

CIVIL REVISION

Present: The Hon'ble Mr. Justice Prasenjit Mandal

Judgment on 30.08.2010

C.O. No.2774 of 2005

Jibankur Chatterjee.

Versus

Asima Chatterjee

Points:

Scope of Revision -Revisional court whether can re-appreciate the evidence in the suit.-Code of Civil Procedure, 1908 S.115

Facts:

Plaintiff is the owner of the suit house. He allowed his eldest son to live in the said house. His eldest son with his wife used to live at that house. There is dispute between son and daughter in law of the plaintiff and a matrimonial suit is pending. Plaintiff alleged on the request of the plaintiff his son vacated the premises and thereafter his daughter in law forceably trespassed in the house and plaintiff filed suit for recovery of possession under section 6 of the Transfer of Property Act. Defendant denied the allegation and stated that the alleged story of surrender of a collusive one between the plaintiff and his son. Trial Court dismissed the suit holding that the defendant did not trespassed in the suit house as alleged.

Held:

A revisional court is to consider whether the findings recorded by the learned Trial Judge are without any evidence or perverse. The revisional court will not re-appreciate the evidence in the suit except where grave injustice has been done or where the learned Trial Judge had failed to exercise the jurisdiction vested in him.

Para 12

Cases cited:

S. R. Batra and Anr. Vs. Taruna Batra, (2007) 3 SCC 169 Ajit Kumar Saha Vs. Amar Kumar Saha, 2003(1) CLJ 64; Damodar Narayan Singh Vs. Sardar Hira Singh & anr., 2002(2) CLJ 68.

For the Petitioner : Mr. J. R. Chatterjee, Sr. Adv.

Mr. Partha Pratim Roy,

Mr. Supriya Dhar.

For the Opposite party: Mr. Debotosh Khan.

Prasenjit Mandal, J.: This application is at the instance of the plaintiff and is directed against the judgment and decree dated may 20, 2005 passed by the learned Civil Judge (Senior Division), Seventh Court, Alipore in Title Suit No.255 of 2001 thereby dismissing the same on contest with costs.

2. The short fact of the case is that the plaintiff/petitioner filed the suit for recovery of possession against the defendant/opposite party under Section 6 of the Specific Relief Act by evicting the defendant from the premises in suit, as described in the schedule of the plaint. His contention is that he purchased more or less two cottahs of land at Sayedpur under P.S. Thakurpukur in 1991 and thereafter he constructed a twostoried building thereon. His eldest son, Shyamankur, was married to the defendant/opposite party on 08.03.1995 and they lived in one room of the said building till 07.06.2000. Thereafter, the defendant/opposite party left her matrimonial home. At present, she has been residing at her father's house at Konnagar. The plaintiff asked his eldest son to leave the premises in suit after revocation of licence granted to him to live thereat. Accordingly, the eldest

son of the plaintiff delivered vacant possession of the said room to the plaintiff on 10.03.2001.

3. The eldest son of the plaintiff filed a Matrimonial Suit for divorce against the defendant before the learned District Judge, Alipore being the Matrimonial Suit No.265 of 2001 and the same is pending. Then on 09.06.2001, the defendant along with some unknown persons entered into the house of the plaintiff and thereafter the plaintiff was dispossessed from the premises in suit. So, the plaintiff has filed the suit under Section 6 of the Specific Relief Act.

4. The defendant/opposite party contested the suit by filing a written statement stating, inter alia, that the marriage between the eldest son of the plaintiff and the defendant took place on 08.03.1995 after negotiation. The plaintiff suppressed the first marriage of his eldest son, though mutual divorce between them was granted on 08.04.1994. After the marriage, she lived with her husband. Her husband is a Deputy Manager of the UCO Bank. On 07.06.2000, the husband went to the paternal house of the defendant for enjoying 'jamaishasthi' festival. But, thereafter he did not bring her back to his house in order to drive out the defendant from her matrimonial home. The allegation of forceful dispossession on 09.06.2001 is false. The defendant has been living in her matrimonial home with her husband. But her husband avoided her and he began to stay separately. The defendant lived in her matrimonial home and cooked food. Thereafter, the husband filed the suit for divorce in collusion with the plaintiff and so the question of recovery of possession of the suit property does not arise.

5. Upon recording evidence on behalf of both the parties, the learned Trial Judge has dismissed the suit on contest. Being aggrieved by the said judgment and decree, this application has been preferred by the plaintiff.

6. Mr. J. R. Chatterjee, learned senior Advocate appearing on behalf of the plaintiff/petitioner, submits that the plaintiff himself purchased the land and thereafter he constructed a two storied house thereon on his own money. His eldest son, Shyamankur, was married to the defendant/opposite party. His son is major and is employed. So, the plaintiff has no responsibility for allowing him to live in his house. His status with regard to the suit property was nothing but a licensee and the plaintiff had revoked his licence and accordingly he delivered possession on 10.03.2001. Since the husband of the defendant is major and service holder, the defendant has no right to reside in the premises in suit particularly when her husband had delivered vacant possession of the suit premises after revocation of the licence by him. The provisions of the Protection of Women from Domestic Violence Act, 2005 could not be applicable because it is not the property of the husband at all and so, the father-in-law is not bound to provide accommodation for the wife of his son.

7. In support of his contention, Mr. Chatterjee has referred to the decision of S. R. Batra and Anr. Vs. Taruna Batra reported in (2007) 3 SCC 169 para 17 and thus he submitted that according to this decision husband is to provide accommodation or to arrange other accommodation. The father-in-law has no responsibility in this regard. He has also referred to the other decision of Ajit Kumar Saha Vs. Amar Kumar Saha reported in 2003(1) CLJ 64 particularly paras 13 & 15 and submitted that an adult son is not entitled to be maintained by the father and when the father is not bound to maintain his adult son, his wife is not also entitled to a right of residence. He has also referred to the decision of Damodar Narayan Singh Vs. Sardar Hira Singh & anr. reported in 2002(2) CLJ 68. By referring paragraph 13 to show that the revisional court can well decide the question of law. Thus, he submitted that

the defendant has no right to reside in the premises in suit and so the learned Trial Judge was not justified in dismissing the suit. It should be set aside.

8. On the other hand, Mr. Khan, learned Advocate appearing on behalf of the opposite party, submits that entire matter is a collusive one between the plaintiff and his son, husband of the defendant. This will appear from different facts such as the first marriage of the husband of the defendant was suppressed at the time of negotiation for the second marriage. Thereafter, the husband filed the suit for divorce against the defendant with mention of the address as given in the plaint filed by the plaintiff signifying that the son of the plaintiff has been using that address for all purposes except towards the claim of the defendant. The learned Trial Judge has rightly dismissed the suit.

9. So, the questions to be decided in this application are:

1. Whether the plaintiff was dispossessed from the premises in suit by the defendant on 09.06.2001.

2. Whether the impugned order can be sustained.

10. After hearing the submission of the learned Advocate of both the sides and on perusal of the materials on record, I find that admittedly the eldest son of the plaintiff, namely, Shyamankur, was married to the defendant / opposite party on 08.03.1995 according to Hindu rites and customs after negotiation. After the marriage, they lived in the house of the plaintiff.

11. As regards the forcible dispossession by the defendant, the learned Trial Judge has specifically observed that the plaintiff has admitted that he did not lodge any diary in the local police station over the incident. No neighbour has come forward to support the allegation of forcible dispossession on 09.06.2001. A local witness, namely, P.W. 3, has been examined but he is not a witness to the alleged occurrence of 09.06.2001; but to the fact that he

examined the wife of the plaintiff and advised her in a nursing home for treatment. Though it is the specific case of the plaintiff that some parah people came to help him but I find that none has supported the version of the plaintiff at all. Admittedly, the defendant has been residing in the premises in suit and the plaintiff has stated that he informed the Director General of Police over the incident but he failed to show that any enquiry was held over it.

12. This Court being a revisional court is to consider whether the findings recorded by the learned Trial Judge are without any evidence or perverse. From the fact stated above, it is clear that the learned Trial Judge has based his findings on the basis of the evidence adduced by the parties. He has come to a finding that on 09.06.2001 the plaintiff was not dispossessed by the defendant at all and in fact it is the matrimonial house of the defendant. Therefore, the judgment passed by the learned Trial Judge does not suffer from any perversity or without any evidence. The revisional court will not re-appreciate the evidence in the suit except where grave injustice has been done or where the learned Trial Judge had failed to exercise the jurisdiction vested in him. There is no such occasion in the instant case.

13. This being the position, I am of the view that the learned Trial Judge has rightly held that there is no sufficient evidence to hold that on 09.06.2001 the plaintiff was dispossessed by the defendant. Therefore, there is nothing to interfere with the above orders. The judgment should be sustained. The questions are, thus, answered.

14. In the result, this application is meritless. It is, therefore, dismissed.

15. There will be no order as to costs.

16. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)