

PUNJAB AND HARYANA HIGH COURT

Ravi Parkash

Vs

Chuni Lal

Ex. Second Appeal No. 258 of 1965

(P.D. Sharma, J.)

23..12.1964. 08.12.1966

JUDGMENT

P.D. Sharma, J.

1. This judgment will dispose of two Execution Second Appeals Nos. 258 and 259 of 1965 filed by Ravi Parkash and Sulekh Chand against Surjit Singh, Jagat Singh and others. A few facts relevant for their disposal may be stated here. Som Parkash and Shashi Kant owned two shops situate in Panipat. They had given one on rent to Chuni Lal and the other to Milkhi Ram. They applied separately under Section 13 of the East Punjab Urban Rent Restriction Act for ejection of these two tenants. The Rent Controller ordered ejection of Chuni Lal on 15th October, 1959, and of Milkhi Ram on 28th August, 1959, Subsequently both of them sold the two shops on 13th October, 1960, by a regular registered deed, Exhibit D. H./1, in favour of Ravi Parkash and Sulekh Chand but for reasons which are not patent on the record, no mention of these ejection orders was made therein. The two vendees, the present appellants, applied for execution of the orders, of ejection obtained by their vendors against Chuni Lal and Milkhi Ram. The numbers of these execution applications are 23 and 24 of 1962. Jagat Singh and Surjit Singh respondents caused obstructions to the delivery of possession of the two shops. The executing Court issued notices under Order 21, Rule 97 of the Code of Civil Procedure to both these obstructionist who appeared before it and stated that they had not caused any obstruction to the execution of the orders of ejection and that in fact they were in occupation of the two shops as tenants under Som Parkash and Shashi Kant. They further pleaded ignorance about the sale of the two shops in favour of Ravi Parkash and Sulekh Chand and added that even if there was any such transfer then also on this basis they could not seek execution of the orders of ejection obtained by their vendors against Milkhi Ram and Chuni Lal.

2. Ravi Parkash and Sulekh Chand, however, maintained that Jagat Singh was a subtenant under Chuni Lal and so was Surjit Singh under Milkhi Ram and that Som Parkash and Shashi Kant had transferred all their rights, interests and title in the two shops in their favour which authorised them to execute the two orders of ejection against their tenants.

3. The executing Court framed the following issue :-

Have Ravi Parkash and Sulekh Chand a right to apply for execution of the ejection order? The court found this issue against the decree-holders and dismissed both their execution applications. Ravi Parkash and Sulekh Chand felt aggrieved from the above and preferred two separate appeals in the Court of the learned Senior Subordinate Judge which were dismissed by him by his common order dated the 23rd December, 1964. It is this order which they have impugned before me.

4. The two Courts below found that Som Parkash and Shashi Kant had sold the two shops in favour of Ravi Parkash and Sulekh Chand by sale deed dated the 13th October, 1960, Exhibit D. H.1 and while doing so they laid not assign the two decrees obtained by them for ejection of their tenants Chuni Lal and Milkhi Ram from the two shops. In their view without such an assignment, the two appellants were not entitled to take advantage of the decrees obtained by their predecessors-in-title. In this connection they relied on Order 21, R. 16 of the Code of Civil Procedure which runs as :-

"Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor and the decree shall not be executed until the Court has heard their objections (if any) to its execution :

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others."

There is no doubt that the present case did not fall within the ambit of the above provisions of law. The learned counsel for the appellants contended that the appellants were competent to execute the two ejection orders under Section 146 of the Code of Civil Procedure which is in the following terms :-

"Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him."

He referred to *Satyanarayana v. Arun Naik*¹, to support his view. In this case a landlord had obtained an order of eviction against his tenant under the provisions of the Hyderabad Houses (Rent, Eviction and Lease) Control Act (XX of 1954), and a month thereafter sold his property to another. As the tenant failed to vacate the premises, the purchaser of the property filed an application for execution of the order of eviction. The Rent Controller dismissed the petition on the ground that the decree for eviction has not been transferred in favour of the purchaser, although he was a transferee of the property which was the subject-matter of the decree. On

appeal, the appellate authority held that, by virtue of Section 146, Civil Procedure Code, the purchaser can file the execution petition. In revision to the High Court, Ekbote, J. after reviewing the entire case law on the subject laid down as under :-

"A transferee of the subject-matter of the decree can continue the execution petition if it is already filed by the transferor-decree-holder or can file a fresh execution petition on the ground that he is such a transferee under Section 146, Civil Procedure Code. There is nothing in Order 21, Rule 16, Civil Procedure Code, which precludes such a transferee from carrying on the execution of the decree obtained by his transferor, the subject-matter of which was subsequently transferred."

I am in respectful agreement with the above view which finds ample support from the observations made by their Lordships of the Supreme Court in *Jugal Kishore v. Raw Cotton Co. Ltd.*², which have been quoted with advantage in the cited case. The learned Senior Subordinate Judge while dismissing the appeals relied on *Lakshmi Pillai v. Yacob Nadar*³, This case has also been discussed in Satyanarayana's case 1964-2 Andh WR 81: AIR 1965 Andhra Pradesh 81. Further, a Bench of Kerala High Court in *Chinnan Kesavan v. Gouri Amma*⁴, ruled to the contrary by laying down -

"While Order 21, Rule 16 is confined to application by a person who has obtained the interest of a decree-holder by means of an assignment in writing or by operation of law, Section 146 is couched in a much wider language so as to enable any person claiming under another to maintain an application which such other person could have made. 'Thus a person who could properly claim rights under a decree-holder, can invoke the aid of Section 146 and file an application for execution of a decree even though his position may not be that of a transferee of the rights under the decree as contemplated under Order 21, Rule 16.'"

In my opinion the two appellants were fully entitled under Section 146 of the Code of Civil Procedure to execute the orders of ejectment obtained by their vendors against Milkhi Ram and Chuni Lal. The two Courts below were thus not justified in dismissing their application on this short ground.

5. Surjit Singh and Jagat Singh respondents had also pleaded before the executing Court that they were in possession of the two shops as tenants direct under Som Parkash and Shashi Kant. The executing Court did not frame any issue covering this point in dispute between the parties and after observing that it was not necessary for it go into this question stated in the order that Surjit Singh and Jagat Singh were not in possession of the two shops as tenants under Som Parkash and Shashi Kant. The learned Senior Subordinate Judge in his impugned order rightly pointed out that the executing Court in the circumstances was not correct in holding as it did that Surjit Singh and Jagat Singh were not occupying the two shops under Som Parkash and Shashi Kant. In the circumstances the executing Court has now to determine whether Surjit Singh and Jagat Singh were occupying the two shops as tenants under Som Parkash and Shashi Kant and thus could successfully defend the orders of ejectment obtained by Som Parkash and Shashi Kant against

Chuni Lal and Milkhi Ram and for this purpose the two cases have to be remanded for fresh decision.

6. The two appeals are, therefore, allowed and the two impugned orders under appeal are vacated. The cases are remanded to the executing Courts for fresh decision as indicated above. The costs will abide the event. The parties through their counsel have been directed to appear before the executing Court for further proceedings in the matter on 4th January, 1967.

Appeals allowed.

Cases Referred.

1(1964) 2 Andh WR 81: AIR 1965 Andh Prad 81

2AIR 1955 SC 376

3(1952) 7 DLR (TC) 184: (AIR 1952 Trav. Co. 254)

4AIR 1959 Ker 180