

SUPREME COURT OF INDIA

Suresh Chand Jain

Vs.

Third Addl. District Judge

(V Khare and M Srinivasan JJ.)

20.11.1998

ORDER

1. Leave granted.

2. This appeal is directed against the order and judgment dated 17-4-1997, passed by the Allahabad High Court whereby the writ petition filed by Respondents 4 to 10 herein was allowed and the executing court was directed to dispose of the objections of the said respondents under Order 21 Rule 98 CPC.

3. The brief facts giving rise to this appeal are as under:

On 9-5-1947, one Seth Bhagwan Das executed a lease in respect of a vacant piece of land in favour of one Sardar Pritam Singh for a period of 45 years. The aforesaid lease deed permitted Pritam Singh to make construction on the leased land. Sardar Pritam Singh constructed shops and kothries on the leased lands with the permission of Municipal Board, Mathura and let out the same to Respondents 4 to 10. The said respondents claimed that they are in occupation of the said shops and kothries as tenants of Sardar Pritam Singh. During currency of lease Seth Gopal Das transferred his rights in the said land in favour of the appellant by a registered sale deed dated 29-9-1965. The

appellant herein filed a suit for ejection of Sardar Pritam Singh before the Judge, Small Cause Court, Mathura. The Judge, Small Cause Court decreed the suit ex parte. Pritam Singh, thereafter, moved an application under Order 9 Rule 13 CPC for setting aside the ex parte decree but the same was rejected. The revision petition against the ex parte decree filed by Sardar Pritam Singh was rejected by the IIIrd Additional District Judge, Mathura. Sardar Pritam Singh, thereafter, challenged the aforesaid orders by means of a petition under Article 226 of the Constitution of India but the same was also rejected. The appellant thereafter applied to the executing court for execution of the decree passed by the Judge, Small Cause Court. In the said proceedings, the appellant filed an application under Order 21 Rule 97 CPC for removal of obstruction put up by Pritam Singh as well as by the subtenants. Pritam Singh as well as his tenants filed objections to the application filed by the appellant. The executing court upheld the plea of Pritam Singh. Aggrieved, the appellant filed a revision before the District Judge, Mathura. Ultimately, the revision filed by the appellant came to be decided by the IIIrd Additional District Judge, Mathura, who, vide his order dated 19-2-1986, allowed the revision and set aside the orders of the executing court.

4. Against the order of the IIIrd Additional District Judge, Mathura, Sardar Pritam Singh as well as the sub-tenants filed separate writ petitions in the High Court under Article 226 of the Constitution of India. The writ petition filed by Sardar Pritam Singh was dismissed on 24-7-1995. The writ petition filed by the sub-tenants Respondents 4 to 10 came up subsequently and a learned Single Judge of the High Court allowed the writ petition by the order and judgment under challenge, holding that the objections of the subtenants required to be considered by the executing court. It is against this order the appellant has come up before this Court by means of a special leave petition.

5. It was urged on behalf of the appellant that the sub-tenants had no independent right and the High Court committed grave illegality in allowing the writ petition by directing the executing court to decide the objection of the sub-tenants.

6. We have heard learned counsel for the respondents and we find the argument raised is well substantiated. From the facts narrated above, it is clear that so far as the tenant Sardar Pritam Singh was concerned, the decree for ejection against him attained finality. The sub-tenant did not have any independent right or (sic) to raise any objection before the executing court. The sub-tenants were legally bound by the orders passed against the main tenant particularly when the ejection decree against the main tenant became final and his objection before the executing court was rejected by the Additional District Judge and upheld by the High Court. Further, we find that the sub-tenants in their objection have not pleaded any right independent to the rights of the main tenant. They merely reiterated the objections of the main tenant, namely, that the ejection decree passed by the Small Cause Court is a nullity and that they were not parties to the eviction suit. Under such circumstances the High Court was not right in allowing the writ petition filed by the sub-tenants. We, accordingly set aside the order and judgment of the High Court dated 17-4-1997 and restore that of the Additional District Judge, Mathura dated 17-2-1986 (sic). The appeal is allowed but there will be no order as

to costs.

7. After the judgment was dictated learned counsel appearing for Respondents 4 to 10 stated that answering respondents have no other alternative place to shift and as such, they may be permitted to remain on the premises for a period of three months, to which the learned counsel for the appellant has no objection. Accordingly the respondents are granted three months' time to vacate and hand over the vacant possession of the premises to the appellant, subject to their filing usual undertaking in this Court within four weeks.