Kamlabai

Vs

Bhikchand Kishanlal and Others

Civil Appeal No. 1795 of 1980

(CJI Y.V. Chandrachud, A. Varadarajan, A.N. Sen JJ)

18.11.1981

JUDGMENT

CHANDRACHUD, C.J. –

1. Respondent 1 Balkisan and his stepbrother Hanumandas (who is now represented by respondent 2), were joint owners of a structure admeasuring approximately 48 ft x 27 ft at Dhule, Maharashtra. The appellant's husband Mangaldas Chunilal, who was in possession thereof as a tenant, was conducting a flour mill in the said premises. Respondent 1 filed Suit No. 247 of 1965 against Mangaldas asking for possession of the particular portion of the property which had fallen to his share. Radhabai, the stepmother of Hanumandas, also filed a suit for eviction of Mangaldas in respect of the portion which had fall to Hanumandas' share. That was Suit No. 234 of 1966. That suit was decreed by the trial court and the decision therein, not having been appealed from, has become final. The trial court had decreed Suit No. 247 of 1965 filed by respondent 1 also. Mangaldas filed an appeal against that decree and he succeeded in the District Court which allowed the appeal and dismissed the suit. Respondent 1, however, filed Special Civil Application No. 2685 of 1967 in the High Court of Bombay which was allowed and respondent 1st suit for eviction was decreed.

2. Respondent 1 applied for execution of the decree obtained by him and, in 1971, he succeeded in obtaining possession of the suit premises. It appears that there were certain movable properties in the premises, consisting of parts of the flour mill which the appellant's husband was running. A notice was given to the appellant by the execution, court her husband having died in the meanwhile, to remove those moveables, but she did not do so. The moveables were then removed to the court where they were lying from 1971 till 1975. In about 1975, they were sold in an auction to respondent 2 of Rs. 1851.

3. The appellant then took proceedings in the Court of the learned Joint Civil Judge, Dhule, against respondent 1, praying that she should be put back in possession of the premises as well as the machinery. That application was taken through all its stages and ultimately, Civil Revision Application No. 521 of 1979 filed by her was dismissed by the High Court. The appellant took similar proceedings against respondent 2 which were then dismissed eventually by the High Court.

4. Being aggrieved by the common judgment dated February 29, 1980 delivered by the High Court in the two revision applications, the appellant has filed this appeal by special leave. special leave to appeal was dismiss of against respondent 1 and leave was granted against respondent 2 only. Respondent 2 has not appeared in the present proceedings.

5. We have done our utmost to see whether some relief can be granted to the appellant who is in impecunious circumstances, but we find it impossible to do so. Her grievance is that the machinery which was removed form the premises was of the value of about Rs, 25,000 but was sold to respondent 2 for a paltry sum of Rs, 1851. Her contention has been rejected by all the courts and frankly, we are unable to see any reason, on the basis on which her contention can at all be accepted. She was given due notice to remove the machinery which she failed to do. In fact, she declined to accept the notice. The machinery was thereafter removed to the court premises where it was lying for nearly four years. There is no material on the record whatsoever on the basis of which we could come to the conclusion that the machinery was purchased by respondent 2 at a gross undervalue. It we were to direct that respondent 2 should be asked to bring back the machinery, it will, in all probability, be in a far worse condition than it was in when it was purchased by him in 1975. The appellant would undoubtedly be entitled to withdraw the sale proceeds of Rs. 1851 which are still lying in the court and all we can do is to direct that the aforesaid amount shall be paid to her forthwith.

6. We are thankful to Shri Misra, who appears for the appellant as an amicus curiae on behalf of the Supreme Court Legal Aid Society. He says that respondents 1 and 2 should be called upon to pay a reasonable sum, ex gratia, to the appellant. We do not think that we can call upon the respondents to pay any such amount to the appellant. If the appellant had even the semblance of a right to the relief claimed, by her, it may have been possible to persuade the respondents to contribute to the costs incurred by her. But we find that the appellant has no right whatsoever to the machinery which has been sold to respondent 2 in accordance with law.

7. Regretfully, therefore, we have to dismiss the appeal which we hereby do. There will be no order as to costs.

8. We exempt the appellant from payment of Court fees.

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