

Om Parkash and Others

Vs

R. K. Lakra

Civil Appeal No. 2821 of 1987

(K. N. Singh, M. H. Kania JJ)

22.07.1988

JUDGMENT

KANIA, J. –

1. This is an appeal against the judgment of a learned Single Judge of the High Court of Jammu and Kashmir in a second appeal. The appellants are the heirs and legal representatives of one Indro Devi. The respondent is the heir and legal representative of one Raghunath Dass Lakra.

2. Very few facts are necessary for the disposal of the appeal before us. The dispute relates to a piece of land measuring 4 marlas and 99 sq. ft. situated at Residency Road in Jammu. This land was granted to one Attar Chand by the Government of Kashmir on a long lease. As per the practice prevailing in the State of Jammu and Kashmir he was known as the Wasidar in respect of the said land. On his death his son Guranditta Mal inherited the leasehold rights of Attar Chand and on the death of Guranditta Mal his widow Indro Devi, who was the original plaintiff, inherited the leasehold rights under the said lease on the basis of a Will executed by Guranditta Mal in her favour. Guranditta Mal, during his lifetime, in 1954, has granted a sublease of the said land to Raghunath, the father of the respondent herein. Indro Devi instituted a suit in the Court of the learned Sub-Judge, Jammu for recovery of possession of the said land on the ground that Raghunath Dass had sublet the house constructed by Raghunath Dass on the said land and was liable to be evicted under the provisions of the Transfer of Property Act read with Section 11 of the Jammu and Kashmir Houses and Shops Rent Control Act (hereinafter referred to as the "J & K Rent Act"). She also contended that the land was required by her bona fide for occupation by her hand her family. The period of the said sublease had expired and it was alleged that in the aforesaid circumstances, the respondent was liable to be evicted.

3. These allegations were denied by the respondent. It was inter alia contended by the respondent that the sublease granted to Raghunath was void ab initio. It was held by the learned Sub-Judge that the ground of bona fide requirement of the landlord as well as unlawful subletting by the sublessee had been established. It was further held that the sublease granted by Guranditta Mal to Raghunath was valid. On these findings the suit was decreed. This decision was upheld on first appeal by the learned Additional District Judge, Jammu before whom an appeal was preferred and the findings of the learned Sub-Judge were upheld by him. On a second appeal preferred to the High Court, the learned Single Judge of the High Court took the view that the sublessee granted by Guranditta Mal to Raghunath Dass was void as it violated the provisions of Rule 35 of Wasidari Rules inasmuch as it amounted to a transfer of immovable property and hence it amounted to a transfer of the leased land by the government to the Wasidar under the provision of the Wasidari Rules. As no permission of the government was taken for granting the said sublease the sublease was void as against the

provisions of the Wasidari Rules. As no permission of the government was taken for granting the said sublease the sublease was void as against the provisions of the Wasidari Rules. The learned Single Judge rejected the contention urged on behalf of the appellants herein that the transfer made by Guranditta Mal was of a mere interest in the leasehold and did not amount to a transfer of the land leased as contemplated under Rule 35 of the said Wasidari Rules. The learned Single Judge, without considering what would be the effect of the sublease being void has somehow come to the conclusion that, in view of the sublease being void, the suit filed by the appellants herein must be dismissed and took the view that the appeal before the learned Judge must be allowed and the suit filed by the appellants must be dismissed. It is this decision which is challenged by the appellants in the present appeal preferred by special leave.

4. In our view, the appeal can be shortly disposed of and the appellants are entitled to succeed. Even assuming that the sublease granted by Guranditta Mal in favour of Raghunath, the father of the respondent was void, the result would be that the respondent and his father would be persons without any legal interest in the said land. Indro Devi and the appellants being the lessees of the said land were suing on their own title and not relying on the sublease and hence they were entitled to evict the respondent who had no title or interest in the said land. If a view is taken that the sublease in favour of Raghunath was valid, in that even, as held by both the courts below, as grounds for eviction set out in Section 11 of the J & K Rent Act have been made out, the respondent ceased to be entitled to the protection of the said Act and was liable to be evicted as the term of his sublease had expired.

5. It was strenuously sought to be contended by Mr. Anil Dev Singh, learned counsel for the respondent that the provisions of Section 12-A of the Jammu and Kashmir Land Grants Act, 1960, as amended in 1969 by the Jammu and Kashmir Land Grants (Amendment) Act, 1969 provided that if any person holding land on lease granted under that Act or under any of the rules referred to in the said section effects or has ever effected before the commencement of the said Act of 1969, transfer of any right in such land without the permission of the government or any authority empowered in that behalf, the lease of such land would be determined and would be deemed always to have been determined with effect from the date such transfer is or has been effected. It was submitted by him that the land held by the appellants and their predecessors-in-title from the government was under a lease granted under some of the rules referred to in Section 12-A. It was contended by him that sublease was admittedly granted without the permission of the government and in view of the said sublease granted by Guranditta Mal, the title of Guranditta Mal and his successors in the land in question under the lease granted by the government itself came to an end. It was urged by him that in these circumstances the title of the appellants to the said land had itself been extinguished and they were not entitled to use for recovery of possession of said land. In our view this contention is not open to the respondent at all. It was nowhere contended by the respondent, either before the learned Sub-Judge or before the Additional District Judge or even in the second appeal before the High Court, that the title of the appellants and their predecessors - in - title to the said land under the lease granted by the government had come to an end in the aforesaid circumstances. Had the plea been taken earlier, it is possible that the appellants might have pleaded facts to show that their lease had not come to an end or that it had been renewed after the sublease was granted. Hence, allowing such a plea at this stage might cause prejudice to the appellants. Some decisions of this Court were shown to us by Mr. Anil Dev Singh where a new plea purely based on law was allowed to be taken even at the stage of the appeal before the Supreme Court. However, in our view, those decisions can have no application whatever in a case like one before us where allowing of such a plea might cause prejudice to the appellants.

6. In our opinion, it is unfortunate that the learned Single Judge of the High Court who decided the second appeal did not proceed to consider at all the effect of the sublease granted to Raghunath being void and we find it difficult to understand how, merely on the basis of the sublease being void, he came to the conclusion that the suit filed by Indro Devi in the court of learned Sub-Judge was liable to be dismissed. Had the learned Judge considered this point, he would have surely realised that the respondent had no title in the said land in view of the sublease being void and was liable to be evicted by a party suing on his own title.

7. Coming to the finding regarding the subletting by the respondent and his father and the bona fide requirement of Indro Devi, these are both essentially issues of fact and have been decided in favour of Indro Devi, the mother of the appellants and their predecessors - in - title. Those finding do not appear to have been seriously challenged before the High Court at all and hence there is no reason why we should go into the question as to whether those findings are correct, in this appeal.

8. In the result, the appeal succeeds and is allowed. The judgment of the learned Single Judge is set aside and judgment and order passed by the learned Sub-Judge is restored. However, considering all the facts and circumstances of the case, we are of the view that the parties must bear and pay their own costs in this Court and there will be an order accordingly.

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