

Mrs. Dhanlaxmi G. Shah

Vs

Miss Sushila Shiv Prasad Masurakir and Others

Civil Appeal No. 1587 of 1974

(Syed M. Fazal Ali, P.S. Kailasam, A.P. Sen JJ)

28.08.1979

JUDGMENT

KAILASAM, J. -

1. The first defendant in the suit is the appellant before us. The suit was filed by the plaintiff, the daughter of one Shiv Prasad Rajaram for a declaration that she is the lawful tenant of the two defendants and for an injunction restraining the defendants from executing decree in R. A. E. Suit No. 1945 of 1957. In the plaint, the plaintiff claimed that her father Shiv Prasad Rajaram was a tenant and after his death, she became the statutory tenant. She further pleaded that though the first defendant had obtained a decree against her mother in R. A. E. Suit No. 1945 of 1957, he could not execute the decree against her as the first defendant had sold the property during the pendency of the earlier suit to second defendant and thus the second defendant has become the landlord. In the suit, the second defendant did not file any written statement. The trial Court as well as the appellate Court dismissed the appeal, but in revision, the High Court decreed the suit mainly on the ground that the first defendant had sold the property to the second defendant and as such in law the second defendant had become the landlord. As the second defendant did not file any written statement and contest the suit, an order of injunction was rightly granted against him. The High Court found that after the first defendant sold the property, he ceased to be the landlord and it is only the second defendant that could claim rights as a landlord. In this view, there could be no difficulty in decreeing the suit of the plaintiff and granting an injunction as against the second defendant.

2. Mr. S. T. Desai, learned counsel for the appellant submitted that whatever the position may be as against the second defendant, so far as the first defendant is concerned, by virtue of an agreement with the second defendant he is entitled to continue the execution proceedings and after obtaining possession from the plaintiff, he is entitled to be in possession as a tenant of the second defendant. The learned counsel for respondent 1, Mrs. Urmila Sirur submitted that the sale deed by which the property was conveyed to the second defendant had not been filed and in the absence of the sale deed, the first defendant cannot rely on any such right in his favour. The document that is produced in Court and relied on by the appellant before us is the agreement to sell. The learned counsel for the respondent is right that the appellant cannot rely on the agreement. If at all any right is reserved in favour of the first defendant, it should be spelt out from the sale deed which has not been produced.

3. In the circumstances, the conclusion arrived at by the High Court is right and this appeal is dismissed. There will be no order as to costs.

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