

KANI RAM AND ANR.

v.

SMT. KAZANI AND ORS.

April 19, 1972

[K. S. HEGDE, A. N. GROVER AND G. K. MITTER, JJ.]

Delhi & Ajmer Rent Control Act, 1952, s 13.—Decree of ejectment passed after compromise between landlord and tenant—Court passing decree satisfied on facts that provisions of s. 13 are complied with—Question whether such decree is valid is a mixed question of fact and law to which principle of constructive res judicata applies.

J instituted a suit for ejectment and recovery of rent under clauses (a) and (e) of s. 13 of the Delhi & Ajmer Rent Control Act 1952 in respect of a house situate in Delhi, against the tenant. The grounds on which ejectment was sought were non-payment of rent and *bona fide* personal requirement of the landlord. A decree of ejectment only was passed on the basis of compromise. The decree holder filed an application for execution. The tenant raised objections one of which was that the decree was not based on the findings of the Court but on a compromise and was therefore a nullity. The Executing Court dismissed the objections and the order was upheld in appeal by the Senior Sub Judge. The High Court dismissed the revision petition. Thereafter the house in question was transferred by sale. A fresh application for execution was filed against the present respondents which was allowed by the Executing Court. An appeal having failed the respondents filed a revision in the High Court. A Single Judge allowed the revision application accepting the respondents plea that the decree was a nullity and rejecting the plea of the decreeholder that the objection was barred by constructive *res judicata*. The latter plea was rejected on the ground that the decision of the courts in the first set of execution proceedings on the question of validity of the decree was a pure question of law. The decree holders appealed to this Court with certificate. Allowing the appeal,

HLD : The High Court fell into an error in considering that the decisions of the Courts in the previous execution proceedings involved a pure question of law. In the judgment of the Senior Subordinate Judge given in the first set of execution proceedings the various circumstances were considered by which the learned judge came to the conclusion that the court which passed the decree for eviction was satisfied that one or more of the grounds mentioned in s. 13 of the Rent Control Act had been made out. The decision given in the first set of execution proceedings was thus not one of law only but of a mixed question of law and fact. Such a decision undoubtedly would operate as *res judicata*. In execution proceedings s. 11 of the Code of Civil Procedure does not apply in terms but the rule of constructive *res judicata* has always been applied. [256D, G-H]

In view of the above decision the question whether the decree was a nullity did not survive for consideration.

Bahadur Singh & Another v. Muni-Sabrat Dass & Another [1968] 2-S.C.R. 432, referred to.

Mathura Prasad Bajoo Jaiswal & Ors. v. Dossibai N. B. Jeejeebhoy, [1970] 3 S.C.R. 830, applied.

CIVIL APPELLATE JURISDICTION : C.A. No. 247 of 1971.

A Appeal by Special Leave from the Judgment and Order dated the 27th August, 1970 of the Delhi High Court in Civil Revision No. 554 of 1969.

O. C. Mathur and *P. C. Bhartari*, for the appellants.

B *Sardar Bahadur Saharya, Vishnu Bahadur Saharya* and *Yogindra Khushalani*, for the respondents.

The Judgment of the Court was delivered by

C **Grover, J.** This is an appeal by special leave from a judgment of the Delhi High Court.

D One Jaigopal instituted a suit for ejection and recovery of rent under clauses (a) and (e) of s. 13 of the Delhi & Ajmer Rent Control Act 1952 in respect of a house situate in Pahargunj against the tenant. The grounds on which ejection was sought were non-payment of rent and *bona fide* personal requirement of the landlord. The suit was resisted by the tenant on various grounds but ultimately on June 2, 1956 a decree for ejection was passed on the basis of a compromise. The suit with regard to the recovery of arrears of rent was dismissed. On June 6, 1959, the decree holder filed an application for execution of the decree. **E** The tenant raised various objections; one of the objections was that the decree sought to be executed was based on a compromise and not on any findings of the court with the result that it was a nullity. On September 7, 1960 the Executing Court dismissed the objection and allowed the execution application of the landlord. That order was confirmed in appeal by the Additional Senior Sub-Judge **F** but the same was dismissed by Mahajan J. on December 19, 1962.

G In March 1962, Jaigopal the decree holder sold $\frac{1}{2}$ share in the house in dispute to Kani Ram and Babu Lal the present appellants before us. The remaining $\frac{1}{2}$ share was sold by him to one Ramjilal. In the year 1963 an execution application was filed by the appellants and Ramjilal after obtaining the necessary orders of the court under Order 21, Rule 16 of the Code of Civil Procedure. In 1969 the appellants also obtained the order of the competent authority under the Slum Areas (Improvement and Clearance) Act to execute the decree for eviction. On February 9, 1968 Ramjilal sold his right, title and interest in a portion of the house in dispute to Tara Chand, one of the judgment-debtors. **H** On July 26, 1968 an application for execution was filed against the present respondents which was allowed by the Executing Court. An appeal against that order by the respondent failed. The matter

was taken in revision by the respondent to the High Court and a learned single judge allowed the revision application and directed the execution application to be dismissed.

A

There are only two points which require determination. One is whether the matters agitated in the second set of execution proceedings were barred by the applicability of constructive *res judicata*. The other is whether the original decree for ejection was valid and was not a nullity. The High Court took the view that the decisions of the courts in the first set of execution proceedings did not operate as *res judicata* as the substantial question involved was purely one of law. According to the High Court a decree for ejection obtained under the Delhi & Ajmer Rent Control Act on the basis of compromise was a nullity. Although in the previous execution proceedings which ended with the order of Mahajan J., made on December 19, 1962 it had been held that the decree was valid that decision could not bar an objection being raised by the judgment-debtors in the second set of proceedings with regard to the validity of the decree which was a pure question of law. In our judgment the High Court fell into an error in considering that the decision of the courts in the previous execution proceedings ending with the order of Mahajan J., made on December 19, 1962 involved a pure question of law. A perusal of the orders both of the Executing Court and the first appellate court shows that it was on an examination of the entire facts that the courts arrived at the conclusion that when the decree for ejection was made the Court had satisfied itself about the existence of the grounds which had been alleged in the petition filed by the landlord.

B

C

D

E

It is true that s. 13(1) of the Rent Control Act prohibited the court from passing the decree or order for recovery of possession of any premises in favour of a landlord against the tenant unless the court was satisfied that one or more of the grounds given in that provision existed; (See *Bahadur Singh & Another v. Muni Subrat Dass & Another*)⁽¹⁾. In the judgment of the Senior Subordinate Judge dated October 30, 1961 given in the first set of execution proceedings the various circumstances were considered by which the learned judge came to the conclusion that the court which passed the decree for eviction was satisfied that one or more of the grounds mentioned in s. 13 of the Rent Control Act had been made out. The decision given in the first set of execution proceedings was thus not one of law only but of a mixed question of law and fact. Such a decision undoubtedly would operate as *res judicata*. In execution proceedings s. 11 of the Code of Civil Procedure does not apply in terms but the rule of constructive *res judicata* has always been applied. Even according to the judgment

F

G

H

(1) [1969] 2 S.C.R. 432

A of this Court in *Mathura Prasad Bajoo Jaiswal & Ors. v. Dossibai N. B. Jeejeebhoy*⁽¹⁾ on which the learned judge of the High Court relied in the judgment under appeal laid down that a mixed question of law and fact determined in the earlier proceedings between the same parties could not be questioned in a subsequent proceeding between them. We have no manner of doubt for these reasons

B that the High Court was wrong in not sustaining the judgment of the Senior Sub-Judge, Delhi, dated November 14, 1969 by which the order of the Executing Court dated August 23, 1969 had been upheld. In this view of the matter the second point calls for no decision.

C In the result the appeal is allowed, the order of the High Court is set aside and that of the courts below restored. The appellants will be entitled to costs in this Court.

G.C.

Appeal allowed.

(1) [1970] 3 S.C.R. 830.