

Smt. Sudha Devi v. M.P. Narayanan & Ors | 30 Oct 2024

Introduction

This case revolves around the importance of proper evidence even in ex-parte proceedings under **Order IX of Code of Civil Procedure, 1908 (CPC)** and demonstrates the Court's willingness to order retrials when the interests of justice demand it.

Facts

- Sudha Devi was the plaintiff in a suit concerning a flat on Lord Sinha Road, Calcutta.
- Baranagar Jute Factory Company Ltd. was the tenant under the plaintiff but defaulted in rent payment and wrongfully sublet the flat to Sadhan Chattopadhyaya (second defendant).
- The plaintiff filed an eviction suit against both defendants, and an ex-parte decree of eviction was passed on 19th February 1982 as they did not appear to contest.
- According to the plaintiff, after the eviction decree, either or both defendants wrongfully inducted a third defendant to occupy the flat.
- The plaintiff filed a new suit claiming Rs. 1,44,730 as past mesne profits, future mesne profits at Rs. 170 per day, and if necessary, possession of the flat against the third defendant.
- In this suit, none of the defendants appeared, and the plaintiff examined one witness and tendered certain documents in evidence.
- The trial court passed an ex-parte decree in favor of the plaintiff.
- The third defendant initially filed an application under Order IX, Rule 13 of CPC to set aside the ex-parte decree but later withdrew it and filed an appeal on merits.
- The High Court allowed the appeal and set aside the decree, finding the evidence led by the plaintiff to be insufficient.
- The plaintiff's subsequent application for modification of judgment and remand for retrial was rejected by the High Court.

Issues Involved

- Whether the ex-parte decree passed under Order IX of CPC was justified based on the meager evidence presented by the plaintiff?
- Whether the plaintiff successfully proved her case regarding the third defendant's induction after the earlier eviction decree?
- Whether the High Court was correct in scrutinizing the evidence despite it being an ex-parte proceeding under Order IX of CPC?
- Whether the case merited a remand for retrial under the provisions of CPC?

Observations

- A court cannot pass an ex-parte decree under Order IX of CPC without reliable relevant

evidence, even in the absence of defense.

- The mere fact that a plaintiff leads some evidence does not automatically entitle them to a decree under Order IX of CPC.
- The sole witness's evidence was found insufficient as he did not disclose his relationship with the plaintiff or connection to the property. Moreover, his testimony contradicted the plaintiff's case by suggesting the third defendant was in possession before the earlier decree.
- The Supreme Court refused to allow additional evidence through affidavits at the appeal stage, noting that affidavits are not included in the definition of 'evidence' under Section 3 of the Evidence Act and can only be used as evidence if the court passes an order under Order XIX, Rules 1 or 2 of CPC.
- The Court found that several questions would arise if the third defendant was assumed to be in possession before the earlier decree, making it necessary to have a full trial.
- In the interest of justice, the Supreme Court directed that:
 - The plaintiff may file an application for amendment of pleadings under the relevant provisions of CPC
 - Defendants would be allowed to file written statements
 - Previously led evidence would continue to be valid
 - The trial should be completed within six month

Conclusion

- The Supreme Court allowed remand for retrial