

(2004) 12 SC CK 0035

In the Supreme Court Of India

Case No : Civil Appeal No. 8088 of 2004 (Arising out of Special Leave Petition (Civil) No. 7763 of 2004)

Sumitra Devi Anand (Dead) by LRs.

APPELLANT

Vs

Shanti Devi (Dead) by LRs.

RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 227

Citation : AIR 2005 SC 545 : (2005) 5 ALLMR 177 : (2005) 1 ARC 460 : (2005) 1 AWC 1 Supp : (2005) 1 BLJR 127 : (2004) 115 DLT 554 : (2005) 1 JCR 126 : (2005) 1 OLR 244 : (2005) 140 PLR 42 : (2004) 10 SCALE 422 : (2005) 1 SCC 599

Hon'ble Judges : R. C. Lahoti, C.J.;G. P. Mathur, J

Bench : Division Bench

Advocate : Rajiv Dutta, R. Nedumaran, Sushma, Namrata Chopra and Beno Bencigar, for the Appellant; Mukul Rohtagi and Sandeep Sethi, Jyoti Singh, Viraj Datar, Vineet Jhanji and Kavita Wadia, for the Respondent

Final Decision : Disposed Of

Judgement

G.P. Mathur, J.—Leave granted.

2. This appeal, by special leave, has been preferred against the order dated 26.3.2004 of the Delhi Court, by which the appeal filed by the appellants against the order dated 22.11.2003 of the Additional District Judge, was dismissed and the order refusing to grant an injunction in their favour under Order XXXIX Rules 1 and 2 CPC was affirmed.

3. The dispute relates to property bearing No.XVI/442, Sethi Building (originally known as Hafiz Building), Faiz Road, Karol Bagh, New Delhi. After partition of the country, Wazir Chand Anand (for short 'Anand') and B.S. Sethi (for short 'Sethi') were tenants of the custodian in the said building. The property was put up for auction on 9.11.1955 and a sale certificate was finally issued in favour of Sethi

on 20.7.1961 certifying that he had given the highest bid for Rs.70,250/- in a public auction and had been declared as purchaser of the property in full. Thereafter, a letter dated 1.9.1961 was issued by the custodian asking the tenants including Anand to attorn in favour of the auction purchaser, namely, Sethi. Sethi filed eviction petition against Anand on 10.2.1986 on the ground of his bona fide requirement for his residence, in which notice was issued returnable on 20.3.1986. However, much before the said date, Anand appeared before the Rent Controller and filed an application for leave to defend in the eviction petition. He also filed an application for recording a compromise. The Rent Controller recorded statement of the parties and passed a consent order for eviction of Anand and he was given time upto 1.3.1988 to vacate the premises. An undertaking of Anand was also recorded to the same effect and the case was disposed of.

4. Sethi and Anand were co-brothers as their wives were real sisters. Sethi was an advocate of some standing in Delhi and he passed away in April, 1988. Anand also passed away on 21.12.1999. The appellants are the legal representatives of Anand, while the respondents are legal representatives of Sethi.

5. On 28.2.2000, when the period of limitation for executing the eviction decree was about to expire, the respondents filed an execution petition against the appellants. The appellants filed objections against the same taking various pleas including the plea that the decree had been obtained by fraud but the same was dismissed by the Additional Rent Controller on 18.3.2002 and the appeal against the said order was also dismissed on 3.4.2002. The appellants then preferred a writ petition under Article 227 of the Constitution before Delhi High Court. During the course of hearing, the parties agreed that the petition be disposed of with liberty to the petitioners (appellants) to file a suit for challenging the eviction decree on the ground of fraud. The writ petition was accordingly disposed of on 9.1.2002 and the operative portion of the order reads as under :

"I am also of the view that since the petitioner has objected to the execution of the decree on the ground of fraud, he may have a right to file a suit to challenge the decree on such ground. Without, therefore, going into the question as to whether the decree could be challenged on the ground of fraud before the Executing Court itself, I dispose of this petition with liberty to the petitioner to challenge the decree on the ground of fraud by filing a regular civil suit. For a period of six weeks from today, the impugned order shall not be executed."

6. The appellants then filed Suit No.1833/02 in Delhi High Court for declaration that the decree of eviction passed on 19.2.1986 in Eviction Case No.36 of 1986 by Shri R.K. Sharma, Additional Rent Controller, Delhi titled as 'Shri B.S. Sethi v. Shri Wazir Chand Anand' is a nullity having been obtained by playing fraud upon the said Court and is not binding upon the plaintiffs and further that they are co-owners of the property in dispute. They also sought a decree for permanent injunction restraining the defendants from dispossessing them from the said property. In view of increase in the pecuniary jurisdiction of the District Court,

the suit was transferred and registered as Suit No.138 of 2003 in the Court of the Additional District Judge, Delhi. The plaintiffs also moved an application for injunction under Order XXXIX Rules 1 and 2 CPC for restraining the defendants from dispossessing them from the property in dispute. The Additional District Judge dismissed the injunction application by his order dated 22.11.2003 and the appeal preferred by the plaintiffs against the said order was also dismissed by the High Court on 26.3.2004.

7. We have heard Shri Rajiv Dutta, Senior Advocate for plaintiff- appellants and Shri Mukul Rohtagi, Senior Advocate for the defendant- respondents. The learned counsel for the appellants has submitted that when the property was put up for auction on 9.11.1955, the highest bid made was that of Sethi and Anand, as his associate, and an amount of Rs.4,991.44 which was due to Anand as compensation for assets left by him in Pakistan, was utilized to make up the sale consideration and thus he was a co-owner of the property. Learned counsel has further submitted that Anand had never appeared before the Rent Controller as the notice was not served upon him nor he had filed any application for recording a compromise. According to the appellants, Anand never appeared before the Court and he neither filed any application for recording a compromise nor gave any undertaking to vacate the premises by 1.3.1988. Sethi had set up an imposter and by playing fraud upon the Court obtained an order of eviction against Anand. Learned counsel has further submitted that Anand being a co-owner of the property, there was no occasion for him to enter into a compromise whereunder he became liable to vacate the building. It is also submitted that the fact that an eviction decree passed in 1986 was sought to be executed in the year 2000, itself shows that the whole thing was fraudulent.

8. Learned counsel for the respondents has submitted that Anand had not paid any amount as his claim for compensation was rejected by the Settlement Officer (Judicial) on 24.4.1959 and finally the sale certificate was issued in favour of Sethi alone on 20.7.1961 and the tenants were asked to attorn in his favour. The eviction decree was not executed as the parties were closely related being co-brothers and they were having very cordial relations. Learned counsel has further submitted that Shri M.S. Sethi, Advocate, had filed an affidavit dated 18.11.2002 stating that Anand had engaged him as his lawyer and he had filed his vakalatnama on his behalf. Anand had appeared in Court and had made a statement on oath supporting the compromise petition. Shri M.L. Sharma, Advocate, has also filed an affidavit dated 18.11.2002 on similar lines stating that he had been engaged by Anand and on his instructions a compromise petition was drafted by him which had been signed by Anand. Learned counsel has submitted that apart from the aforesaid affidavits, there is other voluminous documentary evidence to show that Anand was always treated as tenant of the building and not as co-owner.

9. We have given our anxious consideration to the submissions made by the learned counsel for the parties. It is not in dispute that in the eviction petition

filed by Sethi against Anand, notice was issued returnable on 20.3.1986, but even before the said date Anand appeared on 19.2.1986 and an application for leave to defend was filed by him and thereafter a compromise petition was filed on the basis of which eviction petition was allowed and time was given to Anand to vacate the premises on or before 1.3.1988. The defendant-respondents did not put the decree into execution, but waited for full 12 years and filed the execution petition only on the last date i.e. on 28.2.2000. This shows that the eviction petition was filed only for the purpose of saving limitation and at least till February, 2000, they had no pressing need of the building in question. It certainly looks little strange that though Anand filed an application for leave to defend the eviction petition, but almost simultaneously he filed a compromise petition wherein a consent order was passed giving him time to vacate the premises on or before 1.3.1988. The specific case of the plaintiffs is that Anand never appeared before the Rent Controller and the whole thing was managed by Sethi by setting up an impostor. Having regard to the facts and circumstances of the case, we consider it appropriate in the interest of justice that the suit filed by the appellants itself may be decided at a very early date and their possession may be protected during the pendency of the suit.

10. The appeal is accordingly allowed and the orders dated 22.11.2003 passed by the learned Additional District Judge and also the order dated 26.3.2004 passed by the High Court are set aside. The learned Additional District Judge shall take up the suit on priority basis and decide the same as expeditiously as possible, preferably within one year from the date of communication of this order to him. The appellants shall not be dispossessed from the premises in their occupation during the pendency of the suit. It is further directed that the parties shall make all endeavours for an early decision of the suit and shall not take adjournments unless absolutely necessary. If the plaintiffs cause obstruction in the progress of the suit or adopt delaying tactics, it will be open to the respondents to apply to this Court for vacating the injunction order.

11. It is made clear that any observation made in this order is only for the purpose of deciding the appeal and shall not be construed as an expression of opinion regarding the merits of the claim of the parties.