

Ferozi Lal Jain

Vs

Man Mal and Another

Civil Appeal No. 302 of 1967

(J. C. Shah, K. S. Hegde, A. N. Grover

JJ)

11.03.1970

JUDGMENT

HEGDE, J. -

1. In this execution appeal by special leave the only question that arises for decision is whether the decree under execution is a nullity as held by the High Court as well by the courts below.

2. The appellant is the owner of Shop. No. 4682, Plot No. 21, Daryaganj, Delhi. He leased out that shop to the 1st respondent on November 8, 1953. One of the terms of the lease was that the 1st respondent should not sub-let the shop. On the allegation that the 1st respondent has sub-let the shop to the second respondent, the appellant brought a suit in the court of Sub-Judge, 1st Class, Delhi, for the eviction of the respondents, under Section 13 of the Delhi and Ajmer Rent Control Act, 1952 (to be hereinafter referred to as the Rent Control Act). The respondent denied the sub-lease alleged by the appellant. Their case was that the second respondent was a partner of the 1st respondent. During the pendency of the trial of the suit, the appellant and the 1st respondent entered into a compromise on the basis of which a compromise decree was passed by the court. The compromise petition does not make any reference to the alleged sub-lease. The order made by the court in that connection reads thus :

"As per compromise, decree for ejection and for Rs. 165 with proportionate costs is passed in favour of the plaintiff and against the defendant. The parties shall be bound by the terms of the compromise. The terms of the compromise be incorporated in the decree-sheet. Orders pronounced.

Dated the 4th March, 1965."

3. Under the terms of the compromise, the 1st respondent was given four years' time from the date of the compromise decree for delivering possession of the suit premises. At the end of the said four years, the appellant attempted to execute the decree. At that stage, the second respondent resisted the execution contending that he is not bound by the decree. Thereafter there was a second compromise between the appellant and the 2nd respondent, under the terms of which the second respondent was given time till February 28, 1963, to vacate the premises. At the expiry of that period, the appellant again levied execution. The second respondent again resisted the execution on various grounds, one of which was that the decree having been passed in contravention of Section 13 of the Rent Control Act, the same is a nullity and as such it is not executable. This contention was accepted by the

execution court, the appellant court as well as by the High Court.

4. Section 13 of the Rent Control Act provides for the protection of a tenant against eviction. The material portion of Section 13(1), the clause relevant for our present purpose reads :

"Notwithstanding anything to the contrary contained in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated) :

Provided that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession 'if the Court' is satisfied .....

(b) that the tenant without obtaining the consent of the landlord in writing has, after the commencement of this Act .....

(i) sub-let, assigned or otherwise, parted with the possession of, the whole or any part of the premises ....."

5. From this provision, it is clear that after the Rent Control Act came into force, a decree for recovery of possession can be passed by any court only if that court is satisfied that one more of the grounds mentioned in Section 13(1) are established. Without such a satisfaction, the court is incompetent to pass a decree for possession. In other words, the jurisdiction of the Court to pass a decree for recovery of possession of any premises depends upon its satisfaction that one or more of the grounds mentioned in Section 13(1) have been proved.

6. From the facts mentioned earlier, it is seen that at no stage, the Court was called upon to apply its mind to the question whether the alleged sub-letting is true or not. Order made by it does not show that it was satisfied that the sub-letting complained of has taken place, nor is there any other material on record to show that it was so satisfied. It is clear from the record that the Court had proceeded solely on the basis of the compromise arrived at between the parties. That being so there can be hardly any doubt that the Court was not competent to pass the impugned decree. Hence the decree under execution must be held to be a nullity.

7. Our conclusion in this regard is supported by the decisions of this Court in *Bahadur Singh v. Muni Subrat Dass*, (1969) 2 SCR 432 and *Smt. Kaushalya Devi v. K. L. Bansal*, Civil Appeal No. 98 of 1966, dated 3-12-1968 (SC). In the former case the decree under execution was made on the basis of an award and in the latter case, it was passed on a compromise. In both the cases this Court held that as the decree in question were passed in contravention of Section 13(1) of the Rent Control Act, they were void and hence no execution can be levied on the basis of those decrees.

8. In the result this appeal fails and the same is dismissed. In the circumstances of the case, we make no order as to costs.

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