



\$~102(Appellate)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM (M) 397/2022 & CM No. 20679/2022

PRADEEP KUMAR CHHABRA Petitioner
Through: Mr.T.R. Sharma, Adv.

versus

KUMUD SHARMA@ KARUN SHARMA Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

% 29.04.2022

1. This petition assails order dated 24th February, 2022 passed by the learned Civil Judge in CS SCJ 756/2020, dismissing the objection raised by the petitioner, as the defendant before the learned Civil Judge under Order XXIII Rule 1(3) read with Order XXIII Rule 1(4) of the Code of Civil Procedure, 1908 (CPC).

2. The respondent had filed an eviction petition against the petitioner under Section 14(1)(e) of the Delhi Rent Control Act, 1958. The petitioner, as the respondent in the said eviction petition, contested, in its reply to the eviction petition, the factum of tenancy and claimed that the petitioner was not a tenant of the respondent.

3. The respondent, thereupon, withdrew the eviction petition filed by it and proceeded to file CS SCJ 756/2020, from which the present



proceedings emanate. The earlier Eviction Petition No. E-15/19, filed by the respondent against the petitioner under Section 14(1)(e) of the DRC Act asserted that the petitioner had been inducted as a tenant in the property forming subject matter of the petition (hereinafter “the suit premises”) *vide* a rent agreement dated 23rd May, 1989. Apart from alleging default in payment of rent on the part of the petitioner, the respondent further asserted, in the eviction petition, that the suit premises were required by the respondent in order to carry out his business and that he had no alternative premises which were suitable for the said purpose. The respondent claimed title over the suit property on the basis of a will executed in his favour by one Shri Moti Lal on 26th April, 1985.

4. In his application for leave to defend the eviction petition, the petitioner contested the claim to title and ownership as set up by the respondent. Doubts were also raised by the petitioner regarding the genuineness and veracity of the will dated 26th April, 1985, on the basis of which the respondent was claiming title. Additionally, the petitioner also claimed ownership of the suit premises, while disputing the ownership of the respondent.

5. In these circumstances, the respondent, on 28th February, 2020, submitted that he did not intend to pursue the eviction petition and sought permission to withdraw the eviction petition. The eviction petition was accordingly dismissed as withdrawn by the learned ARC.

6. The respondent, thereafter, proceeded to file CS SCJ 756/2020,



out of which the present proceedings emanate. This suit sought (i) a decree of possession in favour of the respondent and against the petitioner in respect of the suit premises, (ii) a decree for recovery of arrears of rent stated to be due from the petitioner for three years alongwith *mesne* profits and damages and (iii) a decree of permanent injunction against the petitioner, restraining the petitioner from creating any third party interest in respect of the suit premises. While candidly acknowledging the fact that the respondent had indeed earlier filed an eviction petition under Section 14(1)(e) of the DRC Act which was withdrawn consequent to the filing of the application for leave to defend by the petitioner thereto, the respondent contended that the suit would be maintainable in view of the law laid down by this Court in ***S. Makkhan Singh v. Amarjeet Bali***¹. In view of the contest in the application seeking leave to defend the eviction petition by the petitioner, to the title of the respondent, as well as the claim to ownership of the suit premises set up by the petitioner itself against the claim set up by the respondent, the respondent contended that the suit would be maintainable.

7. The petitioner filed objections to the maintainability of the suit under Order XXIII Rule 1(3) read with Order XXIII Rule 1(4) of the CPC. It was sought to be contended, in the said objections, that, as the respondent had withdrawn the eviction petition earlier filed by him under Section 14(1)(e) of the DRC Act without reserving liberty to file any subsequent suit, the suit was barred under the aforesaid provisions of the CPC.

¹ (2008) 154 DLT 211 (DB)



8. The learned Civil Judge has, *vide* the impugned order dated 24th February, 2022, rejected the said objection raised by the petitioner. In doing so, the learned Civil Judge has placed reliance on the judgments of this Court in *Panna Lal v. Neelam Chopra*², *P.C. Jain v. J.K. Soni*³ and of the High Court of Bombay in *Mahadkar Agency v. Padmakar Achanna Shetty*⁴.

9. The learned Civil Judge has opined, in paras 9 and 10 of the impugned order, that the reliefs claimed in the earlier eviction petition and in the present suit were distinct and different, the two proceedings were predicated on distinct causes of action and invoked distinct statutory provisions. It is observed, by the learned Civil Judge, that the earlier eviction petition had been preferred under Section 14(1)(e) of the DRC Act on the ground of bonafide need whereas the subsequent suit sought possession, arrears of rent, *mesne* profits, damages and permanent injunction and was predicated on the right to title and ownership of the respondent as against a corresponding claim set up by the petitioner. The causes of action as well as the factual matrix in which these two proceedings had been filed, were, therefore, found by the learned Civil Judge to be distinct and different. Equally, the learned Civil Judge notices that the relief in the earlier eviction petition was for eviction of the petitioner from the suit premises on the ground of bonafide requirement whereas the relief in the subsequent suit was for recovery of possession, arrears of rent and permanent

² (2016) 231 DLT 56

³ (2009) 156 DLT 760

⁴ AIR 2003 Bom 136



injunction predicated on a claim to ownership and title.

10. In such circumstances, the learned Civil Judge was of the view that Order XXIII Rule 1(3) and (4) of the CPC would not operate to non-suit the respondent. Order XXIII Rule 1 reads thus:

“1. Withdrawal of suit or abandonment of part of claim.—(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim: Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,—
(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff—
(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be



liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff.”

11. Having perused the record, as well as the impugned order and having heard learned Counsel for the petitioner, I am not inclined to interfere with the impugned decision in exercise of the jurisdiction vested in this Court by Article 227 of the Constitution of India. Order XXIII Rule 1(3) deals with the power of a court to, while allowing a plaintiff to withdraw a suit, grant liberty to institute a fresh suit in respect of the subject matter of the earlier suit or a part of the suit from which the plaintiff sought to withdraw. Inasmuch as no such liberty was ever granted by the learned ARC while allowing the respondent to withdraw Eviction Petition No. E-15/19, this provision has no application to the present case at all. Order XXIII Rule 1(4), which would be more applicable, if at all, to the controversy, precludes a plaintiff who abandons any suit or part of a claim under Order XXIII Rule 1 or withdraws from a suit or part of a claim without permission to institute a fresh suit, “from instituting any fresh suit in respect of such subject matter or such part of the claim”.

12. The expression “subject matter” has been defined in Ramanatha Aiyar’s Advanced Law Lexicon as “the right which one party claims as against the other and demands the judgment of the court upon it”.



Specifically in the context of Order XXIII Rule 1(4) of the CPC, the High Court of Kerala holds, in *Subha Jayan v. Meenakshy Kumarayan*⁵, that the interpretation of the word “subject matter” can be made having regard to the substantive right of the parties and to do justice between the parties as the consequence of strict interpretation will be penal in nature. In the context of Order XXIII Rule 3 of the CPC, the High Court of Himachal Pradesh holds, in *Nirmala v. Hari Singh*⁶, that the term “subject matter” means the plaintiff’s cause of action for his suit. In *Ram Janam v. Bindeshwari*⁷, it has been held that no hard and fast rule could be laid down as to the meaning of the expression “subject matter” of the suit under Order XXIII Rule 3 of the CPC, and that the question has to be answered with reference to the frame of the suit, the reliefs claimed and the matters arising for decision in the case based on the pleadings of the parties.

13. Viewed thus, I do not find any jurisdictional infirmity in the decision of the learned Civil Judge that there was a distinction between the subject matter of the eviction petition earlier filed by the respondent and the present suit. The earlier eviction petition was predicated on Section 14(1)(e) of the DRC Act, and sought eviction of the petitioner on the ground of bonafide requirement of the respondent and the landlord. Section 14(1)(e) has not even been invoked in the present suit. There is no prayer for eviction of the petitioner on the ground of bonafide requirement. The case set up in the present suit is on the basis of title, and contests the claim of the petitioner to title

⁵ AIR 2004 Ker 39

⁶ AIR 2001 HP 1

⁷ AIR 1951 Patna 299



over the suit property. The present suit is not based on any provision of the DRC Act.

14. The mere fact that the ultimate outcome of the suit, were it to succeed, might be dispossession of the petitioner and placing of the respondent in possession of the suit property, which may have been the outcome in the eviction petition as well, were the eviction petition to succeed, would not, in my view, be sufficient to denote identity of “subject matter” or claim within the meaning of Order XXIII Rule 1(4) of the CPC.

15. The view taken by the learned Civil Judge is, in my considered opinion, an eminently reasonable view which is in time with the provisions of the statute. This Court while exercising its jurisdiction under Article 227 does not sit in appeal over the decision of the court below. The jurisdiction vested by Article 227 is supervisory in nature, and is intended to correct erroneous exercise of jurisdiction by the court below. The Supreme Court has, in *Estrella Rubber v Dass Estate*⁸, *Garment Craft v. Prakash Chand Goel*⁹ and *Puri Investment v. Young Friends & Co.*¹⁰, held that even if the view taken by the court below is erroneous, that would not justify interference under Article 227 of the Constitution of India, where the error is not such as would invite interference in exercise of supervisory jurisdiction.

16. I am of the opinion that no error can be said to vitiate the

⁸ (2001) 8 SCC 97

⁹ 2022 SCC OnLine SC 29

¹⁰ 2022 SCC OnLine SC 283



impugned decision of the learned Civil Judge. The petition is bereft of merit and is accordingly dismissed *in limine*. Pending application also stands disposed of.

C.HARI SHANKAR, J

APRIL 29, 2022/kr

