

SMT. KALLOO & ORS.

v.

DHAKADEVI & ORS.

February 9, 1982

[E.S. VENKATARAMIAH AND BAHARUL ISLAM, JJ.]

Code of Civil Procedure 1908 s. 47 and Or. XXI.

Landlord and Tenant—Decree for possession obtained by landlord execution against tenant—Matter compromised—Tenant to continue in portion of property and pay damages for use and occupation without default—Breach by tenant—Execution petition by landlord—Whether maintainable—Test—Whether the compromise extinguishes decrees and creates fresh lease or provides mere mode for discharge of decree.

The predecessor of the respondents filed a suit for eviction of the predecessor of the appellants from a shop and obtained a decree on March 21, 1960 for eviction. The decree-holder filed an application for the execution of the decree on March 22, 1966 and during the pendency of these proceedings, a compromise was entered into between the parties, and the Executing Court passed an order dated March 21, 1968 in terms of the compromise. The compromise provided for the judgment-debtor to give vacant possession of the remaining half of the shop to the decree-holder by December 31, 1972 and to pay damages for use and occupation by the 5th of every month to the decree-holder at Rs. 110/- per month, and that on six months damages being due the decree-holder will be entitled to have the shop vacated.

The decree-holder filed an execution petition for recovery of possession on November 25, 1975 alleging that the judgment debtor had not paid damages at the rate of Rs. 110/- per month from July 1, 1975. The judgment-debtor contested the execution proceedings contending that the terms of compromise created a fresh lease in favour of the judgment-debtor in respect of the remaining half of the shop, and that the decree was therefore not executable. The Executing Court upheld the objection holding that the compromise dated March 21, 1968 amounted to a fresh lease.

On appeal, the District Judge, set aside the order of the Executing Court, but in Second Appeal, the High Court upheld the order of the District Judge, and dismissed the appeal.

In the appeal to this Court it was contended on behalf of the appellant/judgment-debtor, that the compromise dated March 21, 1968 created a fresh lease, in favour of the judgment-debtor in respect of the undelivered half of the shop and the decree-holder's remedy was by way of a suit for recovery of possession.

A Dismissing the appeal,

B HELD : When a compromise takes place in the course of execution of a decree for eviction the compromise may extinguish the decree and create a fresh lease, or the compromise may provide a mere mode for the discharge of the decree. What actually takes place depends upon the intention of the parties to the compromise, and the intention has to be gathered from the terms of the compromise and the surrounding circumstances including the order recorded by the Court on the basis of the compromise. [205 C-D]

C In the instant case para 1 of the compromise petition and the order of the Executing Court recording the compromise disclose the intention of the parties. The judgment-debtor had already vacated "half of the shop and given its possession" and *time was granted till December 31, 1972 for vacating and delivering possession of the other half of the shop* as the judgment-debtor wanted time till then lest his business "will be ruined by vacating the shop in hurry." This shows that the intention of the parties was not to create a fresh lease in respect of the half of the shop in possession of the judgment-debtor but to help him to find out alternative accommodation and time for vacating was given till December 31, 1972. Further, the term 'damages', and not 'rents' is used in the compromise petition as well as the order of the Executing Court. The intention of the parties clearly was not to extinguish the decree for eviction but to create a mode of its full discharge. [205 E-H]

D *Konchada Ramamurthy Subudhi & Anr. v. Gopinath Naik*, [1968] 2 SCR 559, referred to.

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2612 of 1981.

Appeal by special leave from the judgment and order dated the 6th January, 1981 of the Madhya Pradesh High Court (Jabalpur Bench) in M.P. No. 87 of 1980.

F *Amlan Ghosh* for the Appellants.

Sobhagmal Jain and *S.K. Jain* for the Respondents.

The Judgment of the Court was delivered by

G BAHARUL ISLAM, J. This appeal by special leave is by the judgment-debtors. The material facts which are not in dispute may be stated thus :

H 2. The predecessor of the respondents (hereinafter referred to as 'the decree-holder') filed a suit for eviction of the predecessor of the appellants (hereinafter referred to as 'the judgment-debtor') and obtained a decree on 21.3.1960, *inter alia*, for eviction from a

shop. The decree-holder filed a petition for execution of the decree for eviction in the executing court on 3.1.1961. The petition was dismissed on 20.1.1961. A fresh petition for execution was filed on 19.1.1965. It was also dismissed on 20.3.1965. The decree-holder again filed an application for execution of the decree on 22.6.1966. During the pendency of this execution proceeding, the parties filed a compromise petition on 31.3.1968. The terms of the compromise on the interpretation of which the result of this appeal depends were as follows :

(Material portions only) :

“In the above case, a compromise has taken place between the parties as follows :

- (1) That for the present the judgment-debtor is not getting a shop. His established business will be ruined by vacating the shop in hurry. Therefore, the judgment-debtor wants time till 31.12.1972 from the decree-holder for vacating half the shop in his possession. So the judgment-debtor will vacate the shop and give possession thereof to the decree-holder by 31.12.1972. He has vacated half the shop and given its possession.
- (2) That during this period the judgment-debtor shall pay damages to the decree-holder for use of the shop @ 110/- per month.
- (3) That the damages shall be paid upto the 5th of every month. In the event of non-payment of damages for any six months, the decree-holder shall be entitled to get the shop immediately vacated, by filing execution, from the possession of the judgment-debtor, without any objection as regards limitation.
- (4) The decree-holder wants to have new shutters put up after removing the present shutters in the front portion of the shop. The judgment-debtor will not be entitled to object to this.

He will help in the putting of girders and he will vacate the portion.

If he will demur to it, the decree-holder can have the shop vacated, without any objection as regards the above limitation.

A So, the aforesaid compromise be accepted and kept on record."

B 3. It is also not in dispute that at the time of the compromise, half of the shop had been vacated and its possession delivered to the decree-holder as stated in the compromise petition. In order to appreciate the intention of the parties to the compromise, it is also necessary to refer to the order dated 21.3.1968 recorded by the execution court on the basis of the compromise. The material para of the order is para 3 and it is in the following terms :

C "The judgment-debtor to give vacant possession of the shop to the decree-holder by 31.12.72 according to the compromise and he will pay damages for use and occupation by the 5th of every month to the decree-holder according to the compromise @ Rs. 110/- per month. On six months' damages being due, the decree-holder will be entitled to have the shop vacated. The decree-holder will provide shutters in the front portion. The judgment-debtor will not object to them.

D The case is decided in terms of the compromise.

E The compromise be recorded."

F 4. On 25.11.1975, the decree-holder filed an execution petition for recovery of possession of the portion of shop in possession of the judgment-debtor, alleging that the judgment-debtor had not paid damages at the rate of Rs. 110/- per month from 1.7.1975. Notice of the execution petition was issued to the judgment-debtor who appeared and raised several objections to the execution proceedings. But we are concerned in this appeal only with one which was that in terms of the compromise, a fresh lease was created in favour of the judgment-debtor in respect of the remaining half of the shop. It was therefore submitted that the decree was not executable. The Executing Court upheld the objection holding that the compromise dated 21.3.1968 amounted to a fresh lease. An appeal was taken to the Court of the District Judge who set aside the order of the Executing Court. In a second appeal, the High Court upheld the order of the District Judge, and dismissed the appeal. It is against this order of the High Court is this appeal by special leave.

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5. The only point urged before us by Shri Amlan Ghosh, learned counsel for the judgment-debtor was that the compromise dated 21.3.1968 created a fresh lease in favour of the judgment-debtor in respect of the undelivered half of the shop, and the decree-holder's remedy was by a suit for recovery of its possession.

6. When a compromise petition is filed in an execution proceeding, and a contention is raised by the judgment-debtor on a subsequent execution being started by the decree-holder that the compromise has given rise to a fresh contract between the parties and that the decree sought to be executed is not executable, what is to be seen is whether the decree has been extinguished as a result of the compromise and a fresh contract has emerged. When a compromise takes place in the course of execution of a decree—for eviction, the compromise may extinguish the decree and create a fresh lease, or the compromise may provide a mere mode for the discharge of the decree. What actually takes place depends on the intention of the parties to the compromise. And the intention has to be gathered from the terms of the compromise and the surrounding circumstances including the order recorded by the Court on the basis of the compromise.

7. In the instant case, paragraph 1 of the compromise petition quoted above and the order of the Executing Court recording the compromise are important and disclose the intention of the parties. Paragraph 1 of the compromise petition shows that the judgment-debtor had already "vacated half of the shop and given its possession" and *time was granted till 31.12.1972 for vacating and delivering possession of the other half of the shop* as the judgment-debtor wanted time till then lest his business "will be ruined by vacating the shop in hurry". This clearly shows that the intention of the parties was not to create a fresh lease in respect of the half of the shop in possession of the judgment-debtor, but to help the judgment-debtor find out, *not in a hurry*; alternative accommodation for his shop so that his established business was not 'ruined' and time for vacating the half of the room was given till 31.12.1972. And this was also how the compromise petition was understood by the Executing Court when it recorded in para 3 of its order: "The judgment-debtor to give vacant possession of the shop to the decree-holder by 31.12.1972 according to the compromise.....". The intention of the parties clearly was not to extinguish the decree for eviction but to create a mode of its full discharge.

A 8. The above interpretation gets support from the use of the term 'damages', and not 'rents', in the compromise petition as well as the order of the Executing Court. The view we have taken gets support also from a decision of this Court reported in [1968] 2 SCR 559.⁽¹⁾ In that case, the appellant filed a suit for eviction of the respondent from the appellant's house. The suit was dismissed by the trial court. In appeal compromise was entered into between the parties and the decree was passed in terms of the compromise. The compromise provided for the respondent's continuation of possession of the house for five years, but it enabled the appellant to execute the decree by evicting the respondent, if the latter failed to pay rent for three consecutive months. When the appellant sought to evict the respondent, the latter claimed protection from eviction on the ground that the compromise decree created a lease. It was held by this Court that the facts that the appellant had filed a suit for eviction of the respondent and the compromise decree enabled him to execute the decree by evicting the respondent, showed that the intention of the parties, which was the decisive test, was not to enter into a relationship of landlord and tenant.

D 9- This appeal has no merit and is dismissed with costs.

E N.V.K.

Appeal dismissed.

(1) *Kanchada Ramamurthy Subudhi & Ors. v. Gopinath Naik.*