

SUPREME COURT OF INDIA

P.V. Jose

Vs.

Kanickammal

C.A.No.55 of 1989

(B. N. Kirpal and M. B. Shah, JJ.)

19.01.2000

ORDER

1. The respondent had filed a suit for declaration of a title to a suit property and for possession thereof in the year 1970. Claim for the title of the property was directed against the step-brother. In the said suit the appellant herein, who was in occupation of the premises, had been impleaded as defendant No. 3. In the written statement filed by the appellant herein he supported the case of the respondent's step-brother and he denied the title of the respondent to the said property.

2. The trial Court decreed the suit and granted a decree for declaration and possession in favour of the respondent herein. Thereupon the step-brother of the respondent filed an appeal in the Court of the District Judge, Coimbatore who by his judgment dated 31st October, 1975 in Appeal Suit No. 21/74 upheld the decree of the trial Court. While disposing of the said appeal one of the contentions which was considered by the lower appellate court was the plea which had been raised by the appellant herein to the effect that he was entitled to the benefit under the provisions of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 (for short 'the Act'). This contention of the appellant herein was not accepted. It was observed that the appellant herein had denied the title of the land-lady with a mala fide intention of defeating her claim and, therefore, she was entitled to the relief of recovery of possession and mesne profits against the appellant herein. Second appeal filed

against the said decision was dismissed by the High Court.

3. The second round of litigation started with the filing of execution application by the respondent. Paper delivery was granted but then in 1985 another execution application was filed under Order 21 Rule 35 claiming possession of the property from the appellant herein. By order dated 21st August, 1986 the Executing Court accepted the contention of the appellant that he was a tenant. Against the rejection of the execution application, the respondent preferred Civil Revision No. 3751 of 1985 before the High Court and by judgment dated 31st July, 1998. The said application was allowed as the High Court came to the conclusion that the provisions of the Rent Act were not applicable to the appellant herein. It is against the said judgment that the present appeal by special leave has been filed.

4. We, after hearing learned counsel for the parties, are in agreement with the aforesaid decision of the High Court. The High Court on an earlier occasion, while hearing second appeal against the judgment of the lower appellate Court, had upheld the finding that the appellant herein was not entitled to the protection of the Act. Once this contention had been raised and considered and the appellant having not carried the matter any further the High Court, in our opinion, was right in invoking the principle of res-judicata and holding that the appellant cannot oppose the execution by raising a contention that he is entitled to the protection of the Act.

5. Mr. Ram Kumar, learned counsel appearing for the appellant sought to place reliance on Section 10 of the Act but that provision can be of no application in the present case in view of the concurrent finding of the courts below to the effect that the provisions of the Act, as a whole, were not applicable in the present case inasmuch as the appellant himself had denied that he was a tenant of the respondent. Be that as it may, without expressing any final opinion on this aspect, on the ground of res-judicata itself this appeal has to be dismissed. Ordered accordingly. However, there will be no order as to costs.

Appeal dismissed.