

Shiv Lal

Vs

Sat Parkash and another

Civil Appeals Nos. 25-26 of 1991

(L.M. Sharma, J.S. Verma, K. Jayachandra Reddy JJ)

18.12.1991

ORDER

1. After service of notice, the respondents appeared through Mr. N. K. Agarwal, Advocate. However, when the matter was listed on 19-8-1991 Mr. N.K. Agarwal stated that as desired by the respondents, he should be relieved from representing them. The prayer was allowed and fresh notice was issued to the respondents indicating that the matter would be finally disposed of at the notice stage.
2. The office report indicates that fresh notice was duly served on the respondents stating that the matter would be finally disposed of at the present stage, but they have chosen not to appear.
3. We have heard the learned counsel for the appellant. Special leave is granted.
4. The appeals arise out of proceedings for eviction of the respondents from the premises in question on the ground that they had ceased to occupy the building for a continuous period of more than four months without reasonable cause. The trial Court allowed the applications by orders which were affirmed on appeal by the first appellate Court. The respondents challenged the decree before the High Court by revision applications under Section 15(5) of the Rent Control Act which were allowed by the impugned judgment reversing the decree and dismissing the applications. The High Court has held that the landlord has to prove that the tenant by his conduct has brought the tenancy to an end and with that intention discontinued the occupation of the demised premises, and since this has not been done the, applications have to be dismissed. The relevant clause of Section 13(2) of the Rent Control Act states that a tenant will be liable to eviction if he ceases to occupy the building for a continuous period of four months without reasonable cause. The section does not require the cession of tenancy in question., The only condition which has to be satisfied is the non-user of the building for the requisite period. The principle underlying the provisions is that if a premise is not required by the tenant, it should become available to another person who may be in need thereof. The High Court, therefore, was clearly in error in assuming that unless the cession of the tenancy is proved, eviction cannot be ordered.
5. Proceeding further, the High Court has on a reappraisal of the evidence without any justification reversed the finding of the fact concurrently arrived at by the trial Court and the first appellate Court. While exercising jurisdiction under Section 15(5) of the Act the Court does not act as a regular third appellate Court and can interfere only within the scope of the sub-section, discussed and defined in many reported cases by this Court. An examination of the facts and circumstances of this case indicates that the reconsideration of the evidence by the High Court was not justified. It appears that on being misled by its view that the cession of tenancy is a necessary element of

Section 13(2)(v), the High Court proceeded to re-examine the evidence on the records, leading to the impugned judgment. We, therefore, set aside the judgment under appeal and restore the decrees passed by the trial Court. The appeals are accordingly allowed, but without costs.

Appeals allowed.

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