit. For the same reasons, the present appeal must necessarily

fail.

17. We, accordingly, dismiss this appeal. There will be no Order as to costs.

S.K. Bhattacharyya J.

18. I agree.