2024 INSC 688

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO…..…… OF 2024
(Arising out of SLP (C) No. 24805 of 2023)

RASHMI KANT VIJAY CHANDRA & ORS. …APPELLANT(S)

Versus

BAIJNATH CHOUBEY & COMPANY …RESPONDENT(S)

O R D E R

Leave Granted.

2. This appeal is directed against the judgment and order dated 24th August, 2023 passed in S.A.No.100 of 2021 by the High Court of Calcutta, whereby the judgment and order dated 12th December, 2019 passed by the City Civil Court at Calcutta[1] in Title Appeal No.14/2018 was set aside. The First Appellate Court set aside the findings returned by the Presidency Small

[1] Hereinafter referred as 'First Appellate Court'

Cause Court[2] in favour of the respondent-tenant, at Calcutta in Ejectment Suit No.1079 of 2002 by order dated 27th November, 2017.

3. The issue *inter se* the parties, is one between a landlord and tenant. The facts stretch about 90 years in time beginning on 19th February, 1933, when one Harak Chand Veljee by a registered deed of settlement, settled premises Nos.37, 38 and 39, Ezra Street, Calcutta-700001 in Trust of which the present plaintiff-appellants were the trustees. One Baijnath Choubey was a tenant in respect of part of the suit premises. The tenancy stood in the name of M/s. B.N. Choubey and Company (a partnership concern). He died having created a Trust to care for his son who was in an asylum at Agra. The said Trust (*which allegedly came to an end with the death of the son in 1949 and his daughter having passed away issueless*) carried on business and the plaintiff-appellants allege that the trustees of the respondent-tenant formed an illegal partnership with two individuals, namely, Sarbottam Das Mundra and Chetandas Mundra. On 31st May, 1984, the plaintiff-appellants came to know that one of the trustees of the respondent or his legal representatives did not exist and, therefore, the business was being carried on by perpetuating fraud.

[2] Hereinafter referred to as the 'Trial Court'

4. The case of the plaintiff-appellants is that the respondent-defendant had illegally inducted a sub-tenant into the subject premises. An eviction notice was served by the plaintiff-appellants on 22nd July, 1984. Thereafter, the suit for eviction, subject matter of the present *lis*, came to be filed.

5. The Trial Court framed 9 issues. The following is a snapshot of the issues as framed and its corresponding findings. For the purposes of clarity, it is mentioned that the appellants are the plaintiffs and the respondent is the defendant:

S.No.	Issues	Findings
1.	Is the suit maintainable in its present form and prayer?	In favour of the defendant
2.	Is there any cause of action to file the instant suit?	In favour of the plaintiffs
3.	Is the plaintiff Trust owner of the suit property as described in the schedule of the plaint?	In favour of the plaintiffs
4.	Did the plaintiffs send a notice of eviction? Was there proper service of the same? If so, was the same legal and valid?	In favour of the plaintiffs
5.	Is the defendant a defaulter in payment of rent?	In favour of the defendant
6.	Is there any relationship of landlord and tenant in between the parties to this suit?	In favour of the defendant
7.	Has the defendant sublet the suit premises?	In favour of the plaintiffs
8.	Are the plaintiffs entitled to the relief as prayed for?	In favour of the plaintiffs
9.	To what other relief or reliefs, are the plaintiffs entitled?	In favour of the plaintiffs

As such, the Trial Court dismissed the Suit.

6. The plaintiff-appellants preferred an appeal against the Trial Court judgment, which came to be numbered as Title Appeal No. 14/2018. The respondent-defendant also preferred cross-objection thereafter on 08.07.2019. The learned First Appellate Court vide Judgment dated 25.07.2019, dismissed the cross-objections preferred on the ground of delay and that such cross-objections have been preferred after the plaintiff-appellants had concluded their arguments in the appeal.

7. The learned First Appellate Court set aside the findings of the Trial Court and decreed the suit in favour of the plaintiff-appellants. The Court held that there were contradictions in the reasoning of the Trial Court, where it had on the one hand observed that a valid legal notice was served upon the defendant and on the other, held the relationship of landlord and tenant is not proved. The question of the relationship of landlord and tenant between the plaintiff-appellants and defendant-respondent in fact, had to be answered in affirmative. The Court held that the defendant has sublet the suit premises and is, therefore, liable to be evicted from the same.

8. The High Court of Calcutta in Second Appeal, under Section 100 of the Civil Procedure Code, 1908[3] admitted the appeal vide Order dated 25th August, 2021 on the following questions of law:

[3] Hereinafter referred to as "CPC"

> i. Whether on the facts and in the circumstances of the case, impleadment of M/s. Baijnath Choubey and company as a sole defendant in the plaint was correct?
>
> ii. Whether on the facts and in the circumstances of the case, the heirs, executors, trustees etc. representing the estate of Baijnath Choubey were also necessary parties?
>
> iii. Whether on the facts and in the circumstances of the case, the suit was liable to be dismissed for non-joinder of necessary party?

9. The High Court, vide the impugned judgment dated 24th August, 2023, allowed the appeal and answered the above questions in the affirmative. The Court observed that:

> "21. It leaves no manner of doubt, that a trade name can never be considered, to be a juristic person, so is a partnership firm. Therefore, the plaintiff cannot maintain the suit without impleading the trustees of the trust, created by the original tenant, Baijnath Choubey, in the breach of Order XXXI Rule 1 of the Code of Civil Procedure.
> ….
> 26. Thus the substantial questions are answered in the affirmative. That decree has been granted by the First Appellate Court on the ground of sub-letting. In absence of any evidence to constitute the ingredients of sub-letting, the decree cannot be maintained…
>
> 27. …. In absence of any evidence, oral or documentary, the finding of the learned First Appellate Court is based on no evidence and therefore warrants interference. I am of the opinion that the impugned judgment by the learned First Appellant Court is erroneous and should not be allowed to remain in force."

10. We have heard the learned counsel for the parties and have also perused the written submissions filed. We are of the view that the High Court fell in error in overturning the findings of the learned First Appellate Court.

11. The answer to the objection raised by the respondent-defendant *qua* the non-joinder of all trustees as necessary parties, is in the impugned judgment itself. The High Court, in paragraph 22 of the impugned judgment, notes that the respondent-defendant contested the suit by filing written statement, which was signed by Sarbottum Das Mundra, who is a partner of the defendant. Pertinently, before the Trial Court, in the written statement, there is no reference made to the non-joinder of necessary parties.

12. Reference is made to the judgment of this Court in ***Gajendra Narain Singh*** v. ***Johrimal Prahlad Rai***[4] to state that where a person is served with summons as a partner of a firm and he files an appearance without protest, his appearance must be deemed to be on behalf of the firm, unless the Court permits him to withdraw such appearance.

13. The issue which remains to be considered, is whether the High Court erred in observing that the Order of the First Appellate Court is based on no evidence. In our view, the answer is in the affirmative.

14. This Court in ***Dnyanoba Bhaurao Shemade*** v. ***Maroti Bhaurao Marnor***[5], while considering the scope of Section 100 of the CPC, observed:

> **"10.** Having given our anxious consideration to the rival contentions aforesaid, we find ourselves unable to sustain the decision rendered by the learned Single Judge of the High Court for the reasons that follow:

[4] AIR 1964 SC 581
[5] (1999) 2 SCC 471

> It has to be kept in view that the learned Single Judge was exercising jurisdiction under Section 100 CPC as it was amended in 1976. A mere look at the said provision shows that the High Court can exercise its jurisdiction under Section 100 CPC only on the basis of substantial questions of law which are to be framed at the time of admission of the second appeal and the second appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. The impugned judgment shows that no such procedure was followed by the learned Single Judge. It is held by a catena of judgments by this Court, some of them being, *Kshitish Chandra Purkait* v. *Santosh Kumar Purkait* [(1997) 5 SCC 438] and *Sheel Chand* v. *Prakash Chand* [(1998) 6 SCC 683] that the judgment rendered by the High Court under Section 100 CPC without following the aforesaid procedure cannot be sustained. On this short ground alone, this appeal is required to be allowed."
>
> (Emphasis supplied)

15. This exposition came to be followed by this Court in ***Narayanan Rajendran*** v. **Lekshmy Sarojini**[6] wherein after tracing out a catena of judgments on Section 100 of the CPC, it was observed:

> *"70*. Now, after the 1976 Amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering under Section 100 CPC only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law."
>
> (Emphasis supplied)

[6] (2009) 5 SCC 264

16. While placing reliance on the above observations, this Court in ***Hardeep Kaur*** v. ***Malkiat Kaur***[7] affirmed that it is the duty of the High Court to frame substantial questions of law before hearing an appeal under Section 100 of the CPC and such a second appeal has to be heard and decided on such substantial question of law.

17. More recently, in ***Kirpa Ram*** v. ***Surendra Deo Gaur***[8] and ***Suresh Lataruji Ramteke*** v. ***Sau. Sumanbhai Pandurang Petkar and Ors.***[9], it was reiterated that High Courts are required to hear second appeals under Section 100 of the CPC only on the satisfaction that there exists a substantial question of law and the appeal has to be heard on the question so formulated.

18. Adverting to the facts of the case at hand, the questions of law framed by the High Court for admission of the appeal, as have been reproduced above, pertain to necessary parties, non-joinder of such parties, and the effect it has on the suit filed by the plaintiff-appellants.

19. In the impugned Judgment, deciding the appeal, there is another substantial question of law framed as to "Whether an interlocutory order of the learned First Appellate Court can be held to have attained finality to bring the issue within the mischief of Section 11 of the CPC." The finding returned is in the

[7] (2012) 4 SCC 344
[8] (2021) 13 SCC 57
[9] 2023 SCC Online SC 1210

affirmative and this interlocutory order whereby the cross-objection of the respondent-defendants was dismissed due to delay has been held to be amenable to appeal. Thereafter, the High Court has proceeded to discuss the issue of *sub-letting* of the suit premises and the decree of the learned First Appellate Court was set aside on that ground.

20. There is no question framed about lack of evidence, sub-letting or incorrect appreciation of facts by the learned First Appellate Court, on which the final finding of the High Court is returned. Furthermore, there is no discussion by the High Court, as to the reasons required for the departure from the substantial questions of law framed at the stage of admission or in the impugned order. The impugned judgment overturns the finding of fact of the First Appellate Court *qua* sub-letting without framing a substantial question of law in this regard at any stage.

21. Therefore, in view of the above exposition of law and the foregoing discussion, the impugned order is liable to be set aside on this ground.

22. The judgment and order dated 24th August, 2023 passed in S.A.No.100 of 2021 by the High Court of Calcutta is set aside. The judgment and order dated 12th December, 2019 passed by the City Civil Court at Calcutta in Title Appeal No.14/2018 stands affirmed.

23. In the interest of justice, the respondent-defendant is directed to hand over vacant physical possession of the suit property by 31.12.2024. Any dues up till the date of occupation shall be borne by the respondent-defendant.

24. The civil appeal is allowed and disposed of in the aforesaid terms. Pending applications if any, shall also stand disposed of.

25. No order as to costs.

……..…….J.
(J.K. MAHESHWARI)

……..…….J.
(SANJAY KAROL)

Dated : September 13, 2024;
Place : New Delhi.