

S. J. Aggarwal

Vs

Karji Narayanbhai and Others

Civil Appeal No. 1255 of 1970

(R. S. Pathak, O. Chinnappa Reddy JJ)

25.07.1980

JUDGMENT

PATHAK, J. –

1. This appeal by special leave granted by this Court is directed against the judgment and order of the High Court of Bombay allowing a writ petition filed by the respondent.
2. The appellant is the owner of a bungalow situated at Dhulia. The bungalow was let out to the respondent. On September 27, 1963 the appellant issued a notice to the respondent terminating this tenancy. It was alleged that the respondent had raised an unauthorised construction and was, therefore, liable to forfeit the tenancy. The appellant then filed a suit for the ejectment of the respondent. The trial Court appointed a Commissioner to report on the question whether an unauthorised construction had been raised. On receipt of the report the trial Court found that no unauthorised construction had been raised by the defendant but that it was the plaintiff who had constructed a trellis work. On appeal by the respondent the decree of the trial Court was reversed by the first appellate court and the suit was decreed on the finding that the respondent had in fact raised an unauthorised construction by converting a shed into a room. The respondent now applied in revision to the High Court, and at some stage the revision petition was permitted to be converted into a writ petition. The High Court went into the evidence on the record and held that the first appellate Court had erred in coming to the finding that the respondent had raised an unauthorised construction. Accordingly, it dismissed the suit.
3. In this appeal, the contention of learned counsel for the appellant is that the High Court has erred in entering into the evidence on the record and that it was incompetent to do so in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution. We have heard counsel carefully and we have examined the material before us, and it seems to us that having regard to the interest of justice this Court should not interfere. The order passed by the High court may have erred in point of jurisdiction but we are satisfied that it promotes justice between the parties. Accordingly we decline to interfere.
4. This appeal is dismissed, but in the circumstances there will be no order as to costs.

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