LegalCrystal - Indian Law Search Engine - www.legalcrystal.com

Gopiram Onkarmall Vs. Sewantilal Punam Chand

LegalCrystal Citation : legalcrystal.com/869739

Court : Kolkata

Decided On : Feb-05-1960

Reported in : AIR1960Cal580,65CWN483

Judge : Renupada Mukherjee and ;K.C. Sen, JJ.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 21, Rule 103

Appeal No. : A.F.O.D. No. 223 of 1959

Appellant : Gopiram Onkarmall

Respondent : Sewantilal Punam Chand

Advocate for Def. : C.C. Ganguly, ;B.S. Bagchi and ;Archana Sen Gupta, Advs.

Advocate for Pet/Ap. : Lala Hemanta Kumar and ;Sudhir Kumar Dutt, Advs.

Disposition : Appeal dismissed

Judgement :

Renupada Mukherjee, J.

1. The defendant of the trial court which is a firmof the name and style of Gopiram Onkarmal, is appellant in this appeal. The suit out of which thisappeal hag arisen was instituted in the trial court byrespondent Sewantilal Punam Chand for a declaration of his tenancy right in two rooms on the thirdfloor of premises No. 208 Cross-Street, Calcutta.There was also a prayer for a declaration that thedecree, passed in, an ejectment, suit against the firm-name of the plaintiff is not binding on him. Subsequent to the institution of the suit a prayer was alsomade for obtaining delivery of possession of the disputed rooms, because during the pendency of thesuit in the trial court the appellant firm had takendelivery of possession of the rooms by executing itsdecree.

The suit was, contested by the appellantfirm. Its defence was that the firm bearing the nameSewantilal Punam Chand was the recorded tenantand the plaintiff was the sole proprietor of the firm and so the decree in question, is binding on him. Another objection taken by the defendant firm was that the suit had lost its maintainability after delivery of possession had been taken by the defendant firm in execution of the decree and after an application filed by the plaintiff under Order 21 Rule 100 of the Code of Civil Procedure for re-delivery of possession was dismissed by the executing court.

3. Both the objections taken in the writtenstatement of the defendant were disallowed and thesuit of the plaintiff was decreed. So the defendanthas preferred this appeal.

4. In this appeal Mr. Lala Hemanta Kumar appearing on behalf of the defendant appellant urged the same two points as had been urged in the trial court. The second point which involves a question of pure law was argued in a modified form in this court. We shall take up both the points one after another.

5. The first point urged on behalf of the appellant involves the question--who was the tenant of the appellant firm? According to the appellant the firm bearing the name and style of Sewantilal Punamchand was the tenant. According to the plaintiff respodent, he was the tenant in his personal capacity and there was no existence of the firm against which the suit for ejectment had been decreed. Upon the evidence adduced by the parties the learned Judge of the City Civil Court who heard the suit came to the conclusion that the plaintiff respondent was the tenant and the firm against which the decree was obtained was not the tenant. Some rent-receipts and some chalans of the office of the Rent Controller would conclusively substantiate the contentions of the plaintiff respondent that he was the tenant in his personal capacity and no counter-foils of rent receipts were produced by the appellant firm to disprove this contention of the respondent. Mr. Lala Hemanta Kumar relied on the fact that in some earlier, rent receipts the name of the tenant figures as Sewantilal Punam Chand Choudhury, but the surname (Chou-dhury) has been dropped in some later rent receipts. From this omission of the surname Mr. Lala argued that the plaintiff was initially the tenant in his personal capacity, but later on the tenancy was converted in the name of the firm by the omission of the surname 'Choudhury'. In our opinion, no such conclusion is permissible merely because of the fact that the surname Choudhury does not appear in some later rent receipts. The plea of the appellant that the tenancy was at first in the personal name of the appellant and was subsequently changed in the name of the firm was taken for the first time during the hearing of the suit in the trial court? In the written-statement the objection taken in this regard was that the firm was all along the tenant and the respondent was never the tenant in his personal capacity. On a consideration of all these facts and circumstances we are of opinion that the decision of the trial court that the respondent was the tenant of the disputed premises in his personal capacity and the firm was never the tenant is correct. The decree passed in the ejectment suit is not, therefore, binding upon the respondent. The first point urged on behalf of the appellant, therefore, fails.

6. We now address ourselves to the secondpoint raised by Mr. Lala which is a pure point oflaw and which was urged by him with greatemphasis. The question of law has arisen under thefollowing facts and circumstances about which thereis no dispute. When the suit was in progress inthe trial court the defendant firm executed thedecree for ejectment which it had obtained againstthe firm Messrs. Sewantilal Punam Chand andobtained delivery of possession of the disputed premises. Thereupon respondent Sewantilal Punam Chand filed an application under Order 21, Rule 100 of the Code of Civil Procedure in his personal capacity-complaining of dispossession and praying for being restored to possession. This application was dismissed on 12-9-1958, on the contest of the appellant. Apparently the order of dismissal was passed under Order 21, Rule 101 of the Code of Civil Procedure. The suit out of which this appeal has arisen was decreed on 3-4-59. By an amendment of the plaint, the plaintiff respondent prayed for delivery of possession, but no prayer was made for setting aside the summary order passed on 12-9-1958. The appellant firm filed the present appeal on 7-5-1959. It is an admitted fact that uptill now respondent Sewantilal Punam Chand has

not filed any title suit under Order 21, Rule 103 of the Code challenging the validity of the order made against him in the proceeding under Order 21, Rule 100 of the Code.

7. Mr. Lala Hemanta Kumar argued on the basis of the above admitted fact that the order made against the respondent in the proceeding under Order 21 Rule 100 has become conclusive by virtue of Rule 103 of Order 21 of the Code. This Rule runs in the following terms:

'Any party not being a judgment debtor against whom an order is made under Rule 98, Rule 99 or Rule 101 may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be conclusive'.

8. Mr. Lala argued on behalf of the appellant, that it is incumbent upon a party against whom an order is made in a proceeding under Order 21 Rule 100 of the Code to institute a regular suit under Rule 103 within a period of one year from the date of the order, which is the period of limitation for such a suit, and if that is not done, the order becomes final and conclusive. Mr. Lala further contended that the fact that a previously instituted suit for establishment of title to the selfsame property is pending at the date when the order in question is made, does not exonerate the party prejudicially affected by that order from bringing this statutory suit. In support of this contention Mr. Lala relied on the decision of a Division Bench of the Madras High Court reported in Uni Achan v. Kunhikrishnan (Nair, AIR 1924 Mad 602 (I). This case is clearly distinguishable from the facts of the present case. In the Madras case the period of one year which is the period of limitation prescribed for a statutory suit under Order 21 Rule 103 of the Code, had already run out before the previously instituted title suit came to be disposed of and under these circumstances it was held by the learned Judges that the order passed under Rule 101 had become final and must be given effect to in the suit. In the present' case, the order under Rule 101 was passed on 12-9-1958, and decree was passed in the previously instituted suit on 3-4-1959. A period of one year had not run out from the date of the summary order and so no occasion had arisen for the institution of the suit under Rule 103.

9. Mr. Lala also drew our attention to another, decision of the Madras High Court reported in Abdul Rahim v. Swaminatha Odayar, AIR 1956 Mad 19. In particular, he drew our attention to some observations occurring at page 29 of the report. The observations run in the following terms :

'Prima facie, therefore, the order would become conclusive if a suit had not been filed to set-aside the order within the time prescribed, that is, one year under Article 11-A, Limitation Act. The Rule does not in terms mitigate its rigour by providing that such a suit need not be filed when another suit for a declaration of the right claimed and rejected in the application was already filed and pending'.

10. This Madras case is also distinguishable from the present case. In the Madras case, the previously instituted suit was decided against the plaintiff who was the unsuccessful claimant in a proceeding under Order 21 Rule 100. The previously instituted suit was also decided before the summary order was made. An appeal was no doubt preferred from the decision of the title suit by the unsuccessful claimant. In the circumstances, it was held that it was proper for the unsuccessful claimant to institute another suit within a year of the date of the passing of the summary order

against him. In the present case, as we have already pointed out, the fact that a decision was made in a regular suit within a year of the date of the passing of the summary order obviated the necessity for bringing another suit. The summary decision could not possibly affect the validity of the decision made in a regular suit, because the summary decision had not attained finality when the decision in the regular suit was given.

11. It does not appear that there is any direct decision of our High Court on this question. Mr. C. C. Ganguly who argued the appeal on behalf of the respondent drew our attention to two decisions of the Madras High Court. One of these cases is reported in Palaniappa Chettiar v. Ramaswami Servai. AIR 1937 Mad 582. It has been held an that case that if a party against whom an order has been made under Order 21 Rule 101 of the Code is able to get his right declared or established within a year, the summary order made under Order 21 Rule 101 must be deemed to have been superseded by the later adjudication. This decision has been followed in a later decision of the Madras High Court reported in Umanath Bhandary v. Pedru Souza, : AIR1950Mad19 . In that case, the learned Judge who gave the decision has gone a step further and held that where a suit or an appeal filed by the claimant is pending at the date when an order under Order 21 Rule 98 dismissing his claim is made, it is not obligatory on his part to file another suit under Rule 103 within one year of the order passed under Order 21 Rule 98. In such a case the summary order is subject to the decision in the suit or appeal pending at the time. The last two decisions referred to by Mr. Ganguly supports his contention that if the unsuccessful claimant has already instituted a title suit which is pending at the elate when an order under Rule 101 is made against him, he need not file a second suit for establishment of his title as required by Rule 103 particularly, if the decision in the title suit is given within a year of the date of the summary order. The provisions of Order 21 Rule 103 of the Code are of a restricted nature and strict compliance with them is necessary. Vide Mt. Talia Bibi v. Nur Din, AIR 1928 Lah 672. The rule applies in terms to a case where no title suit in respect of the same property is pending between the parties, because it enjoins on the unsuccessful party to bring a suit for establishment of his title after the order is passed against him. The period for limitation prescribed in such a suit is one year. Evidently, Rule 103 does not contemplate or cover a case in which a previously instituted suit by the aggrieved party is already pending. The suit is not certainly nullified or invalidated by a summary order. If a competent court gives a decision in that suit within a year of the passing of the summary order, the decision must be accepted as valid because the time-limit for challenging the summary order has not yet run out and the party in whose favour the orderis made in the summary proceeding cannot get any advantage of it, the summary order not having attained finality. Whatever may be the position with regard to a decision given in a previously instituted suit after the expiry of one year from the date of the passing of the summary order, the decision given in such a case within a year from the last mentioned date must be taken to be good and valid, because the summary decision does not attain finality or conclusiveness before the expiry of one year from the date when it is passed. It is true that there would be two conflicting decisions in connexion with the same subject matter, but conflicting decisions of a civil court are not a rare phenomenon. We therefore hold that the summary order in the present case was superseded by the decree passed by the trial court in the regular suit. The second contention urged on behalf of the appellant, therefore, fails.

12. Both the points urged on behalf of the appellant having failed, this appeal is dismissed with costs to the respondent.

K.C. Sen, J.

13. I agree.

LegalCrystal - Indian Law Search Engine - www.legalcrystal.com