

M/s. Parasram Harnand Rao

Vs

M/s. Shanti Parsad Narinder Kumar Jain and Another

Civil Appeal No. 1085 of 1070

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

10.04.1980

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed a judgment of the Delhi High Court and arises out of an application filed by respondent 1 who claimed to be the tenant of the appellant, recalling the warrant of possession issued by the Controller in pursuance of a decree dated July 31, 1971 passed against respondent 1.

2. The case had a rather chequered career having passed through several phases. To begin with the landlord-appellant executed a lease in respect of the disputed premises in favour of respondent 2 for three years as far back as April 1, 1942. In 1948, a suit was brought by the appellant for eviction of the tenant for non-payment or rent on the ground of conversion of the user of the premises. The suit for possession was however dismissed but a decree dated November 31, 1948 for arrears of rent was passed and it was held that Laxmi Bank was the real tenant. Subsequently, the Bombay High Court ordered the bank to be wound up and in the winding up proceedings, the said High Court appointed an Official Liquidator who on February 16, 1961 sold the tenancy rights to respondent 1 - S. N. Jain. This sale was confirmed by the High Court on the same date and as a result thereof respondent 1 took possession of the premises on February 24, 1961. On April 5, 1961, the landlord-appellant filed an application under the Delhi Rent Control Act for eviction of Laxmi Bank. On July 31, 1961, a decree for eviction was passed in favour of the landlord-appellant. On January 22, 1963, respondent 1 filed a suit for a declaration that he was a tenant of the landlord-appellant. This suit was dismissed for non-prosecution on May 5, 1964 and an application to set aside the ex parte decree was also dismissed and the appeal against that order also failed. Thereafter respondent 1 filed an application under Section 25 of Delhi Rent Control Act (hereinafter referred to as the 'Act') for recalling the warrant of possession issued by the court in pursuance of the decree dated July 31, 1961 in favour of the landlord.

3. The present appeal arises out of these proceedings. The Rent Controller allowed the application and recalled the warrant of possession by its Order dated December 20, 1966. The matter was then taken up by the landlord in appeal to the Rent Control Tribunal which by its Order dated November 25, 1968 reversed the order of the Rent Controller and dismissed the tenant's application. A second appeal against the order of Tribunal was then filed by the tenant to the High Court which reversed the order of the Rent Control Tribunal and restored the order of the Rent Controller, hence this appeal by special leave.

4. Mr. Mridul appearing for the appellant challenged before us the findings of the High Court on

points 1 and 3 which are formulated at page 91 of the judgment of the Delhi High Court. These points may be extracted thus :

(1) The application made by the appellant before the High Court under Section 25 was not barred by reason of the dismissal of the appellant's suit for default of appearance under Order 9, Rule 9, CPC.

(3) The transfer to the appellant by the Official Liquidator of the tenancy rights being voluntary did not come within the mischief of Section 14(1)(b) of the Act.

5. In the first place it was argued that so far as point 1 is concerned, the High Court was wrong in holding that the application of respondent 1 was not barred by the reason of the dismissal of the appellant's suit for setting aside the ex parte decree by the principle of res judicata or Order 9, Rule 9, CPC. It was contended that even if the previous suit filed by respondent 1 for declaration of his status as a tenant was dismissed for default but as the application for setting aside the decree also failed, there was an adjudication against the then plaintiff-respondent 1 and therefore the present suit was clearly barred by the principles of res judicata or Order 9, Rule 9. At any rate there can be no escape from the position that the application of respondent 1 would be clearly barred by the principle contained in Order 9, Rule 9, CPC. In case of *Suraj Ratan Thirani v. Azamabad Tea Co.* ((1964) 6 SCR 192 : AIR 1965 SC 295) this Court held thus :

We are not however impressed by the argument that the ban imposed by Order 9, Rule 9 creates merely a personal bar or estoppel against the particular plaintiff suing on the same cause of action and leaves the matter at large for those claiming under him. Beyond the absence in Order 9, Rule 9 of the words referring "to those claiming under the plaintiff" there is nothing to warrant this argument. It has neither principle, nor logic to commend it .... The rule would obviously have no value and the bar imposed by it would be rendered meaningless if the plaintiff whose suit was dismissed for default had only to transfer the property to another and the latter was able to agitate rights which his vendor was precluded by law from putting forward.

6. In the instant case it was appellant who brought the previous suit which resulted in a decree for eviction of the tenant on July 31, 1961 - a date when respondent 1 had already taken possession of the premises by virtue of transfer made by the Official Liquidator. Thus the identity of the subject-matter being substantially the same, this case clearly falls within the ambit of the ratio in the case supra. On this ground alone therefore the appellant is entitled to succeed because the High Court with due respect does not appear to have properly construed the scope of Order 9, Rule 9, CPC. There is however nothing to show that respondent 1 was a tenant within the meaning of Rent Control Act so as to maintain an application under Section 25 of the Act when in fact he was an unlawful sublessee. As regards point 3, the High Court relying on a decision of Calcutta High Court in *Krishna Das Nandy v. Bidhan Chandra Roy* (AIR 1959 Cal 181 : 63 CWN 29) has found that as the transfer in favour of respondent 1 by the Official Liquidator was confirmed by the court, the status of the tenant by respondent 1 was acquired by operation of law and therefore the transfer was an involuntary transfer and the provisions of Rent Control Act would not be attracted. After a careful perusal of the Calcutta case (AIR 1959 Cal 181 : 63 CWN 29), in the first place it appears that the section concerned has not been extracted and we are not in a position to know what was the actual language of the section of the Bengal Act. Secondly, in our opinion, the Official Liquidator had merely stepped into the shoes of Laxmi Bank which was the original tenant and even if the Official Liquidator had transferred the tenancy interest to respondent 1 under the orders of the court,

it was on behalf of the original tenant. It was undoubtedly a voluntary sale which clearly fell within the mischief of Section 14(1)(b) of the Delhi Rent Control Act. Assuming that the sale by the Official Liquidator was an involuntary sale, then it undoubtedly became an assignment as provided for Section 14(1)(b) of Delhi Rent Control Act. Section 14(1)(b) runs thus :

That the tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord.

7. The language of Section 14(1)(b) is wide enough not only to include any sublease but even an assignment or any other mode by which possession of the tenanted premises is parted. In view of the wide amplitude of Section 14(1)(b) we are clearly of the opinion that it does not exclude even an involuntary sale. For these reasons therefore we are unable to agree with the view taken by the High Court. The appeal is accordingly allowed, the judgment and decree of the High Court are set aside and the plaintiff's application under Section 25 of the Delhi Rent Control Act.

8. Mr. Bisaria, learned counsel appearing for the respondent submitted that as the tenant has been in the premises for a period of 19 years and is conducting business therein, he may be permitted sufficient time to make alternative arrangements. Mr. Mridul appearing for the appellant fairly conceded that he would no objection if one year's time is allowed to the respondent provided he gives an undertaking for handing over peaceful and vacant possession at the expiry of the time. We therefore allow time to the respondent to vacate the premises on or before April 15, 1981 on the condition that he files an undertaking within two weeks to the effect (1) that he shall hand over vacant and peaceful possession to the landlord on or before April 15, 1981; (2) that he shall not induct any person on the premises; (3) that he shall go on paying the compensation for wrongful use of premises equivalent to the rent.

9. The undertaking must be filed supported by an affidavit within two weeks from today failing which the order granting time shall stand revoked.

10. There will be no order as to costs.

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