

Valimohmad Haji Samsuddin and Others

Vs

Samsher Khan Dilawarkhan

Civil Appeal No. 430 of 1977

(V. R. Krishna Iyer, D. A. Desai, A.D. Koshal JJ)

06.12.1978

JUDGMENT

KRISHNA IYER, J. -

1. This appeal by special leave involves a question as to whether on the facts, the terrace of a building is covered by a lease of the portion built upon on that floor or is only a licence for user by the tenant. The trial Court negatived the case of lease but the appellate Court upheld it and the High Court dismissed the revision in limine. The appellant has come up in appeal against that order of the High Court.
2. It is obvious that the jurisdiction of the Court is not available under these circumstances and although we have granted leave to appeal, it must have been largely to see if some workable arrangement could be quickly made between the parties. That prospect has proved baffling and has had to be abandoned. The necessary consequence is that the appeal fails because we decline to] interfere.
3. The substantial purpose of the landlord-appellant seems to be to construct additional rooms on the vacant terrace which, he says, he is willing to share in compact blocks with the tenant-respondent. He further offers to have an open terrace available on top for the tenant to occupy with a separate staircase. To confirm his bona fides he states that he will leave the tenant intact in regard to the built-up portion except that he may request for an exchange of one room downstairs for one room in the newly built-up area if built upon at all. All these are future plans and cannot be taken as an accomplished fact in this suit for injunction by the tenant-respondent. Here, we cannot grant any reliefs on the lines pleaded for by the landlord.
4. Probably, granting the bona fides of the offer put forward by the landlord, there may be provisions in the rent control law which may be usefully pressed into service by the landlord later. Of course, when the landlord brings a suit for eviction on such reasonable grounds of bona fide requirement for reconstruction it is obvious that the court will have to be very cautious in examining the bona fides. Moreover, the court must obviously see to it that the tenant is not disturbed from his existing occupation and, if at all, bettered in his lot. These are matters to be worked out on the merits by the appropriate court, if approached. It is beyond us to give any positive relief or even to indicate any specific remedy. We mention this only because the landlord put forward such an intention or proposal on his part and we thought it fit to specificate it in this order. Beyond that, there is no relevancy in this appeal for those observations.
5. We therefore dismiss the appeal with costs, quantified at Rs. 1000.

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