

SUPREME COURT OF INDIA

Fateh Singh

Vs.

Hari Chand

C.A.No.11337/2011

(Kurian Joseph and A.M.Khanwilkar,JJ.,)

15.02.2017

JUDGMENT

Kurian Joseph,J.,

1. The appellants have challenged the judgment dated 30th October, 2009 in second appeal being RSA No.116A/1996 passed by the High Court of Delhi. The matter pertains to eviction. Though the learned (Senior Counsel has strenuously made a very persuasive attempt to canvass for the proposition that the High Court exceeded in its jurisdiction in re-considering the whole case on re-appreciation of evidence, and upsetting the findings rendered by the Court of First Appeal, we find it difficult to accept the same.

2. Perversity was the only substantial question of law framed and pressed before the High Court. There is a specific averment in para 6 of the plaint that the appellants had been evicted from the premises but were re-inducted and permitted to stay for a short while to have the marriage of the daughter performed in the premises. But thereafter, they refused to vacate and that necessitated the filing of the Suit. This specific averment is not denied in the written statement and no issue in that regard has been framed also. It is also a fact that no rent whatsoever has been collected by Sh. Chunnamul who according to the appellants is the Landlord. No doubt, in the year 2011, during the pendency of these proceedings, the appellants deposited the rent from the year 1982 to 2011 in the name of Sh. Chunnamul who expired as far back as in the year 1979. In the above background, such deposit will not take the appellants anywhere. The appellants did not examine the munshi of Chunnamul to whom they have allegedly paid the rent prior to 1982. It is shocking as to how such weighty evidence as rightly appreciated by the trial Court has been ignored by the First Appellate Court.

3. Having analysed such perversity, we are of the view that the High Court was well within its jurisdiction under Section 100 of the Code of Civil Procedure in restoring the decree of eviction passed by the trial Court.

4. Having realized the situation, Mr. Keshav Dayal, learned Senior Counsel appearing for the appellants, on humanitarian grounds requested that the appellants may be granted a period of minimum two years to vacate the premises. Mr. Nidhesh Gupta, learned Senior Counsel, appearing for the respondents submitted that this is a litigation which started in the year 1982 and the whole family of the respondents is actually getting suffocated in the small premises and, therefore, only a short time may be granted to the appellants for shifting and re-locating to other premises.

5. Having regard to the facts and circumstances of the case, we are of the view that time up to 31st December, 2018 would be reasonable in the peculiar facts of this case. Therefore, while dismissing the Civil Appeal, the appellants are granted time up to 31st December, 2018 subject to the appellants filing usual undertaking in this behalf before this Court within a period of one month stating therein that they will vacate the premises on or before 31st December, 2018. They shall also undertake that they will surrender vacant possession to the respondents herein without any other objection. The Appellants will not induct any other person in the premises and the whole premises occupied by them will be surrendered to

respondent No.1 on or before 31st December, 2018. The undertaking shall also state the names of all major members of the family residing in the premises as on today.

6. We make it clear that other than the order as above, the respondents in the peculiar facts of this case, will not make any other claim with regard to money, use and occupation charges etc. till 31st December, 2018. The appellants are free to withdraw whatever amount they have deposited before any forum.

7. The Civil Appeal is disposed of in the above terms.