

Kani Ram and Another

Vs

Smt. Kazani and Other

Civil Appeal No. 247 Of 1971

(G. K. Mitter, A. N. Grover, K. S. Hegde JJ )

19.04.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from the judgment of the Delhi High Court.
2. One Jaigopal instituted a suit for ejection and recovery of rent under clause (a) and (e) of Section 13 in the Delhi and Ajmer Rent Control Act, 1952 in respect of a house situate in Pahargunj against the tenant. The grounds on which ejection was sought were non-payment of rent and bona fide personal requirement of the landlord. The suit was resisted by the tenant on various grounds but ultimately on June 2, 1956, a decree for ejection was passed on the basis of a compromise. The suit with regard to the recovery of arrears of rent was dismissed. On June 6 1959, decree-holder filed an application for execution of the decree. The tenant raised various objections; one of the objections was that the decree sought to be executed was based on a compromise and not on any findings of the court with the result that it was nullity. On September 7, 1960 the Executing Court dismissed the objection and allowed the execution application of the landlord. That order was confirmed in appeal by the Additional Senior Sub-Judge on October 13, 1961. The judgment-debtor went up in revision but the same was dismissed by Mahajan, J., on December 19, 1962.
3. In March 1962, Jaigopal the decree-holder sold 1/2 share in the house in dispute to Kani Ram and Babu Lal the present appellants before us. The remaining 1/2 share was sold by him to Ramjilal. In the year 1963, an execution application was filed by the appellants and Ramjilal after obtaining the necessary orders of the court under Order XXI, Rule 16 of the Code of Civil Procedures. In 1969 the appellants also obtained the order of the competent authority under the Slum Areas (improvement and Clearance) Act to execute the decree for eviction. On February 9, 1968 Ramjilal sold his right, title and interest in a portion of the house in dispute to Tara Chand, one of the judgment-debtors. On July 26, 1968 an application for the execution was filed against the present respondents which was allowed by the Executing Court. An appeal against that order by the respondent failed. The matter was taken in revision by the respondent to the High Court and a learned Single Judge allowed the revision applications and directed the execution application to be dismissed.
4. There are only two points which require determination. One is whether the matter agitated in the second set of execution proceedings were barred by the applicability of constructive res judicata. The other is whether the original decree for ejection was valid and was not a nullity. The High Court took the view that the decisions of the court in the first set of execution proceedings did not operate as res judicata as the substantial question involved was purely out of law. According to the

High Court the decree for ejection obtained under Delhi and Ajmer Rent Control Act on the basis of compromise was a nullity. Although in the previous executions proceedings which ended with the order of Mahajan, J., made on December 19, 1962, it had been held that the decree was valid for decision could not bar an objection being raised by the judgment-debtors in the second set of proceedings with regard to the validity of the decree which was a pure question of law. In our judgment the High Court fell into an error in considering that the decision of the court in the previous executions proceedings ending with the order of Mahajan, J., made on December 19, 1962, involved a pure question of law. A perusal of the order both of the Executing Court and the first appellate court shows that it was on an examination of the entire facts that the courts arrived at the conclusion that when the decree for ejection was made the Court had satisfied itself about the existence of the grounds which had been alleged in the petition filed by the landlord.

5. It is true that Section 13(1) of the Rent Control Act prohibited the court from passing the decree or order for recovery of possession of any premises in favour of a landlord against the tenant unless the court was satisfied that one or more of the grounds given in the provisions existed; (See *Bahadur Singh and Another v. Muni Subrat Dass and Another*) ((1966) 2 SCR 432.). In the judgment of the Senior Subordinate Judge, dated October 30, 1961 given in the first set of execution proceedings in the various circumstances were considered by which the learned judge came to the conclusion that the court which passed the decree for eviction was satisfied that one or more of the grounds mentioned in Section 13 of the Rent Control Act had been made out. The decision given in the first set of execution proceedings was thus not one of law only but of a mixed question of law and fact. Such a decision undoubtedly would operate as *res judicata*. In execution proceedings Section 11 of the Code of Civil procedure does not apply in terms but the rule of constructive *res judicata* has always been applied. Even according to the judgment of this Court in *Mathura Prasad Bajoo Jaiswal and Others v. Dossibai N. B. Jeejeebhoy* ((1970) 3 SCR 830 : (1970) 1 SCC 613.), on which the learned judge of the High Court relied in the judgment under appeal laid down that a mixed question of law and fact determined in the earlier proceeding between the same parties could not be questioned in a subsequent proceeding between them. We have no manner of doubt for these reasons that the High Court was wrong in not sustaining the judgment of the Senior Sub-Judge, Delhi, dated November 14, 1969, by which the order of the Executing Court, dated August 23, 1969, had been upheld. In this view of the matter the second point call for no decision.

6. In the result the appeal is allowed, the order of the High Court is set aside and that of the courts below restored. The appellants will be entitled to costs in this Court.

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