

Sudhir Kumar and Others

Vs

Baldev Krishna Thapar and Others (from Jammu and Kashmir)

Civil Appeal Nos. 2557 and 2558 of 1966

(J.C. Shah, K.S. Hegde JJ)

28.10.1969

JUDGMENT

HEGDE, J. -

1. These connected appeals arise from an execution proceeding. The question for determination in these appeals is whether the decree under execution is executable? The learned single judge of the High Court of Jammu and Kashmir before whom the execution was levied came to the conclusion that the decree is executable but the execution petitioners, who are entitled to a fraction of the interest in the suit properties can only have joint possession of the same along with the judgment debtors who had acquired by purchase a ten annas share in those properties. Both the appellants as well as Respondents 1 and 2 appealed against the order of the learned single judge. The appellate bench of that High Court reversed the decree of the learned single judge. It came to the conclusion that the decree is not executable and that it is merely declaratory in character. It accordingly dismissed the execution petition. Hence these appeals by certificate.

2. The facts giving rise to the controversy are as follows :

One Sardar Uttam Singh Khorana leased in favour of the 1st respondent and the father of the second respondent the Uttam Talkies in Jammu including a cinema machinery and furniture for a term of three years on a monthly rental of Rs. 3,000/-. One of the terms of the said lease was that after expiry of the lease, the tenant shall have the option to renew the lease with the consent of the landlord. At the end of the lease period Sardar Uttam Singh brought a suit for ejection against the lessees but he died during the pendency of the suit leaving behind him a will by which his son Joginder Singh got a six annas share in the Uttam Talkies and his another son Devinder Singh got a four annas share therein. The remaining six annas share was bequeathed to a trust. On December 23, 1958, a compromise was entered into between the legal representatives of the original plaintiff and the defendants by which the tenancy was continued till December 31, 1962. We shall refer to the other terms of the compromise at the appropriate stage. Before the term stipulated in the compromise came to an end, Joginder Singh sold his six annas share in the Uttam Talkies to the appellants in this appeal. The other ten annas shares were conveyed to the lessees by the owners of those shares. Before conveying their shares, on October 14, 1961, Devinder Singh and the trustees of the trust executed in favour of the lessees an agreement to renew the lease for a period of three years from 1-1-1963 more or less on the same conditions on which it was enjoyed by them previously. On January 3, 1963, Devinder Singh on his own behalf and on behalf of the trust filed an

application before the executing Court praying that satisfaction of the decree may be entered into. Accordingly the Court recorded satisfaction of the decree by its order of the same date. Thereupon the appellants moved the Court for delivering Khas possession of the Uttam Talkies. Yet another application was filed by them on January 5, 1963, requesting the Court to review its order entering satisfaction of the decree. That application was accepted by the Court and on January 17, 1963, the learned single judge recorded satisfaction of the decree only to the extent of the share purchased by the lessees. Thereafter the appellants pressed their execution petition. The lessees objected to the same. As mentioned earlier their objection was overruled by the learned single judge who directed delivery of the joint possession in favour of the appellant as well as the lessees. As seen earlier that decision was overruled by the division bench.

3. The contention on behalf of the appellant is that the compromise decree referred to earlier is a executable decree whereas the lessees take the stand that it is merely a declaratory decree. According to them, the compromise entered into between the parties amounts to a creation of a new lease and the decree superimposed on it merely endorses the agreement entered into between the parties.

4. The material portion of the compromise decree reads as follows :

"1. The defendants shall remain as lessees of Uttam Talkies Residency Road, jammu with the machinery furniture fitting, etc. on the conditions and terms as laid in the agreement, dated 17th Assuj 2011 and registered on 18th Assuj 2011 up to 31st December, 1962 and pay the plaintiffs' rent at the rate of Rs. 3,000/- per month from 1st January, 1959 in the following proportion :

##(a) S. Devinder Singh . . Four annas in a rupee.(b) S. Devinder Singh . . Four annas in a rupee.(c) M/S. Devinder Singh Gopal Dass and Trustees - six annas in a Manohar Lal. rupee.##

2. The defendants shall be liable to ejectment and shall vacate the premises on 1st January, 1963 on the terms and conditions as stated above.

3. The rent account up to 31st December, 1958 has been separately settled and paid.

4. The defendants shall have right to quit the leased premises at any time before 31st December, 1962, provided they give two months previous notice to the plaintiff in this behalf. In such contingency rent due up to the date of handing over the possession shall be recoverable.

5. The parties shall bear their own costs." The relevant terms of the compromise are as follows :

"That the parties have compromised the abovenamed case and have agreed that the defendants shall remain as lessees of the Uttam Talkies, Residency Road, Jammu on terms and conditions on which they previously held the said premises machinery furniture fittings, etc. up to 31st December, 1962 and pay to the plaintiffs rent at Rs. 3,000/- per month from 1st January, 1959 in the following proportion :

# S. Devinder Singh . . Four annas in the rupee. S. Joginder Singh . . Six annas in the rupee. M/S. Devinder Singh, Trustees - six annas in the Gopal Dass and rupee. Manohar Lal.##

The rent account up to 31st December, 1958 has been separately settled and paid.

The rest of the terms and conditions will be as contained in the agreement a deed, dated 17th Assuj 2011 registered on 18th Assuj 2011.

The defendants shall have right to vacate the premises even before 31st December, 1962 if they so desire and give 2 months' previous notice. In such contingency rent up to the date of handing over of possession shall be recoverable.

It is therefore prayed that a decree may kindly be passed directing ejectment on 1st January, 1963 on terms and conditions contained herein.

The parties will bear their own costs."

Paragraph 30 of the lease executed by Uttam Singh in favour of the lessees which incorporates the renewal clause reads as follows :

"That at the time of expiry of the period of three years the promisors with the consent and consultation of promisee shall be entitled to take the cinema on contract for further two years on the above conditions provided that there has been no breach of any condition laid down in the agreement."

5. The question whether under the terms of the compromise the parties entered into a fresh lease or the decree-holders merely granted an extension of time for delivery of possession of the premises demised essentially depends on the intention of the parties who entered into the compromise as could be gathered from the compromise petition as well as the compromise decree. It is necessary to note that in the compromise petition, it is specifically stated that the parties had agreed "that the defendants shall remain as lessees of Uttam Talkies, Residency Road, Jammu, on terms and conditions on which they previously held the said premises machinery furniture fittings, etc. up to 31-12-1962 and pay to the plaintiff rent at Rs. 3,000/- per month from 1st January, 1959 in the following proportion ..... It is further stated therein that "the rest of the terms and conditions will be as contained in the agreement a deed, dated 17th Assuj 2011 registered on 18th Assuj, 2011". But the last clause in the compromise petition reads : "it is therefore prayed that a decree may kindly be passed directing ejectment on 1st January, 1963 on terms and conditions contained herein". The compromise decree refers to the defendants as "lessees" and the compensation payable by them as 'rent'. At the same time clause (2) of the decree says that the defendants shall be liable to ejectment and shall vacate the premises on 1st January, 1963 on the terms and conditions as stated above. The compromise and the compromise decree speak, so to say, in two voices : If we had been merely left with the specific terms incorporated in the compromise petition and the compromise decree without bringing in by reference the terms of the original lease as to matters not specifically covered in the compromise petition and the compromise decree, there would have been some difficulty in spelling out the real intention of the parties. But by incorporating the terms of the old lease, to the extent not covered by the new terms, the parties had agreed to incorporate into the new agreement the term relating to renewal found in the original lease. On an analysis of the terms of the compromise, it is seen that the lessors had granted a fresh lease of the cinema talkies demised; a monthly rental was

fixed in respect of the same and the lessees were given an option to renew the lease at the end of the term fixed though that right is subject to certain conditions. Under these circumstances, the direction in the decree to vacate the suit premises at the end of the term fixed in the compromise in accordance with the terms of the compromise would amount to an ineffective direction. Such a direction cannot be considered as an ejectment decree. It is at best a declaration of the right of the lessors to eject the lessees at the end of the lease period if the lessees fail to get a renewal.

6. Mr. Tarkunde, learned Counsel for the appellant contended that on a proper construction of the compromise petition and the compromise decree, it would be seen that the renewal clause was not incorporated into the compromise decree. According to him the period during which the defendants are permitted to be in possession of the suit premises is subject to no alteration under any circumstance. Subject to that condition and other conditions mentioned in the compromise petition, the terms of the original lease were incorporated into the compromise petition. We see no basis for this contention. A term in a lease relating to renewal is independent of the duration of the lease fixed under the lease deed. The renewal obtained by the exercise of the option given under the lease is an extension obtained by the exercise of an independent power. Therefore there is no force in the contention that because the compromise had fixed the period during which the defendants could continue as lessees, the renewal clause in the original lease deed did not become one of the terms of the agreement. We are unable to consider the clause in the compromise referring to the original lease as a barren clause or that it is not wide enough to reach the renewal clause.

7. Mr. Tarkunde next contended that the renewal clause referred to earlier is a meaningless term as the lessees are entitled to a renewal only if the lessors consented. He urged that there can be a renewal only if both the lessors and the lessees agreed.; but in that event there is no need to have a term providing for renewal. We are unable to read the renewal clause as Mr. Tarkunde wants us to do. No term in a contract should be considered as superfluous if it can be given some reasonable meaning. The clause in question definitely says that lessees are entitled for a renewal. The right of the lessors to give consent must be read in the context of the lessees' entitlement to get a renewal of the lease. If so read, it is clear that the lessors can withhold their consent either because of the lessees' failure to observe one or other of the material terms of the lease or on some other reasonable ground. The lessors cannot withhold their consent capriciously or unreasonably. A covenant against assigning and letting, charging or parting with possession of the demised property or any part thereof without licence or consent of the landlord is deemed to be subject to a proviso to the effect that such licence or consent is not to be unreasonably withheld. That is the position both under the English law as well as under the Indian law. About that there is no dispute. If in the matter of introducing a stranger to the demised property, the law insists that the lessors should not unreasonably withhold his consent, it follows as a matter of reason and logic that the lessor cannot unreasonably withhold his consent, when the lessee exercises his option to renew the lease on the strength of one of the terms in the lease deed.

8. On a consideration of all the terms in the compromise petition, we are satisfied that the parties intended to create a fresh lease and not that the lessees were only permitted to be in possession of the leasehold for the prescribed period as licensees.

For the reasons mentioned above, these appeals fail and are dismissed with costs.

</html