

Subhash Chand Jain

Vs

Hari Singh and Others

Special Leave Petition (Civil) No. 3630 of 1986

(M. P. Thakkar, G. L. Oza JJ)

13.10.1986

ORDER

PATHAK, J. -

1. The petitioner prays for special leave to appeal against an order dated March 7, 1986 of a Division Bench of the Delhi High Court dismissing a first appeal against an order appointing a receiver passed by a learned Single Judge of the High Court during the pendency of a revision petition before him.
2. The appeal was rejected on the ground that it was incompetent. It seems to us unnecessary to go into the question because it appears to us that the matter can be disposed of on the merits.
3. Hari Singh filed a suit against Sher Singh for dissolution of a partnership and rendition of accounts. The suit was decreed on January 11, 1985 by the trial court and a money decree was passed in favour of Hari Singh. On February 4, 1985 Hari Singh applied for amendment of the decree so that it would include the relief of possession of shop No. 3098, Bahadurgarh Road, Delhi. The application was rejected by the trial court, and a revision petition was filed by Hari Singh in the High Court. During the pendency of the revision petition Hari Singh made an application for an interim order for taking possession of, and sealing off, the said shop. He alleged that the shop was in possession of Sher Singh. In reply Sher Singh stated that he had surrendered possession of the shop to Hari Singh and that he was no longer in possession thereof. On November 26, 1985 the learned Single Judge ordered the appointment of a Receiver and directed the Receiver to take possession of the shop with the help of the police, if necessary, and to dispossess therefrom anyone in possession. The petitioner, who alleges that he took the shop on rent on March 1, 1985 from one Hukam Chand, a collateral of Hari Singh, and that he had been in possession ever since in his own right, filed an application before the learned Single Judge objecting to the order dated November 26, 1985 and contending that as a third person he was not liable to eviction. The learned Single Judge called for documentary evidence in support of the claim and on March 4, 1986 he made an order dismissing the application. It was against this order that the petitioner appealed to a Division Bench of the High Court. As mentioned earlier the appeal was dismissed as incompetent on March 7, 1986.
4. The question on the merits before the learned Single Judge was whether the petitioner was entitled to continue in possession of the shop. The learned Single Judge found that a major portion of shop No. 3098 had fallen to the share of Hari Singh while a minor portion belonged to Hukam Chand. As the petitioner claimed through Hukam Chand the learned Single Judge found that he had no right to assert possession against Hari Singh.

5. After hearing learned counsel for the parties we see no reason to interfere with the order of the learned Single Judge. The learned Single Judge has found that the shop substantially belongs to Hari Singh and that therefore, the petitioner cannot assert a right to possession. In the circumstances there is no ground for disturbing the order appointing the Receiver. The Receiver is entitled to possession of that part of the premises which belongs to Hari Singh.

6. The revision petition is pending before the learned Single Judge of the High Court. At this interlocutory stage there is good reason to allow the order of the learned Single Judge to prevail.

7. It is also unnecessary to examine whether a Receiver can be appointed at this stage of the litigation between Hari Singh and Sher Singh. That objection is not open to the petitioner when he has no right to the property as against Hari Singh.

8. The special leave petition is rejected.

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