

SUPREME COURT OF INDIA

Goutam Bhavan Rep.by M.D

Vs.

Shakuntala Sahu Rep By GPA Holder

C.A.No.5516 of 2008

(B.N. Agrawal and G.S. Singhvi JJ.)

05.09.2008

ORDER

1. Leave granted.

2. Heard learned counsel for the parties.

3. The respondent No.1 filed a suit, which was registered as O.S. No.73/1996 (old No.617/1993) for eviction of respondent No.2, Ramesh Chandra Goutham. The same was decreed by II Addl. District Judge, Visakhapatnam vide judgment dated 24.9.1999 on the ground that respondent No.2 had committed default in payment of rent. During the pendency of that suit, the appellant, which is a partnership firm consisting of the wife and son of respondent No.2 filed a suit (O.S. No 1835/1997) for declaration that the firm is statutory tenant of the suit premises and for grant of perpetual injunction restraining respondent No.1 herein from forcibly evicting it. By judgment dated 3.5.2000, Principal Junior Civil Judge, Visakhapatnam dismissed the suit. The Lower Appellate Court reversed the judgment and decree passed by the trial Court and decreed the suit by declaring the firm to be the statutory tenant of respondent No.1. The Lower Appellate Court also granted permanent injunction restraining respondent No.1 from evicting the appellant. Second Appeal No.876/2003 preferred by respondent No.1 against the judgment of the Lower Appellate Court was dismissed by the High Court on 5.9.2003.

4. In the meanwhile the appellant-firm applied for and was granted leave to appeal against judgment and decree dated 24.9.1999 passed in O.S. No.73/1996. The appeal was registered as A.S. No.642/2000. During the course of hearing, attention of the High Court was drawn to judgments passed in O.S. No.1835/1997, A.S. No.128/2000 and S.A. No.876/2003 and it was submitted that the declaration granted by the Lower Appellate Court, which was confirmed by the High Court that appellant is the statutory tenant of the premises in question is binding on the parties and, therefore, the decree of eviction is liable to be set aside. The learned Single Judge referred to the judgments relied upon by the counsel for the appellant, but declared that the same are inadmissible because neither the plaintiff nor the defendant were parties to the proceedings.

5. In our opinion the reason assigned by the learned Single Judge for discarding the judgments and decrees of the Lower Appellate Court and High Court in A.S. No.128/2000 and S.A. No.876/2003 respectively is ex-facie, erroneous because it is based on a misreading of the two judgments. Undisputedly, respondent No.1 was a party to the suit filed by the appellant for declaring it to be statutory tenant of the premises in question. The trial Court dismissed the suit but the Lower Appellate Court decreed the same and declared that the appellant is the statutory tenant of the premises and granted perpetual injunction against respondent No.1. The finding recorded by the Lower Appellate Court was confirmed by the High Court. Respondent No.1 did not challenge the same by filing petition for special leave to appeal. Therefore, the finding recorded by the Lower Appellate Court that the appellant was statutory tenant of the premises in question will be deemed to have become final and the learned Single Judge was bound to consider the same while deciding the appeal preferred by the appellant against the judgment and decree dated 24.9.1999. In our view, the High Court should have allowed the appeal of the appellant-firm and set aside the decree of eviction passed in respect of the premises in question because the appellant was declared as statutory tenant and there was neither any allegation nor any evidence was produced by respondent No.1 that the appellant had defaulted in payment of rent.

6. In the result, the appeal is allowed, the judgments and decrees passed by the trial Court as well as the High Court are set aside and suit for eviction filed by respondent No.1 is dismissed.

7. Needless to say that this order shall not in any manner affect the right of respondent No.1 to file a properly constituted suit for eviction against the appellant in case grounds for eviction are made out.