
(2000) 08 SC CK 0110

In the Supreme Court Of India

Case No : Civil Appeal No. 6087 of 1990

Thangamani and Another

APPELLANT

Vs

Natesan and Another

RESPONDENT

Date of Decision : 17-08-2000

Acts Referred:

Citation : (2000) 87 FLR 951 : (2000) 2 JT 253 Supp : (2000) 7 SCALE 259 : (2000) 8 SCC 492 : (2001) SCC(L&S) 49 : (2000) 4 SCR 292 Supp : (2001) 1 UPLBEC 664

Hon'ble Judges : V. N. Khare, J;S. N. Phukan, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. Admittedly, the defendants-appellants were tenants of the land in dispute and the plaintiffs-respondents were the landlords. A suit was filed wherein a compromise was entered into between the plaintiff's and the defendants, whereby the landlords agreed to sell the land in favour of the defendants appellants for a consideration of Rs. 63,000.00. The defendants-appellants paid a sum of Rs. 3,00,07.00- towards earnest money. The agreement stipulated that the defendants-appellants would be in possession from the date of the execution of agreement and in case of any default in payment of instalments, they will be liable to pay damages. Admittedly, the defendants-appellants did not pay the instalments. With the result, the plaintiffs-respondents filed a suit for recovery of possession of land. The defendants-appellants filed a written statement wherein they asserted their possession over the land on the basis of the agreement of sale and also on the ground that they were the tenants of land and as such are protected under the Cultivating Tenants Protection Act. The trial court found that the defendants-appellants are not entitled to retain possession in pursuance of the agreement as they have committed default in payment of the balance instalments. So far as the question of protection under the Cultivating Tenants Protection Act was concerned, the trial court was of the view that since the defendants-appellants voluntarily surrendered their possession and as such they

have renounced their character of being tenants. Consequently, the suit for delivery of possession was decreed. First and second appeal filed by the defendants-appellants were dismissed by the first Appellate Court as well as by the second Appellate Court. It is against the said judgment the defendants-appellants are in appeal before us.

2. Learned Counsel, appearing for the appellants, urged that admittedly the defendants-appellants being tenants, have statutory right to continue in possession and the same cannot be held to have been surrendered on execution of agreement. No doubt, no party can contract out or waive the statutory right which he enjoys under the Act, but the same is not the case here. In the present case the defendants voluntarily surrendered their possession to the landlords. It is permissible for a tenant to surrender possession if they wanted to do so. A perusal of agreement clearly shows that the defendants-appellants were allowed to be treated in possession from the date of agreement and if they fail to perform their obligation under the agreement, they were required to surrender possession and further pay damages for use and occupation of the land. The defendants' possession as a tenant came to an end when they surrendered their possession over the land to the landlords and their subsequent possession over the land began under the agreement. Under such circumstances, the defendants were under obligation to deliver back the possession of the land to the plaintiffs-respondents once they committed default in payment of the consideration money. We are in agreement with the view taken by the courts below.

3. Learned Counsel for the appellants then urged that in any event the damages awarded by the Court below is not legally recoverable from the defendants. We are not deposed to go into this matter in view of statement of learned Counsel appearing for the plaintiffs respondents, which is quite fair and equitable that the plaintiffs-respondents would not press the claim for damages against the defendants-appellants.

4. For the aforesaid reasons, we set aside the judgment and decree passed by the Courts below to the extent it awarded damages to the plaintiffs-respondents. However, the rest of the decree passed by the Court is upheld.

5. The appeal is allowed in part. There shall be no order as to costs.