Sri Shivaji Balaram Haibatti vs Sri Avinash Maruthi Pawar on 20 November, 2017

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 19421 OF 2017
(ARISING OUT OF SLP (C) No.22894/2014)

Sri Shivaji Balaram Haibatti ….Appellant(s)

VERSUS

Sri Avinash Maruthi Pawar …Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal is filed by the plaintiff against the final judgment and order dated 04.04.2014 passed by the High Court of Karnataka, Bench at Dharwad in Regular Second Appeal No.213/2007(INJ.) whereby the High Court allowed the appeal filed by the respondent herein and set aside the judgments and decrees of the Trial Court and First Appellate Signature Not Verified Digitally signed by ASHA SUNDRIYAL Date: 2017.11.20 17:03:44 IST Reason: Court.

3. In order to appreciate the issues involved in the appeal, it is necessary to state few relevant facts.

4. The appellant is the plaintiff whereas the respondent is the defendant in the civil suit out of which this appeal arises.

5. The dispute involved in the appeal relates to a shop measuring 9 ft. 9 inch North and 5 ft. East West situated out of land bearing CTS 1590/A-4 in the City of Belgaum (as detailed in plaint) (hereinafter referred to as "suit shop").

6. One Vithal Dhopeshwarkar was the owner of the suit shop along with the land over which the suit shop is built and some adjoining land. He sold the land and the suit shop to the appellant vide registered sale

deed dated 20.09.1997 (Annexure P-6). The respondent (defendant) was in possession of the suit shop even prior to its purchase by the appellant from Vithal Dhopeshwarkar.

7. On 08.06.1999, the appellant filed a civil suit being O.S. No.115/1999 against the respondent in the Court of Civil Judge, Sr Division, Belgaum claiming possession of the suit shop from the respondent. The suit was founded on the allegations, inter alia, that the appellant is the owner of the suit shop having purchased the same vide registered sale deed dated 20.09.1997 from Vithal Dhopeshwarkar. It was alleged that the respondent was in possession of the suit shop without any right, title and interest of any nature.

8. In other words, according to the appellant, the respondent, since inception, was in illegal possession of the suit shop. The appellant, on purchase of the suit shop, therefore, requested the respondent to vacate the suit shop but he failed to vacate and hence the appellant became entitled to claim possession of the suit shop from the respondent on the strength of his ownership over the suit shop. A relief of mesne profits at the rate of Rs.2500/- per month was also claimed.

9. The respondent filed written statement. He denied the appellant's title and claimed that he has been in possession of the suit shop since “time immemorial” and much prior to the appellant's purchasing the suit shop. The respondent also raised a plea that he has perfected his title by virtue of adverse possession over the suit shop against the predecessor-in-title of the appellant and the appellant.

10. The Trial Court framed the issues. Parties led evidence. By judgment/decree dated 03.11.2003 in O.S. No.115 of 2003, the Trial Court decreed the appellant's suit. The Trial Court held that the appellant is the owner of the suit shop, that the respondent failed to prove his adverse possession over the suit shop, that the respondent has been in illegal possession of the suit shop and that the appellant is entitled to claim eviction of the respondent from the suit shop and also entitled to claim mesne profits at the rate of Rs.2000/- p.m. for a period of three years and the cost of Rs.5000/-. The Trial Court accordingly passed decree for possession and mesne profits against the respondent.

11. The respondent, felt aggrieved, filed first appeal before the Ist Additional District Judge, Belgaum being Regular Appeal No.58/2003. By judgment/decree dated 11.12.2006, the First Appellate Court dismissed the appeal and affirmed the judgment/decree of the Trial Court.

12. The respondent, felt aggrieved, filed Second Appeal in the High Court of Karnataka (Dharwad Bench) being S.A. No. 213/2007 under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code"). The High Court, by impugned judgment, allowed the Second Appeal and while setting aside of the judgments and decrees of two Courts below dismissed the appellant's suit.

The High Court held that the respondent was in possession of the suit shop as tenant and, therefore, the remedy of the appellant lies in filing the suit under the Rent Laws and the Transfer of Property Act for claiming possession of the suit shop. It was held that the present suit is, therefore, not maintainable for passing a decree for possession against the respondent in respect of suit shop.

13. Felt aggrieved, the plaintiff (appellant herein) has filed the present appeal by way of special leave before this Court.

14. Heard Mr. R.S. Hegde, learned counsel for the appellant and Mr. Charuditta Mahindrakar, learned counsel for the respondent.

15. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal and while setting aside of the impugned judgment of the High Court restore that of the Trial Court and First Appellate Court, which had rightly decreed the appellant's suit against the respondent in relation to the suit shop.

16. In our considered opinion, the approach of the High Court in deciding the second appeal, which resulted in allowing the respondent's appeal, is wholly perverse and against the well settled principle of law applicable to second appeals and to the factual controversy involved in the case as would be clear from our reasons set out hereinbelow.

17. Section 100 of the Code deals with second appeals. Sub-section (4) says that where the High Court is satisfied that a substantial question of law is involved in the case, it shall formulate that question. Sub-section (5) says that the appeal shall be heard on the question “so formulated". It further provides that the respondent is allowed to raise an objection at the time of hearing of the appeal that the question which has been framed does not involve in the case or in other words, is not a “substantial question of law" and, therefore, the appeal is liable to be dismissed as involving no substantial question of law within the meaning of Section 100 of the Code.

18. The proviso to sub-section (5), however, recognizes the power of the High Court to frame any other substantial question of law which was not initially framed but in the opinion of the Court does arise in the case. The Court can frame such question by assigning reasons.

19. Reading of sub-sections (4) and (5) of Section 100 of the Code, in clear terms, shows that, first, the High Court can hear the second appeal only on the question so formulated; second, it has jurisdiction to dismiss the second appeal if the respondent raises an objection at the time of hearing that the question so formulated does not arise in the case or is not a substantial question of law; and third, it can hear the appeal on any other question not initially framed provided such question arises in the case and is a substantial question of law. Such question can then be framed by assigning the reasons.

20. Now coming to the facts of the case, we find that the High Court had admitted the second appeal by framing the following question of law:

"Whether the Courts below have committed an error in the manner of considering the pleadings as well as the evidence available on record and as to whether the same is contrary to the recitals in the documents at Exhibit P.15?"

21. Reading of the aforementioned question shows that the only question, which the High Court was required to consider in the appeal, was whether the Trial Court and First appellate Court decided the case contrary to the pleadings and evidence and especially contrary to the recitals of EX-P.15.

22. The High Court, however, did not frame any other question of law to examine the legality and correctness of any specific finding recorded by the Courts below on the issues framed.

23. In the absence of any question of law framed on any of the adverse findings recorded by the two Courts below against the respondent, those findings attained finality. In other words, since no error was noticed in any of the findings of the two Courts below, the High Court did not frame any substantial question in relation to such findings, which became final for want of any challenge.

24. The High Court, however, framed one general question of law as to whether the findings of the two Courts below were contrary to the pleadings and evidence and especially to Ex-P-15 and held, by placing

reliance on Ex.P-15, that the respondent was occupying the suit shop as tenant and, therefore, the remedy of the appellant was in filing a tenancy suit against the respondent and to claim his eviction from the suit shop under the State tenancy laws or/and Transfer of Property Act in such suit but not in the present suit which is based on the strength of his title. The High Court, with this finding, accordingly allowed the appeal and dismissed the appellant's suit as being misconceived.

25. In our considered opinion, the aforesaid finding of the High Court is wholly illegal and unsustainable in law besides being against the pleading and evidence. This we say for following reasons:

26. First, the respondent (defendant) had not raised such plea in his written statement. In other words, the respondent did not set up such defense in the written statement. Second, the Trial Court, therefore, had no occasion to frame any issue on such plea for want of any factual foundation in the written statement. Third, the Trial Court and First Appellate Court, in these circumstances, had no occasion to record any finding on this plea either way. Fourth, in the light of these three reasonings, the High Court ought to have seen that such plea really did not arise for consideration because in order that any question is involved in the case, the party concerned should lay its factual foundation in the pleading and invite finding on such plea. Fifth, the High Court failed to see the case set up by the respondent in his written statement. As mentioned above, the defense of the respondent was that he had denied the appellant's title over the suit shop and then set up a plea of adverse possession contending that he has become the owner of the suit shop by virtue of adverse possession, which according to him, was from time immemorial.

27. It was clear that the respondent never claimed that he was in possession of the suit shop as tenant of the appellant's predecessor-in-title. On the other hand, the respondent had asserted his ownership right over the suit shop on the strength of his long adverse possession.

28. It is these issues, which were gone into by the two Courts and were concurrently decided by them against the respondent. These issues, in our opinion, should have been examined by the High Court with a view to find out as to whether these findings contain any legal error so as to call for any interference in second appeal. The High Court, however, did not undertake this exercise and rather affirmed these findings when it did not consider it proper to frame any substantial question of law. It is a settled principle of law that the parties to the suit cannot travel beyond the pleadings so also the Court cannot record any finding on the issues which are not part of pleadings. In other words, the Court has to record the findings only on the issues which are part of the pleadings on which parties are contesting the case. Any finding recorded on an issue de hors the pleadings is without jurisdiction. Such is the case here.

29. That apart, even if we examine the question framed by the High Court as arising in the case, we are of the considered opinion that the question has to be answered against the respondent (appellant before the High Court) and in favour of the appellant herein for more than one reason mentioned below.

30. First, the respondent did not adduce any evidence to prove that he was in possession of the suit shop as tenant of the appellant's predecessor- in-title. In order to prove the tenancy between the respondent and the appellant's predecessor-in-title (Vithal Dhopeshwarkar), it was necessary for the respondent to have filed rent receipts/lease deed etc. and also to have examined his landlord who, according to him, had inducted him as tenant in the suit shop. It was not done.

31. Second, Ex.P-15, which is sale deed of the suit shop nowhere recites that the respondent was in possession of the suit shop as tenant. All that it recites is that the respondent has been in possession of the suit shop. Such recitals, in our opinion, no way confer the status of a tenant on the respondent in the absence of any independent evidence adduced by him to prove the creation of tenancy. No benefit of Ex.P-15 could thus be taken by the respondent to claim the status of a tenant.

32. In the light of aforementioned reasons, we are of the considered opinion, that the High Court was not right in holding that the respondent was in occupation of the suit shop as tenant and that the remedy of the appellant was to file a civil suit to claim eviction under the Rent Laws. This finding, in our view, is contrary to the pleadings and evidence. It is also otherwise not legally sustainable for want of any evidence adduced by the respondent in support thereof.

33. In view of foregoing discussion, we are of the considered view that the Trial Court and First Appellate Court were justified in holding the appellant to be the owner of the suit shop, having purchased the same vide registered sale deed dated 20.09.1997 from its previous owner. It was also rightly held that the respondent was in possession of the suit shop as an encroacher and failed to prove his adverse possession over the suit shop. These findings being concurrent findings of fact were binding on the High Court and, therefore, the second appeal should have been dismissed in limine as involving no substantial question of law.

34. In the light of foregoing discussion, the appeal succeeds and is allowed. Impugned judgment of the High Court is set aside and as a consequence, the judgments of the First Appellate Court and Trial Court are restored.

…….....J. [R.K. AGRAWAL]

…..…….....J. [ABHAY MANOHAR SAPRE] New Delhi;

November 20, 2017