

G. Muthuvelu Pillai (Dead) by Lrs.

Vs

Hazarath Syed Sha Mian Sakkaf Sahib Khadiri Thaikal (Dead) by Lrs. and Others

Civil Appeal No. 3127 of 1979

(Kuldip Singh, N. M. Kasliwal JJ)

03.09.1992

JUDGMENT

KASLIWAL, J. –

1. Civil Appeal Nos. 491-92 of 1980, Civil Appeal Nos. 783-784 of 1981 and Civil Appeal Nos. 10102-05 of 1983 were tagged to be heard along with the above appeal. After hearing learned counsel for the parties in all these cases, judgment was reserved. Learned counsel for the appellants in C.A. No. 492 of 1980 and C.A. Nos. 10103 and 10105 of 1983 informed that the matter had been compromised between the parties out of Court and as such these appeals were disposed of by an order dated August 4, 1992. After going through the record of the above appeal, we are convinced that its facts are so glaring and different that it can be dealt with separately and as such we are deciding this appeal on its own facts.

2. The High Court itself in the opening part of the impugned order has observed as under :

"This case illustrates how very resourceful a judgment-debtor could be and ingenuously set at naught the valid orders of court, including a compromise decree. Undaunted by the adverse judgments right from 1963, the judgment-debtor has been making repeated onslaughts under the umbrage of some technical plea or other and thereby has been preventing the decree-holder from realising the fruits of the decree."

3. The broad features of the case are that original Suit No. 30 of 1962 was filed by the plaintiff, Hazarath Syed Sha Mian Sakkaf Sahib Khadiri Thaikal represented by its trustee, for the recovery of the vacant possession of the suit property from defendants 1 and 2 after removing the superstructure put up thereon. G. Muthuvelu Pillai was the first defendant who is now dead and is represented through his legal representatives who are the appellants in the present appeal. Pending the aforesaid suit the parties entered into a compromise on June 28, 1963. A decree was passed in favour of the plaintiff in terms of the compromise on August 6, 1963 and according to which the plaintiff was permitted to purchase the superstructure on payment of Rs 6,000. On appeal, the sale consideration was increased to Rs 10,000 by the lower appellate court. In second appeal decided on November 5, 1968 the amount was determined as Rs 8,000. The plaintiff had already deposited Rs 6,000 and for the balance Rs 2,000 he was granted 2 months' time. The defendants were permitted to withdraw the sum of Rs 6,000 already deposited as well as Rs 2,000 to be deposited only after giving possession. The plaintiff on the strength of this decree filed an execution petition in 1969. Certain objections were raised on behalf of the defendant judgment-debtor 1 and all those objections were dismissed right up to the High Court. While dismissing the objections the High Court in its order dated November 13, 1970 observed that the petitioner in that case (defendant judgment-debtor

1) had been set up by the other members of the family to rake up the question over again after having obtained an advantage of the amount being fixed at Rs 8,000 by the High Court.

4. After all the above proceedings having culminated against the defendant judgment-debtor, the plaintiff decree-holder filed execution petition in 1973 under Order 21 Rule 35 CPC for delivery of possession. This execution petition was also opposed by the defendant judgment-debtor 1 and after having lost in all the three courts including the High Court has now come before this Court by the grant of special leave. The judgment-debtor-appellant was seeking the protection under Section 3 of the Madras City Tenants' (Protection) Act, 1921 as amended by the Amending Act 16 of 1964 and made applicable to Thanjavur on November 7, 1964. The High Court held that it was a case of a simple purchase of the superstructure dehors the Act and it cannot be contended at all, that any rights still remained surviving under the Act as the rights of the parties were already concluded by a compromise dated June 28, 1963. It may also be noted that the property in question is a Trust property belonging to the Thaikal. The decree was based on a compromise with a direction to the Trust to purchase the superstructure on the site. The land of the site admittedly belonged to the Trust. The appellant had himself filed an application before the High Court for extension of time vacate the superstructure and that was dismissed so late as August 29, 1973. The plaintiff had deposited the sum of Rs 6000 in 1963 and another Rs 2,000 in 1968. Thus, there is no equity and justice in favour of the appellant.

5. We do not find any error in the aforesaid view taken by the High Court and we find no force in this appeal and it is accordingly dismissed with costs.

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