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PARASRAM HARNAND RAO

v.

SHANTI PRASAD NARINDER KUMAR JAIN & ANR.

April 10, 1980

B

[S. MURTAZA FAZAL ALI AND P. S. KAILASAM, JJ.]

Delhi Rent Control Act, Section 25 read with Order IX Rule 9 C. P. C., scope of—Whether the dismissal of the earlier suit of respondent-tenant for default of appearance under Order IX Rule 9 C. P. C. a bar for an application under section 25 of the Delhi Rent Control Act.

C

Transfer of tenancy rights by the Official Liquidator, whether voluntary and did not come under the mischief of section 14(1) (b) of the Delhi Rent Control Act.

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The appellant landlord executed a lease in respect of the disputed premises in favour of respondent 2 for three years as far back as 1-4-1942. In 1948, a suit was brought by the appellant for eviction of the tenant for non payment of rent on the ground of conversion of the user of the premises. The suit for possession was however dismissed but a decree dated 31-11-1948 for arrears of rent was passed and it was held that Laxmi Bank was the real tenant. Subsequently, the Bombay High Court ordered the Bank to be wound up and in the winding up proceedings, the High Court appointed an Official Liquidator who on 16-2-1961 sold the tenancy rights to respondent No. 1. The sale was confirmed by the High Court on the same date and as a result thereof respondent

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No. 1 took possession of the premises on 24-2-1961. On 5-4-1961, the landlord appellant filed an application under the Delhi Rent Control Act for eviction of Laxmi Bank. On 31-7-1961, a decree for eviction was passed in favour of the appellant. On 22-1-1963, respondent No. 1 filed a suit for declaration that he was a tenant of the landlord appellant. The suit was dismissed for non-prosecution on 5-5-1964 and an application to set aside the ex parte order was also dismissed and the appeal against that order also failed. Thereafter respondent No. 1 filed an application under Section 25 of the Delhi Rent Control Act for recalling the warrant of possession issued by the Court in pursuance of the decree dated 31-7-1961 in favour of the appellant. The Rent Controller allowed it on 20-12-1966. An appeal to the Rent Controller Tribunal was ordered by order dated 25-11-1968 in favour of the appellant. A second appeal filed by respondent No. 1 to the High Court was allowed in his favour and the Rent Controller's order allowing recalling of the warrant of possession was

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restored. Hence the appeal by special leave by the landlord.

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Allowing the appeal, the Court

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HELD : 1. The application of respondent No. 1 under Section 25 of the Delhi Rent Control Act is clearly barred by the principle contained in order IX Rule 9 Civil Procedure Code. It was the appellant who brought the previous suit which resulted in a decree for eviction of the tenant on 31-7-1961—a date when the 1st respondent had already taken possession of the premises by virtue of transfer made by the Official Liquidator. There is nothing to show that respondent No. 1 was a tenant within the meaning of Delhi Rent Control

Act so as to maintain an application under section 25 of the Act, when in fact he was an unlawful sub-lessee. [447A, E, F-G] **A**

Suraj Ratan Thirani and Ors. v. Azamabad Tea Co. and Ors. [1964] 6 S. C. R. 192; applied.

2. The language of section 14(b) of the Delhi Rent Control Act is wide enough not only to include any sub-lease but even an assignment or any other mode by which possession of the tenanted premises is parted. In view of the wide amplitude of s. 14 (b), it does not exclude even in involuntary sale. [448D-E] **B**

In the instant case, the official Liquidator had merely stepped into the shoes of Laxmi Bank which was the original tenant and even if the official liquidator had transferred the tenancy interest to respondent No. 1 under the order of the Court, it was on behalf of the original tenant. It was undoubtedly a voluntary sale which clearly fell within the mischief of s. 14 (1) (b) of the Delhi Rent Control Act. Assuming that the sale by the Official Liquidator was an involuntary sale, then it undoubtedly became an assignment as provided for by s. 14 (b) of Delhi Rent Control Act. [448A-C] **C**

Krishna Das Nandy v. Bidhan Chandra Roy, A.I.R. 1959 Cal. 181; Overruled. **D**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1085 of 1970.

Appeal by Special Leave from the Judgment and Order dated 17. 3. 1969 of the Delhi High Court in SAD No. 2/69. **E**

P. R. Mridul and O. P. Sharma for the Appellant.

S. K. Bisaria for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J. This appeal by special leave is directed against a judgment of the Delhi Court and arises out of an application filed by Respondent No. 1 who claimed to be the tenant of the appellant, recalling the warrant of possession issued by the Controller in pursuance of a decree dated 31-7-1961 passed against the 1st respondent. **F**

The case had a rather chequered career having passed through several phases. To begin with the landlord-appellant executed a lease in respect of the disputed premises in favour of Respondent No. 2 for three years as far back as 1.4.1942. In 1948, a suit was brought by the appellant for eviction of the tenant for non-payment of rent on the ground of conversion of the user of the premises. The suit for possession was however dismissed but a decree dated 31. 11. 1948 for arrears of rent was passed and it was held that Laxmi Bank was the real tenant. Subsequently, the Bombay High Court ordered the **G**
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A Bank to be wound up and in the winding up proceedings, the said High Court appointed an Official Liquidator who on 16. 2. 1961 sold the tenancy rights to Respondent No. 1—S. N. Jain. This sale was confirmed by the High Court on the same date and as a result thereof respondent No. 1 took possession of the premises on 24.2.1961. On 5. 4. 1961, the land-lord-appellant filed an application under the Delhi Rent Control Act for eviction of Laxmi Bank. On 31. 7. 1961, a decree for eviction was passed in favour of the landlord-appellant. On 23-1-1963, Respondent No. 1 filed a suit for a declaration that he was a tenant of the landlord-appellant. This suit was dismissed for non-prosecution on 5.5.1964 and an application to set aside the *ex-parte* decree was also dismissed and the appeal against that order also failed. Thereafter Respondent No. 1 filed an application under s. 25 of Delhi Rent Control Act (hereinafter referred to as the Act) for recalling the warrant of possession issued by the Court in pursuance of the decree dated 31. 7. 1961 in favour of the landlord.

D The present appeal arises out of these proceedings. The Rent Controller allowed the application and recalled the warrant of possession by its Order dated 20. 12. 1966. The matter was then taken up by the landlord in appeal to the Rent Control Tribunal which by its Order dated 25. 11. 1968 reversed the order of the Rent Controller and dismissed the tenant's application. A second appeal against the order of Tribunal was then filed by the tenant to the High Court which reversed the order of the Rent Control Tribunal and restored the order of the Rent Controller, hence this appeal by special leave.

F Mr. Mridul appearing for the appellant challenged before us the findings of the High Court on point nos. 1 & 3 which are formulated at page 91 of the judgment of the Delhi High Court. These points may be extracted thus :—

“(1) The application made by the appellant before the High Court under section 25 was not barred by reason of the dismissal of the appellant's suit for default of appearance under Order IX Rule 9, C.P.C.

G (3) The transfer to the appellant by the Official Liquidator of the tenancy rights being voluntary did not come within the mischief of section 14(1)(b) of the Act.

H In the first place it was argued that so far as point No. 1 is concerned, the High Court was wrong in holding that the application of Respondent No. 1 was not barred by the reason of the dismissal of the appellant's suit for setting aside the *ex-parte* decree by the principle of *Res Judicata* or Order IX Rule 9 C.P.C. It was contended that

even if the previous suit filed by respondent No. 1 for declaration of his status as a tenant was dismissed for default but as the application for setting aside the decree also failed, there was an adjudication against the then plaintiff—respondent No. 1 and therefore the present suit was clearly barred by the principles of *Res Judicata* or Order IX Rule 9. At any rate there can be no escape from the position that the application of respondent No. 1 would be clearly barred by the principle contained in Order IX Rule 9, C.P.C. In case of *Suraj Ratan Thirani & Ors. v. The Azamabad Tea Co. & Ors.*(¹) this Court held thus :

“We are not however impressed by the argument that the ban imposed by O. IX, r. 9 creates merely a personal bar or estoppel against the particular plaintiff suing on the same cause of action and leaves the matter at large for those claiming under him. Beyond the absence in O. IX, r. 9 of the words referring “to those claiming under the plaintiff” there is nothing to warrant this argument. It has neither principle, nor logic to commend it The rule would obviously have no value and the bar imposed by it would be rendered meaningless if the plaintiff whose suit was dismissed for default had only to transfer the property to another and the latter was able to agitate rights which his vendor was precluded by law from putting forward.”

In the instant case it was appellant who brought the previous suit which resulted in a decree for eviction of the tenant on 31-7-1961—a date when the 1st respondent had already taken possession of the premises by virtue of transfer made by the Official Liquidator. Thus the identity of the subject matter being substantially the same, this case clearly falls within the ambit of the ratio in the case supra. On this ground alone therefore the appellant is entitled to succeed because the High Court with due respect does not appear to have properly construed the scope of Order IX Rule 9 C.P.C. There is however nothing to show that respondent No.1 was tenant within the meaning of Rent Control Act so as to maintain an application under s. 25 of the Act when in fact he was an unlawful sub-lessee. As regards point No. 3, the High Court relying on a decision of Calcutta High Court in *Krishna Das Nandy vs. Bidhan Chandra Roy*(²) has found that as the transfer in favour of respondent No. 1 by the Official Liquidator was confirmed by the Court, the status of the tenant by respondent No. 1 was acquired by operation of law and therefore the transfer

(1) [1964] 6 S. C. R. 192.

(2) A. I. R. 1959 Cal. 181.

A was an involuntary transfer and the provisions of Rent Control Act would not be attracted. After careful perusal of Calcutta case, in the first place it appears that the section concerned has not been extracted and we are not in a position to know what was the actual language of the section of the Bengal Act. Secondly, in our opinion, the official liquidator had merely stepped into the shoes of Laxmi Bank which was the original tenant and even if the official liquidator had transferred the tenancy interest to respondent No. 1 under the orders of the Court, it was on behalf of the original tenant. It was undoubtedly a voluntary sale which clearly fell within the mischief of s.14(1)(b) of the Delhi Rent Control Act. Assuming that the sale by the official Liquidator was an involuntary sale, then it undoubtedly became an assignment as provided for by s. 14(b) of Delhi Rent Control Act. S. 14(b) runs thus :—

D “14(b)—that the tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord.”

E The language of s. 14(b) is wide enough not only to include any sub-lease but even an assignment or any other mode by which possession of the tenanted premises is parted. In view of the wide amplitude of s.14(b) we are clearly of the opinion that it does not exclude even an involuntary sale. For these reasons therefore we are unable to agree with the view taken by the High Court. The appeal is accordingly allowed, the judgment and decree of the High Court are set aside and the plaintiff's application under s. 25 of the Delhi Rent Control Act is dismissed.

F Mr. Bisaria, learned counsel appearing for the respondent submitted that as the tenant has been in the premises for a period of 19 years and is conducting business therein, he may be permitted sufficient time to make alternative arrangements. Mr. Mridul appearing for the appellant fairly conceded that he would have no objection if one year's time is allowed to the respondent provided he gives an undertaking for handing over peaceful and vacant possession at the expiry of the time. We therefore allow time to the respondent to vacate the premises on or before 15th April, 1981 on the condition that he files an undertaking within two weeks to the effect (1) that he shall hand-over vacant and peaceful possession to the landlord on or before 15th April, 1981; (2) that he shall not induct any person on the premises; (3) that he shall go on paying the compensation for wrongful use of premises equivalent to the rent.

The undertaking must be filed supported by an affidavit within two weeks from today failing which the order granting time shall stand revoked. **A**

There will be no order as to costs.

S.R.

Appeal allowed.