

Udai Chand

Vs

Shankar Lal and Others

Civil Miscellaneous Petition No. 8783 of 1977

(CJI M. H. Beg, P. N. Bhagwati, D. A. Desai JJ)

07.02.1978

JUDGMENT

BEG, C.J. -

1. The plaintiff landlord had purchased a shop by a sale deed dated May 17, 1965, and then terminated the tenancy of the defendant-petitioner by a registered notice in July, 1965, coupled with a demand for arrears of rent. Upon the failure of defendant to comply with the notice to quit a suit was filed against the defendant-petitioner on November 23, 1965. During the pendency of that suit the Rajasthan Premises (Control of Rent & Eviction) Act, 1950, was made applicable by a notification dated March 30, 1967, to Rajgarh town where the shop is situated.

2. The defendant-petitioner had denied having executed any rent note in favour of Bhurdas, the predecessor-in-interest of the plaintiff landlord who had also notified the defendant-appellant of the sale in favour of the plaintiff by a registered notice dated June 25, 1965, received by the defendant-petitioner on June 29, 1965. The defendant-petitioner pleaded having taken the shop from another individual, Mahant Ram Ratan Das.

3. In the course of litigation, the defendant-petitioner had asked for an issue to be framed on the question whether there was legal necessity for the transfer in favour of the plaintiff. In other words, he had questioned, at that stage, the legality of transfer in favour of the plaintiff on the ground of want of title in the plaintiff's predecessor-in-interest and also on the ground that the sale deed was invalid. The High Court had, however, on a revision application preferred by the defendant petitioner, rejected the demand of the tenant for framing of an issue on the question whether there was legal necessity for the transaction. The ground for this rejection was that, as the defendant-petitioner had obtained possession under a tenancy from Bhurdas, the predecessor-in-interest of the present landlord, Surajmal, the defendant-petitioner, Udai Chand was estopped from questioning the title of his landlord by reason of the principle laid down in Section 116 of the Evidence Act.

4. Ultimately, upon the decree for eviction, the defendant-petitioner had again challenged the view that he was estopped from questioning the title of Bhurdas. On this question the learned Judge who heard the second appeal in the High Court observed :

I would like to mention here that the learned Counsel for the appellant did not challenge the correctness of the finding that the rent notes Ex. 8 and Ex. 10 were executed by the defendant in favour of Bhurdas. The learned Counsel for the appellant also did not challenge the genuineness of the sale deed dated May 17, 1965 executed by Bhurdas in favour of Surajmal.

The High Court then quoted the recitals of Ex. 10 showing that the defendant had admitted that the shop was owned by Bhurdas to whom he would pay rent. The defendant-petitioner's second appeal was, therefore, dismissed by the High Court.

5. The defendant-petitioner then filed a special leave petition in this Court under Article 136. Ground No. 7 of the grounds of special leave petition was :

That the Hon'ble Court should have appreciated that the rent note Ex. 10 nowhere states that Bhurdas was the owner of the house and hence the inference of the Hon'ble Judge that the petitioner had admitted that Bhurdas was the owner of the shop, is not correct and hence the judgment under appeal deserves to be set aside.

6. On May 17, 1977, the learned Vacation Judge granted special leave to appeal to this Court and also an ex parte order staying dispossession pending disposal of a notice of motion.

7. The respondent's application for revocation of special leave to appeal is now before us. The respondents have filed a true copy of the rent deed Ex. 10. A perusal of it shows that there was a specific mention of Bhurdas as the owner of the shop in dispute which the defendant-petitioner had taken on rent. Hence, there could be no getting away from the fact that the defendant-petitioner had made a clearly false and misleading assertion in his special leave petition. We fail to see what point other than applicability of Section 116 of the Evidence Act could possibly arise in the case. The whole case was concluded by finding of fact. Nevertheless, the special leave petition was granted in this Court. We think that the only reason why such leave could have been granted was that it was misrepresented to the Court that the rent note in favour of Bhurdas did not contain an admission of the ownership of Bhurdas. This was certainly a mis-statement of a material fact which was of decisive importance in the case. In fact, it was a serious misrepresentation on the only point which could possibly arise in the case.

8. We have heard learned Counsel for both sides. Learned Counsel for the defendant-petitioner is unable to give any explanation for the false assertion in Ground No. 7 of his special leave petition except that the learned Counsel had himself misunderstood the document, because of other facts in the case. We are unable to accept this flimsy explanation as a sufficient justification for the false assertion.

9. Reference was made by the learned Counsel for the respondents to *The King v. Willams* ((1914) 1 KB 608) and *The King v. The General Commissioners for the Purposes of the Income Tax Acts for the District of Kensington* ((1917) 1 KB 436), which are cases of misleading assertions by petitioners made in affidavits to support grounds for writ petitions. He also cited *Asiatic engineering Co. v. Achhru Ram* (AIR 1951 All 746), on principles governing refusal of relief on writ petitions due to misrepresentation or suppression of material facts. More relevant is : *Hari Narain v. Badri Das* ((1964) 2 SCR 203, 209 : AIR 1963 SC 1550), where Gajendragadkar, J., speaking for this Court said (at p. 209) :

In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading.

In that case, this Court revoked the grant of special leave despite the fact that Mr. Setalvad, who had

argued the special leave petition at the time of its grant, had stated that, so far as he recollected, the special leave was not granted on the ground on which misrepresentation by his client had taken place.

10. The last mentioned case was cited with approval in *Rajabhai Abdul Rehman munshi v. Vasudev Dhanjibhai Mody* ((1964) 3 SCR 481, 488 & 493 : AIR 1964 SC 345), where Sarkar and Shah, JJ. pointed out (at p. 488) :

Exercise of the jurisdiction of the Court under Article 136 of the Constitution is discretionary : it is exercised sparingly and in exceptional cases, when a substantial question of law falls to be determined or where it appears to the Court that interference by this Court is necessary to remedy serious injustice. A party who approaches this Court invoking the exercise of this overriding discretion of the Court must come with clean hands. If there appears on his part any attempt to overreach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised in revoking the leave to appeal granted even at the time of hearing of the appeal.

And, Hidayatullah, J., said (at pp. 493-494) there :

The powers exercisable by this Court under Article 136 of the Constitution are not in the nature of a general appeal. They enable this Court to interfere in cases where an irreparable injury has been caused by reason of a miscarriage of justice due to a gross neglect of law or procedure or otherwise and there is no other adequate remedy. The article is hardly meant to afford relief in a case of this type where a party is in default of rent because he withdrew a deposit lying in court but who cannot, on the record of the case, be shown to have withdrawn the amount. If the petition had mentioned that the decision of the appeal Court had proceeded on the ground that the amount was taken out, it is difficult to imagine that this Court would have given special leave to decide a question of discretion.

11. We are constrained to observe that the tendency to file appeals in hopeless cases only to gain time and ward off eviction has assumed alarming proportions. We cannot mitigate possible rigours of any law by permitting defaulting tenants to hold up their evictions indefinitely or for inordinately long periods on flimsy or unsustainable grounds. We cannot permit abuses of the process of law and of law Courts.

12. Accordingly, we allow this application for revocation of special leave. We hereby revoke the special leave granted and reject the special leave petition. We also vacate the stay granted. The application for urging additional grounds is rejected. The plaintiff-respondent will get special costs.

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