

Srimathi Kaushalya Devi & Others

Vs

Shri K. L. Bansa

Civil Appeal No. 98 of 1968

(S. M. Sikri, R. S. Bachawat, K. S. Hegde JJ)

03.12.1968

JUDGMENT

SIKRI, J. -

This appeal by certificate granted by the Circuit Bench of the Punjab High Court at Delhi is governed by the decision of this Court in Bahadur Singh v. Muni Subrat Dass. (Civil Appeal Nos. 2464 and 2468 of 1966; Judgment dated October 16, 1968)

The facts out of which the present appeal arises are these. One Raghunath Sharma, predecessor-in-interest of the appellants-hereinafter referred to as the plaintiff-instituted on February 7, 1956, suit No. 53 of 1956, in the Court of Sub-Judge, 1st Class, Delhi, for the eviction of his tenant K. L. Bansal, hereinafter referred to as the defendant. He gave three grounds for ejection in the plaint : (1) that the premises were required bona fide by the plaintiff for occupation as residence for himself and other members of the family, and that he had no other suitable accommodation to meet his bona fide residential requirements; (2) that the defendant already owned a house in Delhi which was suitable for him; and (3) that the defendant had defaulted in payment of rent.

The defendant filed a written statement denying these allegations. Appropriate issues were framed on April 4, 1956. On June 5, 1956, an application was filed by the plaintiff and the defendant that a compromise had been effected on the following terms :

"(a) Decree for ejection be passed in favour of the plaintiff against the defendant, the decree will be executable after the 31st December, 1958, if the defendant does not give possession till then.

(b) The standard rent of the premises be fixed at Rs. 40/- per mensem, instead of Rs. 50/- paid at present payable from the 1st July, 1956, till the defendant vacates the premises.

(c) The amount in deposit with this Court be paid to the plaintiff which will be adjusted between the parties."

On July 6, 1956, the counsel for the parties and the plaintiff made a statement on solemn affirmation to the same effect, and on the same day the Court recorded the following order :

"In view of the statement of the parties' counsel and the written compromise a decree is passed in favour of the plaintiff against the defendant."

The decree was drawn up accordingly.

The defendant, however, did not vacate the premises on December 31, 1958. On the other hand, he presented an application of February 16, 1959, under Section 47, C.P.C., challenging the validity of the decree alleging that the same had been passed in contravention of the provisions of Section 13 of the Delhi and Ajmer Rent Control Act, 1952 (XXXVIII of 1952), (hereinafter referred to as the Act) and hence the decree was a nullity. He failed before the Sub-Judge, and also on appeal before the Senior Sub-Judge, Delhi.

The High Court, on revision, held that the decree was a nullity as the order passed on the basis of the compromise did not indicate that any of the statutory grounds mentioned in Section 13 of the Act existed. In Bahadur Singh's case this Court has held that the decree passed on the basis of an award was in contravention of Section 13(1) of the Act because the Court had passed the decree in terms of the award without satisfying itself that the ground of eviction existed. Bachawat, J., speaking for the Court observed that "on the plain wording of Section 13(1) the Court was forbidden to pass the decree. The decree is a nullity and cannot be enforced in execution." This Court, accordingly, declared inter alia that "the decree in so far as it direct delivery of possession of the premises to the landlord is a nullity and cannot be executed."

The present case is also governed by the provisions of Section 13(1) of the Act and, as we have said before, this appeal must fail, in view of the judgment of this Court in Bahadur Singh's case. (Ibid) In the result the appeal is dismissed but there will be no order as to costs.

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