

Ram Chandra Verma

Vs

Jagat Singh Singhi and Others

Civil Appeal No. 3227 of 1996

(K. Ramaswamy, S. Saghir Ahmad, G. B. Pattanaik JJ)

31.01.1996

JUDGMENT

1. Though notice has been sent on second occasion to respondent No. 3 on May 24, 1994, so far acknowledgment has not come back. Therefore, notice on 3rd respondent must be deemed to have been served. Respondents 1 and 2 are represented by Mr. G.S. Chatterjee.
2. Leave granted.
3. The respondents filed Suit No. 19/75 on May 19, 1975 for eviction of the tenant Harkesh Rai Agarwal on three grounds, namely, default, subletting and personal requirement. The suit was dismissed on August 25, 1975. Again another suit was instituted on September 25, 1975 for the same grounds. The suit was again dismissed. Pending appeal, Harkesh Rai and the respondent have compromised the matter. By compromise decree dated November 26, 1981 Harkesh Rai agreed to surrender one room now in possession of the appellant. When execution was sought to be taken and the appellant resisted the execution, an application under Order 21, Rule 97 of CPS was filed to remove the obstruction which was ordered by the Executing Court. On appeal, the High Court by order dated August 16, 1983 in F.A. 1/91 dismissed the appeal. Thus this appeal by special leave.
4. The question is : whether the appellant is bound by the compromise decree entered into by Harkesh Rai Agarwal and the respondents. It is settled law that unless the conditions for eviction are proved, the decree for eviction on compromise is a nullity. That apart, the property belongs to four persons and three brothers made an admission prior to partition that the appellant is in possession of a room admeasuring 15x30 as tenant land admittedly it fell to the share of Lunkaran Singhi. In view of those admissions made by the co-owners who have got joint interest and made their admissions against their interest, the admissions bind all the co-owners. In view of that admission, the necessary conclusion is this that the appellant is independently in possession of the premises admesuring 15x30 in his own right as a tenant.
5. In the compromise decree, ultimately, the High Court granted possession of the premises in occupation of the appellant. The appellant having been found in possession, he is entitled to obstruct execution defending his illegal dispossession in execution proceeding and he is also independently entitled to file application under Order 21 Rule 97 claiming his possession. In view of the fact that he was found to be in possession, the finding recorded by the executing Court as upheld by the High Court that he is a licensee on behalf of Harkesh Rai Agarwal is clearly illegal. We therefore, hold that the appellant cannot be ejected from the premises in his possession except in accordance with law.

As regards the execution of the compromise decree is concerned, it would be open to the respondent to proceed against Harkesh Rai Agarwal in accordance with law.

6. The appeal is accordingly allowed, No costs. Appeal allowed.