

**SUPREME COURT OF INDIA**

Som Dutt

Vs.

Govind Ram

C.A.No.167 of 2000

(B. N. Kirpal and S. Rajendra Babu, JJ.)

10.01.2000

**ORDER**

1. Special leave granted.

2. A suit for eviction was filed by the appellant on 13th November, 1969 against the tenants. One of the tenants was Bishandas (defendant No. 2) the father of respondent. It appears that the suit was decreed in 1975 by the trial Court on the ground of bona fide need of the landlord. Thereafter, an appeal was filed and in 1981 a compromise was recorded between the parties in the appeal. Even though Govind Ram was not a party to the said suit but in the application which was filed for recording of the compromise it was stated that Govind Ram who was the son of the tenant would remain in half portion of the land for a period of 10 years and that he and his heirs would vacate the premises on 31st December, 1990 and it was also stated that if they did not vacate, the landlord would be at liberty to take out execution proceedings for the possession of the land.

3. Honesty in transaction being at a discount, Govind Ram resiled from the undertaking which was given which led to the appellant filing an execution application. The said application was allowed

but the High Court in revision reversed the decision of the executing court holding that the compromise did create a new tenancy in favour of Govind Ram.

4. We do not agree with the reason given by the High Court in reversing the decision of the executing Court. It is not in dispute that the premises in question were in the occupation of Bishandas, the father of Govind Ram (respondent). By virtue of the compromise which was entered into in 1981 before the appellate Court, the son of the tenant who was already in possession was allowed to continue for a period of 10 years. Even if there be a creation of tenancy, the compromise between the parties including Govind Ram was that Govind Ram would vacate the premises on 31st December 1990. It is on that basis that the compromise was arrived at and the order passed by the appellate Court. Apart from anything else, Govind Ram is clearly estopped from filing any application objecting to the execution of the decree. On this ground alone, Govind Ram has to be non-suited.

5. We accordingly, allow the appeal, set aside and judgment of the High Court and restore the order of the trial Court. The respondent shall pay costs throughout to the appellant.

Appeal allowed.