

Devi Sahai Palliwal

Vs

Union of India and Another

Civil Appeal No. 1831 of 1968

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

03.11.1976

JUDGMENT

RAY, C.J. -

1. This appeal is by certificate from the judgment dated February 8, 1965 passed in Regular First Appeal 59-D of 1956 by the High Court of Punjab Circuit Bench at Delhi.
2. The appellant filed suit against respondent 2 therein and claimed possession of suit premises. Respondent 2 had taken possession of the premises on February 1, 1954. On September 17, 1954 respondent 2 gave notice to the appellant that the premises occupied by it would not be required by it after September 30, 1954.
3. The controversy is that respondent 2 did not deliver vacant possession to the appellant or his son though the appellant specifically wrote to the respondent in that behalf.
4. The case of the respondent is that the respondent had entered into possession on February 1, 1954 and one Gaya Prasad agent of the appellant had let the respondent into possession. The same Gaya Prasad who as agent of the appellant had let the respondent into possession took vacant possession of the premises.
5. The appellant's suit apart from possession was for mesne profits. The High Court upheld the decree for Rs. 600 against the respondent. There is no dispute with regard to that portion of the judgment.
6. The only dispute raised by counsel for the appellant is that the respondent did not delivery vacant possession in accordance with the contract and therefore the respondent is liable for mesne profits. The High Court found that there was no enforceable contract and the appellant was not entitled to rely on it. The High Court was correct in holding that. We have examined the plaint. There is no allegation in the plaint to support any pleading under Section 70 of the Indian Contract Act. In our recent unreported decision dated October 28, 1976 in Union of Indian v. Sitaram Jaiswal (Since reported in (1976) 4 SCC 505) we have held that in the absence of proper pleadings under Section 70 of the Indian Contract Act the plaint should not be entertained.
7. The greater hurdle and one which is insurmountable in the way of the appellant is that the entire cause of action is misconceived. If Gaya Prasad had taken possession and if Gaya Prasad according to the appellant is a trespasser the suit would lie against Gaya Prasad. It is admitted that the respondent is no longer in possession and was not in possession of the premises after he had

delivered possession to Gaya Prasad. If any decree was passed in favour of the appellant against the respondent obviously if the decree had to be executed it could not be executed against the respondent. Therefore the only remedy that the appellant had was to file a suit against Gaya Prasad. The appellant chose not to do so.

8. For these reasons the appeal is dismissed. Parties will pay and bear their own costs.

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