

(1998) 09 AHC CK 0125

In the Allahabad High Court

Case No : Special Appeal No's. 425 and 434 of 1998

Sunder Das Daulat Ram and Sons (P.) Ltd. and another	APPELLANT
Vs	
District Magistrate, Bareilly and others	RESPONDENT

Date of Decision : 24-09-1998

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 9
Civil Procedure Code, 1908 (CPC) — Section 141, 144
Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 29A

Citation : (1999) 1 AWC 598

Hon'ble Judges : Sudhir Narain, J;B.K. Roy, J

Bench : Division Bench

Advocate : H.P. Mishra, for the Appellant;

Final Decision : Disposed Of

Judgement

B.K. Roy and Sudhir Narain, JJ.—These two appeals are being disposed of by this command Judgment as they arise out of an order dated 29.5.1998 passed by a learned single Judge allowing Misc. Application No. 27690 of 1997 filed by Suresh Kumar Vadav, respondent No. 5 of Civil Misc. Writ Petition No. 5831 of 1995, M/s. Sundar Das Daulat Ram and Sons (P.) Ltd. and another v. District Magistrate, Bareilly and others, for restitution of the property of Imperial Cinema building situate at College Road, Bareilly. The reference in these appeals as to the appellant and the respondents shall be with reference to Special Appeal No. 425 of 1998.

2. The facts :

The facts giving rise to these appeals are that Waqf Alal Aulad, respondent No. 3. is owner of the land. Smt. Irshad Jahan Begum, (respondent No. 4) acting as Mutwalli, executed an agreement to lease of the land in question on 20th May, 1950 in favour of Sri Om Prakash Gupta for the purpose of constructing a cinema

building and for running cinema theatre. The lease deed provided that the lessee can also make constructions other than cinema building like shops, etc. He was the Managing Director of petitioner No. 1. Pursuant to the lease deed, a building known as Imperial Cinema was constructed. The lease was for a period of 45 years. Clause (2) of the lease deed provided that the period of lease can be extended for a further period of 15 years. Appellant No. 2. M/s. Imperial Theatre, a sister concern and a registered partnership firm, spent amount in furnishing the cinema house and setting up the plant, machinery, generator, cooling plant, etc. and started running the cinema in the name and style of "Imperial Theatre". Suresh Kumar Yadav, respondent No. 5, was appointed its Manager. Smt. Irshad Begum who had executed the lease deed as Mutiualfi died on 4.6.1993 and thereafter a dispute arose regarding Mutwalliship. Smt. Ishrat Jahan Begum claimed herself as Mutwalli. One Mst. Shaukat Jahan Begum also claimed as Mutwalli. A suit was filed in this respect in the civil court.

2.1. The appellants filed Civil Misc. Writ Petition No. 5831 of 1995 alleging that their Manager respondent No. 5, colluded with some local Mafias and Smt. Ishrat Jahan Begum, who was claiming as Mutwalli and in the mid night of 31st December, 1994 and 1st January, 1995 entered into the premises in dispute with large number of local gundas and muscleman and took its forcible possession. It was prayed that a writ of mandamus be issued commanding respondent Nos. 1 and 2 to force respondent Nos. 3, 4 and 5 to restore back the possession of the premises in dispute to the petitioner-appellants.

2.2. The Court passed the following interim order on 7.3.1995 :

"In this petition, the allegation is that the petitioners were forcibly dispossessed by the respondents through local Mafia. This allegation is serious because no body can be dispossessed except by following the procedure of law. Hence on the facts and circumstances, i Issue an interim mandamus to the D. M.. Bareilly and S. S. P.. Bareilly to look into the matter and if the allegations of the petitioners that they were forcibly and illegally dispossessed, are correct, they should restore possession to the petitioners forthwith or show cause within two weeks."

2.3. Pursuant to the aforesaid order of this Court, respondent Nos. 1 and 2 directed the Sub-Divisional Magistrate, Sadar Bareilly and Additional Superintendent of Police, Bareilly to Inquire into the matter and submit their reports. These officers, to whom the inquiry was entrusted, took statements of Suresh Kumar Yadav, (respondent No. 5) Smt. Ishrat Jahan Begum, (respondent No. 4) Smt. Shaukat Jahan Begum who was contesting the claim for Mutwalliship and B. N. Gupta on behalf of the appellants. They submitted a report dated 20.3.1995 stating that possession was taken forcibly from the appellants but it was in collusion with respondent No. 5, who was working as Manager on behalf of the appellants and running the cinema on their behalf. An affidavit was also filed by the District Magistrate, Bareilly and Mohd. Mubeen Khan annexing a copy of the report. The learned single Judge after considering the report confirmed the order dated 7.3.1995 vide his order dated 27.11.1995. The order dated

27.11.1995 reads as under :

"Heard Shri R. P. Goyal and Shri S. K. Garg, learned counsel for the petitioner and Shri N. N. Singh. learned counsel for the respondent Nos. 3, 4 and 5 and Shri Vineet Saran for Shri A. K. Vishnoi. the then District Magistrate and Sri Gurbachan Lal the then Senior Superintendent of Police.

In view of the affidavits of District Magistrate and the Senior Superintendent of Police, it is evident that the respondent Nos. 4 and 5 had taken forcible possession of the premises in question instead of taking legal proceedings. Hence this forcible possession is clearly illegal and I confirm the interim mandamus dated 7.3.1995 and direct the respondent Nos. 4 and 5 to hand over possession back to the petitioner within two weeks from today. The respondent Nos. 1 and 2 will ensure that this order is complied with. However, it is open to the respondent Nos. 4 and 5 to take such legal proceedings such as civil suit or other proceedings as they may be advised."

2.4. The District Magistrate, in compliance of the order dated 27th November, 1995. issued directions to the police authorities that respondent No. 5. respondent No. 4 and representative of respondent No. 3 if failed to hand over possession, it may be got handed over to the petitioner-appellants in presence of the Magistrate. The police handed over possession to the appellants on 7th December. 1995.

2.5. Respondent Nos. 3, 4 and 5 filed Special Appeal No. 954 of 1995 against the order passed by the learned single Judge dated 27.11.1995. The Court passed order on 8th December. 1995 to maintain status quo till 11th December. 1995. This order was extended from time to time. The Court on 11.12.1995 passed an order that the Special Appeal shall be decided along with Civil Misc. Writ Petition No. 15181 of 1995. The Division Bench held that no person can forcibly dispossess any person from his property. The Court observed as follows :

"But dispossessing a person from his property otherwise than in due course of law is different from grabbing the property by terrorising the person in possession. To capture the property forcibly by creating terror by applying brute force is not a simple case of dispossessing a person from property. In a country governed by rule of law no person can be deprived of his life, liberty and property by third degree methods, such as terrorising or manhandling the person concerned. In such a case not only the person who has been dispossessed of his property but the society itself is taken to ransom by brute force. Such an act creates terror in the minds of the people and has the effect of shaking the social fabrics of the society. These acts also hit and damage the authority of the Government with the result that the public order, peace and tranquillity of the society are disturbed. In such cases it is the duty of the Government to come to the rescue of the persons who are threatened or have been dispossessed from their property by brazen act of lawlessness."

The Division Bench, however, considering the report submitted on behalf of the

District Magistrate, vide order dated 13.3.1995 held that its possession was given to the owner by Sri Suresh Kumar Yadav, Manager of the appellants ; the possession was handed over willingly to the owner by the employee of the appellants, who was admittedly working as a Manager and that if he had handed over possession and acted beyond his authority given to him by his employer, it cannot be said to be a case" of property grabbing and passed the following operative order :

"For the reasons given above, Special Appeal is allowed. The impugned order dated 27.11.1995 passed by the learned single Judge is set aside. The petition filed by the tenants is dismissed. The tenants will have liberty to approach civil court for the appropriate relief, if so advised. In view of the facts and circumstances of the case, there shall be no order as to costs.

March 13. 1995

Sd/-R. A. Sharma, J.

Sd/-B, S. Chauhan, J."

2.6. Respondent No. 5 had not filed any counter-affidavit in the writ petition. He had also not filed any special appeal against the order of the learned single Judge dated 27.11.1995.

2.7. The appellants came to know that respondent No. 5 got executed a registered lease deed in favour of Smt. Neelam. his wife and Smt. Shakuntala, his mother-in-law jointly regarding 2259.05 sq. m. of lands by Smt. Irshad Jahan Begum on 12.12.1994 in respect of the land on which Cinema building and residential house had been constructed by the appellants. The appellants filed Suit No. 144 of 1996 in the Court of Civil Judge. Senior Division on 19.3.1996 for permanent injunction restraining the defendants from interfering with their possession over the land and building in question and for further a declaration that lease deed dated 12.12.1994 is null and void and illegal. They also filed an application for grant of Interim Injunction. The Court passed an injunction order on 19.3.1996 restraining the defendants from dispossessing the plaintiff-appellants by force save and except in accordance with law. Notices were issued to defendants.

2.8. Suit No. 15 of 1996 was filed by Allah Taala through its beneficiary Iqbal Ahmad in the Court of Civil Judge (Senior Division). Bareilly for a declaration that the lease deed dated 12.12.1994 is illegal and void. Respondent No. 5 and his wife Smt. Neelam and mother-in-law Smt. Shakuntala are all defendant in both the suits.

2.9. Respondent No 5 filed an application u/s 144 of the CPC for restoration of possession on 17.4.1997 in Civil Misc. Writ Petition No. 5831 of 1995 on the allegation that possession was taken on 7.12.1995 from him pursuant to the order dated 27th November, 1995 passed by this Court and after the said order having been set aside, he is entitled for restoration of possession. On behalf of

the appellant as well as respondent No. 4, counter-affidavits were filed asserting, inter alia that possession was not taken from him ; and that he was only Manager of the appellants and was not entitled to restoration of possession over the property in dispute. The learned single Judge allowed this application by the impugned order dated 29.5.1998 and directed for restoration of possession. Following operative part of the order was passed :

"Accordingly the application is allowed. The opposite parties 1 to 4 are directed to restore the position vis-a-vis the property in question, as it obtained Immediately preceding 7.12.1994, i.e.. restore the possession of the property to the party dispossessed by the police force on 7.12.1994."

2.10. Against this order Special Appeal No. 425 of 1998 has been filed by M/s. Sundar Das Daulat Ram and Sons (P.) Ltd. and M/s. Imperial Theatre and Special Appeal No. 435 of 1998 has been filed by Waqf Alal Aulad and Mst. Ishrat Jahan Begum.

3. The Submissions, Questions involved and our Findings :

We have heard Shri S. C. Budhwar, Senior Advocate and Sri H. N. Singh, learned counsel for the appellants and Sri R. N. Singh. learned counsel appearing on behalf of the contesting respondents at length."

3.1 The first question is whether respondent No. 5 was in possession on 7th December. 1995. the date when the possession was delivered to the appellants? it must be considered in this context as to how the appellants were dispossessed and by whom. Pursuant to the order of this Court dated 7th March, 1995 an inquiry was conducted by the District Magistrate through Assistant Police Superintendent and Divisional Magistrate Sadar. Bareilly. They recorded statements of respondent No. 5 Suresh Kumar Yadav. He stated that he delivered possession to Smt. Ishrat Jahan Begum on expiry of term of the lease, which was expiring on 31st December. 1994. that Smt. Ishrat Jahan Begum came at about 12 in the night with her relatives and asked for possession : and that she put her locks in the property in dispute. Smt. Ishrat Jahan Begum made statements that she went to the cinema hall at 12 in the night with her relatives and asked Suresh Kumar Yadav to deliver possession as the period of agreement expired on 31.12.1994 ; that there was no application for extension of the period of lease and she is obtaining possession pursuant to the Will executed by her mother in the year 1986 ; and that the Manager delivered the possession. The conclusion of the report was that respondent No. 5 had delivered possession to Smt. Ishrat Jahan Begum. It was on the basis of this report that the Division Bench, while disposing of the appeal and the writ petition, held that the possession was not taken from the appellants by terrorising them : it was his Manager who delivered its possession to the appellants ; Respondent No. 5 in the application u/s 144. C.P.C. made averment that he was in fact in possession when the possession was taken by the police on 7.12.1995 the petitioner having himself made a statement before the Assistant Superintendent of Police and the Sub-Divisional Magistrate

that he had delivered the possession to respondent No. 4, cannot urge that he remained in possession over the property in dispute ; he never filed any counter-affidavit in the writ petition nor had he filed any Special Appeal challenging the version of the appellants in the writ petition or the contents of the report submitted on behalf of the District Magistrate in the writ petition.

3.2. Learned counsel for the respondent referred to the memo of possession filed as Annexure-2 to the application filed u/s 144, C.P.C. This memo of possession recites that pursuant to the order dated 27.11.1995 passed by the Court, possession of Imperial Cinema and the residence of Manager Suresh Yadav were delivered to Shri B. N. Gupta. Managing Director of M/s. Sundar Das Daulat Ram and Sons. Learned counsel for the respondents tried to translate the Hindi word "Par" as "from". This contention cannot be accepted relating to preceding circumstances that the possession was delivered by respondent No. 5 to respondent No. 4. It is further contended that in the writ petition the petitioner-appellants had prayed for delivery of possession from respondent Nos. 3, 4 and 5. This prayer was made on the basis of the averments made in paragraph 12 of the writ petition, which reads as under :

"That in the mid night of 31st December. 1994 and 1st January. 1995 the respondent No. 4 in collusion with respondent No. 5 and the local Mafias entered into the premises in dispute with large number of local gundas and musclemen and to justify the Illegal action a letter had been given by respondent No. 4 to respondent No. 5 a true copy whereof is being filed herewith and is marked as Annexure-3."

3.3. Learned counsel for respondent No. 5 invited our attention to paragraphs 7. 18 and 20 of the plaint of Suit No. 144 of 1996 filed by the appellants. These paragraphs only refer to the proceedings pursuant to the writ petition. Paragraph 12 of the plaint categorically states that in mid night of "31.12.1994 and 1.1.1995 defendant No. 2 in collusion with defendant No. 3 and local Mafias consisting of over 40-50 masked persons, fully armed, by terrorising took possession. From this paragraph, it is clear that defendant No. 2 had taken possession in collusion with defendant No. 3, namely. Suresh Kumar Yadav. Learned counsel for the respondents has further referred to the letter alleged to have been written by Mst. Ishrat Jahan Begum, (respondent No. 4) to the District Magistrate on 31.5.1996 and the rent receipts filed as Annexures-8 and 9 to the counter-affidavit in Special Appeal No. 425 of 1998. She had made statement before the Assistant Superintendent that possession was taken by her from Suresh Kumar Yadav. These documents are subject to scrutiny in the subsequent suit which has been filed by the appellants, Smt. Ishrat Jahan Begum has filed counter-affidavit in Misc. Application No. 27690 of 1997 in paragraph 7 of which she has stated as follows :

"However; admittedly, the possession was with the answering respondent and not with respondent No. 5 applicant. In this view of the matter. respondent No. 5 has no locus standi to claim delivery of possession in his favour."

It was clear that respondent No. 5 had colluded with respondent No. 4 and delivered possession to her and, therefore, possession was to be restored to the appellants, as they were dispossessed on 31.12.1994/ 1.1.1995.

3.4. The second contention of learned counsel for the applicant-contesting respondent No. 5 is that after 31st December, 1994, the rights of the appellants had ceased as the period of lease had expired and after the said date, respondent No. 4 had taken the possession and after taking the possession, it was given to his wife and mother-in-law pursuant to the lease deed dated 12.12.1994. This case, however, was never set up by respondent No. 5 by filing a counter-affidavit in the writ petition. He also never preferred any Special Appeal against the order of the learned single Judge dated 27.11.1995. Only respondent Nos. 3 and 4 had filed Special Appeal. He was admittedly a Manager appointed for running the Cinema. The lease deed is alleged to have been executed in favour of his wife and mother-in-law on 12.12.1994 few days before 31st December, 1994. The possession of respondent No. 5 was in the capacity of an agent of the appellants. He has not shown that there was any authority to deliver possession to respondent No. 4. Respondent No. 5 could not deliver possession to his wife and mother-in-law pursuant to the agreement of lease alleged to have been executed by respondent No. 4 in their favour. Respondent No. 4 has filed counter-affidavit asserting that she never delivered possession. In paragraph 8 of the counter-affidavit dated 7.9.1997 filed by Ishrat Jahan Begum in Application No. 27690 of 1997, she has stated that she has not given authorisation of delivery of possession in favour of respondent No. 5, his wife and mother-in-law. Smt. Neelam, respondent No. 6 and Smt. Shakuntala Devi, respondent No. 7 in whose favour the lease deed dated 12.12.1994 is alleged to have been executed, did not file any application for restitution nor had respondent No. 5 filed any application asserting that he having power of attorney is filing the application on their behalf. In paragraph 7 of the affidavit filed in support of the application, it was stated that his possession was through his wife and mother-in-law in whose favour the lease deed was made. The title of the application did not indicate that he was filing this application on their behalf. The person who was appointed to manage the Cinema house cannot pass on possession to other persons alleging that he is in possession on their behalf instead of handing over possession to the person who had inducted him in possession as his agent.

3.5. There is a serious dispute regarding the validity of the lease deed dated 12.12.1994 alleged to have been executed in favour of Smt. Neelam and Smt. Shakuntala Devi. The assertion of the appellants is that this lease was executed for a period of 45 years with effect from 1.1.1950 but clause (2) of the agreement of the lease provided that it can be extended for a further period of 15 years. Further assertion of the appellants is that before the expiry of this period, the term of the lease was extended and rent was accepted for the period up to March, 1995 and Respondent No. 4 has further extended the period of lease vide letter dated 20.11.1997. Sri B. N. Gupta has filed a supplementary counter-affidavit in Writ Petition No. 5831 of 1995 enclosing a copy of the letter

written by respondent No. 4 extending the term of the lease till 31.12.2009 and the letter written by her to the District Magistrate informing about the extension of the lease deed. These letters have been annexed as Annexures-S.A. 1 and S.A. 2 to the supplementary affidavit. The appellants have filed Suit No. 144 of 1996 and in the said suit, one of the reliefs claimed is that the lease deed dated 12.12.1994 executed by Smt. Ishrat Jahan Begum be declared as null and void.

3.6. The contention of learned counsel for the respondents is that the lease deed, which was executed in favour of the appellants, was unregistered document and that did not create any right. The appellants' contention is that even if the lease deed was unregistered, they continued to be tenant and as they had raised the constructions with the permission of the landlord, they are protected from eviction u/s 29A of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972. It is, however, not necessary to go into the question of rights and title of the parties regarding the tenancy. It is a well-settled law that a tenant cannot be evicted by force. In Special Appeal No. 583 of 1995. the Division Bench, relying upon Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao, has held that the tenants have a right to continue in the property leased till they are evicted in accordance with law. The appellants were admittedly not evicted through the process of the Court.

3.7. There is another aspect in regard to the lease deed dated 12.12.1994. The appellants had taken the lease in respect of the land. Appellant No. 1 had constructed the Cinema house and appellant No. 2 installed the plant and machinery for running the Cinema. The lease deed pertains to the land. The constructions have yet not been demolished or removed. Respondent No. 5 cannot retain the possession of the Cinema building and other constructions raised on the land pursuant to the lease deed dated 12.12.1994. Clause (5) of the agreement provided that after expiry of the term of the lease, the lessee shall remove the constructions or if the lessor agrees, he can purchase such constructions. In case the constructions are not removed, a suit can be filed for possession over the land and it will be open to the lessee to remove the constructions and unless possession is taken, after removal of the constructions, the subsequent lessee cannot take possession of the constructions.

3.8. The doctrine of restitution is based on equitable principle. In AIR 1941 128 (Privy Council) the appellants therein applied for restitution on the ground that they had been dispossessed on account of order of the Court, and thus they should be restored possession. The -Privy Council found that the respondent-company had a valid lease and the forfeiture of its lease by the Government being invalid, respondent-company was entitled to remain in possession and the appellants-company had no right to obtain lease of such land and rejected the application for restitution filed by it recording following observations :

There is in existence a valid lease to the respondent company : and the lessors could grant to the appellants no rights inconsistent with it. In other words, the respondents are lawfully in possession of the premises, and it cannot be

necessary for the ends of justice to oust them and put into possession the appellants who. when In, would have no right to retain possession."

In Lal Bhagwant Singh Vs. Rai Sahib Lala Sri Kishen Das, , wherein the appellant claimed restitution, it was held that he having defaulted in payment of the installments under the decree was not entitled for restitution as the order of restitution in the circumstances of the case would be contrary to the principles of the doctrine of restitution which is that on the reversal of a judgment, the law raises an obligation on the party to the record who received the benefit of the erroneous judgment to make restitution to the other party for what he had lost and that it is the duty of the Court to enforce that obligation unless it is shown that restitution would be clearly contrary to the Interest of justice.

In Ramji Seth v. Smt. Zohra Kaimi. 1983 AWC 673 , it was held that it is to be determined by the Court granting restitution that the party. who had given application, is entitled to the benefit of the restitution. A person; who is a mere trespasser, is not entitled to restitution of possession. In Mansa Tewari and Others Vs. Subh Narain and Others, , where the suit in appeal was abated but after such abatement, an application was filed for refund of the amount deposited by the applicants during the pendency of the suit, it was held that as the matter was pending before the consolidation authorities, the amount should not be refunded to the applicants u/s 144. C.P.C.

Section 144, C.P.C. Is per se not applicable to writ petitions under Article 226 of the Constitution in view of the Explanation attached to Section 141, C.P.C. The doctrine of restitution, however, can be applied in appropriate cases following the principles laid down u/s 144, C.P.C. The Court has an inherent power to place a person in possession which he would have been entitled to prior to the passing of the order by the Court by which he has been deprived of any right which was existing in his favour. The Court acts "Ex debito justitiae". This has to be examined in each case as to what right the applicant had before he was dispossessed from the property in question.

3.9. In the present case, Suresh Kumar Yadav-respondent No. 5 was appointed as Manager to run the Imperial Cinema. He had not denied this position. He was in fiduciary relation towards the appellants. His position was one Involving confidence and the discharge of duties towards his employer. He was in possession of the Cinema building in the capacity of their agent. The duty of fidelity imposes on employee not only skillful performance of the work entrusted to him but also negative duty of refraining from deception and from entering into relations giving him an interest inconsistent with that of the employer. He was admittedly in possession on 31.12.1994 in the capacity of a Manager but the report submitted on behalf of the District Magistrate clearly indicated that he colluded with respondent No. 4 and delivered possession to her. He subsequently cannot turn and say that he is now in possession on behalf of his wife and mother-in-law who are alleged to have obtained lease from respondent No. 4 which is still subject-matter of the dispute in the suit.

The Division Bench had dismissed the writ petition and set aside the order of the learned single Judge dated 27.11.1985, but it was observed that if the petitioner-appellants are so advised, may file a suit in regard to their rights. This order was passed obviously in the context that if the petitioner-appellants were dispossessed forcibly, they can file a suit in the Court claiming their rights. It was open to the Division Bench, while setting aside the order of the learned single Judge, to direct for restitution of possession to the respondents but the Court did not pass such an order and left the matter for the civil court to pass an appropriate order. The appellants have held a suit and obtained Injunction order that they will not be dispossessed except in accordance with law. The dispute regarding the validity of the lease deed dated 12.12.1994 is also the subject-matter of the suit. Respondent No. 5. his wife and mother-in-law all are parties to his suit. They can contest the matter establishing their rights.

4. As regards Irshad Jahan Begum (Respondent No. 4), who was claiming her possession against the appellants on the basis that the term of the lease had expired, has herself filed Special Appeal NO- 434 of 1998 against the order of the learned single Judge granting restitution of the property in question in favour of Respondent No. 5 asserting that he is not entitled to the. restitution of the property in question. She has disclaimed that any possession was handed over by her to Respondent No. 5, his wife or mother-in-law.

5. Respondent No. 5 himself does not claim any right over the property in dispute. The restitution of the property in favour of respondent No. 5, in these circumstances, was unjust and inequitable. These appeals though under Rule 9, Chapter IX of the Rules of the Court are really under Clause 10 of the Letters Patent. The Letters Patent Appellate Court has jurisdiction to decide questions of facts and law both. See the Apex Court decision in Smt. Asha Devi Vs. Dukhi Sao and Another, . Accordingly, we are of the view that the learned single Judge was not correct in allowing restitution in favour of respondent No. 5.

6. Learned counsel for the appellants also urged that the learned single Judge had no Jurisdiction to decide the miscellaneous applications. We. however, do not express any opinion in the matter as the appeals are being allowed against order of the learned single Judge on merits.

7. In view of the above discussions, the impugned order passed by the learned single Judge is set aside and the application filed by respondent No. 5 u/s 144. C.P.C. is dismissed.

8. These two appeals are allowed.

9. The appellants of Special Appeal No. 425 of 1998 are entitled to for costs.