

Devi Dass

Vs

Mohan Lal

Special Leave Petition [Civil] No. 1473 of 1980

(A. C. Gupta, V. D. Tulzapurkar JJ)

25.03.1980

JUDGMENT

1. Special leave to appeal granted.

2. This appeal arises of a proceeding for eviction and the tenant is the appellant before us. Respondent Mohan Lal's claim for ejection was allowed on the ground that he required the disputed premises for his own use and occupation. He purchased the building of which the disputed premises is a part on May 11, 1972 from its original owners Jagiri Lal and Vasudev. The courts below recorded a finding accepting Mohan Lal's case of requirement and the High Court affirmed that finding. According to the tenant the sale by the original owners in favour of Mohan Lal was not a bona fide one and had been made with the ulterior motive of evicting the tenant. The tenant's case, as set out in the judgment of the appellate authority, was as follows :

Learned counsel for the appellant while challenging the finding of the trial court under issue 1 has further contended that the sale deed Ex. A-1 is a sham transaction and no right, title or interest passed to Mohan Lal under this document. In this context it has also been argued that the sale consideration was not received by Jagiri Lal and Vasudev and in fact Jugal Kishore, father of Mohan Lal executed the sale deed in the name of his son Mohan Lal, acting as Mukhtar of Jagiri Lal and Vasudev and this was done in order to have ground for ejection created against Devi Dass, as earlier several applications filed by Jugal Kishore as Mukhtar of the landlords, Jagiri Lal and Vasudev for ejection of Devi Dass, the tenant from the premises in dispute, had failed.

3. The appellate authority rejected the tenant's case on the view that tenant could not challenge the validity of the sale deed executed in favour of Mohan Lal because the tenant was not a party to it. We do not think this was a correct view to take. An allegation had been made that in reality there was no sale and the sale deed was a paper transaction. The court had to record a finding on this point. The appellate authority however did not permit counsel for the tenant to refer to the evidence adduced on this aspect of the matter. The High Court also did not advert to it. We, therefore, allow this appeal, set aside the decree for eviction and remit the case to the trial court to record a finding on the question whether the sale of the building to respondent Mohan Lal was a bona fide transaction upon the evidence on record. The trial court will allow the parties to adduce further evidence on the point if the court considers it necessary. We do not disturb the other findings recorded in the suit. After recording the finding, the trial court will dispose of the suit in accordance with law, and expeditiously, if possible within six months. There will be no order as to costs.

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