

Neutral Citation No. - 2024:AHC-LKO:86436

Court No. - 7

Case :- S.C.C. REVISION No. - 25 of 2024

Revisionist :- Madhuri Agarwal

Opposite Party :- Anil Kumar Singh And Others

Counsel for Revisionist :- Ashish Chaturvedi, Amitabh Banerjee,
Vijay Krishna Srivastava

Counsel for Opposite Party :- Rama Shanker Singh, Aakchad
Nath, Nirmal Srivastava

Hon'ble Pankaj Bhatia,J.

1. Heard the counsel for the revisionist and Sri Rama Shanker who appears for the respondents.
2. The present revision has been filed challenging the judgment and order dated 22.10.2024.
3. The facts, in brief, are that the revisionist was a tenant in occupation of the premises owned by the respondents by virtue of an agreement, which was extended from time to time and subsequently, as there was no payment of rent allegedly by the tenant, a notice appears to have been served under section 106 of the Act and the tenancy was determined and the suit in question was filed being SCC Suit No.119 of 2015.
4. During the course of the proceedings, an order came to be passed striking of the defense of the revisionist by means of an order dated 30.11.2019 against which a revision was preferred, however no interim order was granted by the revisional court and the suit proceeded on merits. While decreeing the suit, the SCC court decided three points on determination as framed, the first being with regard to the relationship of landlord and the tenant, the second being with regard to service of notice and the third being with regard to default in payment of rent. All the three findings were returned in favour of the landlord and the suit in question was decreed.

5. The submission of the counsel for the revisionist, attacking the said judgment, is that while deciding the issue with regard to service of notice, a reverse burden has been cast upon the revisionist although knowing well that the defense has already been struck off. He further argues that in terms of the power of attorney, based upon which, the suit in question was filed, there was no authority in favour of the person filing the suit, to institute the proceedings under section 20 and the said power of attorney was confined to PA Case No.64 of 2014, instituted and pending in between the same parties.

6. He further argues that in the subsequent agreement whereby the property was leased for a extended period of eleven months, the address of the property was shown as A-1/1, Sector B- Aliganj, whereas in the notice, the address was mentioned as A-1/1-A, Sector B Aliganj, Lucknow. Thus, there was error in describing the property in the notice and to that effect, the notice was also defective. He further argues that in terms of the lease deed, two months' notice was required to be served by the lessor for determining the lease whereas the notice for determining the lease was indicating the time of one month, which was further bad in law. He relies upon the following judgments :

(i). Vijay Kumar Singh @ Veer Singh vs. Shanker Saran Das Agarwal; (2016) 118 ALR 613

(ii). Modula India vs. Kamakshya Singh DEO; (1198) 4 SCC 619.

(iii). Rangammal vs. Kuppuswami and another; (2011) 12 SCC 220

(iv). Sudha Agrawal vs. Xth Addl. District Judge and others; (1999) 6 SCC 332.

(v). State of Madhya Pradesh vs. Nomi Singh and another (2015) 14 SCC 450.

7. Supporting aforesaid judgments, the counsel for the revisionist argues that once the evidence has been struck off, the defendant is precluded from adducing any evidence although he may cross examine the witness of the plaintiff.

8. In the judgment in the case of **Modula India vs. Kamakshya Singh DEO; (1198) 4 SCC 619**, the Supreme Court had the occasion to consider the scope of the defendants' rights after the right to defense has been struck off and the following was summed up :

For the above reasons, we agree with the view of Ramendra Mohan Dutta, Acting C.J. that, even in a case where the defence against delivery of possession of a tenant is struck off under Section 17(4) of the Act, the defendant, subject to the exercise of an appropriate discretion by the court on the facts of a particular case, would generally be entitled :

(a) to cross-examine the plaintiff's witnesses; and

(b) to address argument on the basis of the plaintiff's case.

We would like to make it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond the legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses.

9. In the case of **Rangammal vs. Kuppuswami and another; (2011) 12 SCC 220**, the Supreme Court had the occasion to consider the burden of proof in terms of the mandate of section 101 of the Evidence Act and the following was recorded as under :

"21. Section 101 of the Indian Evidence Act, 1872 defines 'burden of proof' which clearly lays down that :

***101. Burden of proof -** Whosoever desires any court to give judgment as to give any legal right or liability dependent on the existence of facts and which he asserts, must prove that those facts exist.*

When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

Thus, the Evidence Act has clearly laid down that the burden of proving a fact always lies upon the person who asserts it. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.

33. Since the High Court has misplaced the burden of proof, it clearly vitiated its own judgments as also of the courts below since it is well established dictum of the Evidence Act that misplacing burden of proof would vitiate judgment. It is also equally and undoubtedly true that the burden of proof may not be of much consequence after both the parties lay evidence, but while appreciating the question of burden of proof, misplacing of burden of proof on a particular party and recording findings in a particular way definitely vitiates the judgment as it has happened in the instant matter. This position stands reinforced by several authorities including the one delivered in the case of Koppula Koteswara Rao vs. Koppula Hemant Rao, 2002 AIHC 4950 (AP).

10. In the case of ***Sudha Agrawal vs. Xth Addl. District Judge and others; (1999) 6 SCC 332***, it was alleged that the burden is upon the landlord to establish the need and the following was observed in para 5, which is quoted herein below :

5. A perusal of Section 21(1)(a) shows that a landlord can succeed in his application for eviction

of a tenant if he establishes before the Prescribed Authority that his need for the premises is bona fide. The fourth proviso of Section 21(1) provides that the Prescribed Authority, while considering the bona fide requirement of the landlord has also to take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application excepting in cases provided for in Explanation (i).

Explanation (i) provides that where the tenant or any member of his family who is normally residing with him or wholly dependent on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, no objection by the tenant against an application under this sub-section shall be entertained. The aforesaid provisions extracted above show that in cases where the Explanation (i) is applicable, no presumption can be raised with regard to the need of the landlord as bona fide. The only effect of the application of Explanation (i) is that the tenant is not entitled to contest the application filed by the landlord and the Prescribed Authority is not required to compare the hardship of the landlord with that of the tenant which he was otherwise required to do under the fourth proviso of Section 21(1) of the Act. We have noticed earlier that the landlord can get an order of release in his favour only when he proves his need as bona fide before the Prescribed Authority. It is no doubt true that the application of the landlord is uncontested as the tenant is out of field, still the landlord has to establish his bona fide need. In fact the landlord is required to stand on his own legs and he cannot derive any advantage of absence of defence of the tenant. The proceedings before the Prescribed Authority are like an uncontested suit, where there is no defence of the defendant. In such a suit the plaintiff in order to get a decree must prove his case to the satisfaction of the court. Applying the said principle to the present case, we have no doubt in our mind that by application of Explanation (i) the landlord is not discharged from the burden of proving his need as bona fide. Further we also do

not find any provision in the Act creating any presumption in favour of the landlord as regards his need as bona fide.

11. Similarly in the case of ***State of Madhya Pradesh vs. Nomi Singh and another (2015) 14 SCC 450***, while deciding the lis, it was held that it is the plaintiff who has to establish his claim and has to stand on his own legs. The following was observed in para 11, which is quoted in herein below :

11. It is settled principle of law that in respect of relief claimed by a plaintiff, he has to stand on his own legs by proving his case. On perusal of the impugned order passed by the High Court, this Court finds that the High Court has wrongly shifted burden of proof on the defendants. In the middle of paragraph 12, while giving its reasons to disagree with the decree passed by the courts below, the High Court has observed as under: -

"It was the respondent-defendant who has challenged the possession of the plaintiff and his father on the ground of khasra entries, therefore, burden of proving the fact that the allegations made by the defendant are correct, is on the defendant, in which defendant has failed. Further it has been admitted before the Court that entry of the plaintiffs in the khasra record is as encroacher, but no such khasra entries have been produced by them...."

In the middle of paragraph 15 of the impugned decree, again the High Court observes: -

"Further the defendant has failed to prove the possession of plaintiff and his father was that of an encroacher. The defendant has further failed to prove the khasra Nos. 1950 to 1952 to be wrong or that patta given to the plaintiffs, was only for one year,...."

The above observations made by the High Court, show that it has erroneously placed onus of proof of title and possession of the plaintiffs, on the

defendant. The High Court has completely ignored the fact that the plaintiff after losing case in the first round from trial court, got amended the plaint and took plea of adverse possession, on which the matter was remanded to the trial court, and after hearing parties suit was again dismissed, which was upheld by the first appellate court. The above approach of the High Court is against the law laid down by this Court, and in our opinion, it erred in law in reversing the decree passed by the trial court and that of the first appellate court by shifting burden of proof on the defendant.

12. In the light of the said facts and law as pleaded above, it is argued that the revision deserves to be allowed and the impugned order deserves to be quashed.

13. The counsel for the respondents, on the other hand, argues that in terms of the power of attorney, it was specifically provided that the power of attorney holder was entitled to file other legal proceedings also in respect of the said property in question. He further argues that the minor misdescription of error in notice served under section 106 of the Act, would not be to the benefit of the revisionist who is a tenant. He further argues that the landlord had discharged the initial burden of proving that the notice was served under registered cover and the presumption was there in favour of the service of the notice, as the tenant had denied and rebutted the presumption, the burden was heavily upon the person rebutting the presumption to establish in terms of the provisions of the General Clauses Act. He further argues that the tenant was granted lease in the year 2011 for a period of eleven months and has continued till 2024 and considering the age of the landlord, no interference is required by this Court and the revision deserves to be dismissed.

14. Considering the submissions made at the bar, the submission of the counsel for the revisionist with respect to burden of proof, as decided in para 6 and 7 of the impugned judgment, the same deserves to be rejected for the reason that the initial burden of proving the service of the notice was duly discharged and there was a presumption in favour of the service of notice, as rightly been observed by the JSCC Court. The presumption of service of notice as prescribed under the General Clauses Act, is a rebuttable presumption, however the person who rebuts the presumption is liable to plead and lead evidence to that effect.

15. In the present case, once the defense of the revisionist was struck off, the said contention could not have been considered as essentially there were no pleading of rebuttal more so when it is well settled that after the defense is struck off, the defendant can defend the suit only on the basis of the evidence led, its cross examination and on the basis of the arguments.

16. The second question also merits rejection for the sole reason that the power of attorney itself indicates that the power of attorney holder can also any action in respect of the property in question.

17. The other submission of the counsel for the revisionist with regard to error in the description of the property, the said is a minor discrepancy, to which no benefit can accrue in favour of the tenant, even in the power of attorney, there is a reference of the property as A-1/1-A .

18. Considering the fact that the defense has been struck off, no good ground for interference is made out in the judgment and order dated 22.10.2024.

19. The revision lacks merit and is **dismissed**.

20. At this stage, the counsel for the revisionist seeks some time to vacate the premises considering the age of the revisionist, which is opposed by the counsel for the respondents-landlord.

21. Considering the fact that the revisionist is in occupation of the premises since long, he is directed to vacate the premises on or before 31.03.2025 subject to the revisionist filing an undertaking before the JSCC Court to vacate the premises and to handover the possession of the premises to the landlord and no one else on or before 31.03.2025. The said undertaking along with arrears of rent shall be filed before the JSCC Court within a period of three weeks from today.

22. In the event of failure of filing the undertaking, the respondent landlord would be entitled to execute the decree in accordance with law.

Order Date :- 20.12.2024

VNP/-

[Pankaj Bhatia, J]