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Ram Swarup Etc. Vs. Asharfi Devi

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Court : Delhi

Decided On : Aug-09-1978

Reported in : 15(1979)DLT65

Judge : Avadh Behari Rohatgi, J.

Acts : Slum Area (Improvement and Clearance) Act, 1956 - Sections 19

Appeal No. : Election Second Appeal No. 5 of 1975

Appellant : Ram Swarup Etc.

Respondent : Asharfi Devi

Advocate for Pet/Ap. : B.R. Malik and; G.D. Gandhi, Advs

Judgement :

Avadh Behari Rohatgi, J.

(1) The landlord, Prabhu Dayal, brought an application for eviction of his tenant Asharfi Devi, the present respondent. The Rent Controller passed an order of eviction against the tenant on 11th January, 1962. The property is situated in a slum area. Under s. 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (the Act) as originally enacted the landlord was required to apply for permission of the competent authority to execute the eviction order. Prabhu Dayal applied. The competent authority did not give permission. The eviction order thereforee could

not be executed.

(2) On 3rd May, 1965, Prabhu Dayal brought a suit for possession and mesne profits against Asharfi Devi in the court of the subordinate judge on the ground that Asharfi Devi had ceased to be a tenant by reason of the eviction order passed by the controller and that in the eye of law she was a trespasser. Asharfi Devi appeared in court. She contested the suit. Her chief defense was that the suit against her was not maintainable as the competent authority had refused permission to 390 the landlord to execute the eviction order and that she was protected by the statute. The trial court framed among others the following issues : 2. Whether the suit is maintainable 3. Whether the tenancy of the tenant has come to an end and her possession has become unlawful If so, what is its effect

(3) On issue No. 2 the subordinate judge held that the suit was maintainable. On issue No. 3 he returned the finding that the tenancy of the tenant had come to an end when the order of eviction was passed against her and her possession was unlawful. In the result he passed a decree for possession and mesne profits on 26th November,1965.

(4) The tenant appealed. The senior subordinate judge dismissed her appeal on 29th July, 1966. The tenant carried the matter further in appeal to the High Court. During the pendency of the appeal Prabhu Dayal died. His legal representatives were not brought on record within time. thereforee, the appeal abated. On 17th February 1971 the High Court made an order holding that the appeal had abated. The decree thus became final.

(5) But this was not the end. Now siarled the execution proceedings. On 23rd May, 1972. the heirs of Prabhu Dayal, th^present appellants, made an application for execution of the decree of possession passed in their father's favor. Ashaffi Devi filed objections under s. 47 Civil Procedure Code Her principal objection was that the decree of possession passed by the civil court against her is a nullity, without jurisdiction and inexecutable. The executing court dismissed her objections. She appealed to the court of the senior subordinate judge. The appellate court by the impugned order dated 7th February, 1975 held that the decree dated 26th November. 1965 and affirmed in appeal on July 29. 1966 is a nullity. The heirs of

1'prabhu Daval now appeal to this court.

(6) The lower appellate court has held that the decree is without jurisdiction because Prabhu Dayal did not obtain the permission of the competent authority under the Act before filing the suit for possession as was mandatory after the amendment of s. 19 of the Slum Areas Act. S. 19 of the Act was amended on 21st December, 1964 by Act 43 of 1964. The amended section provides that no person shall except with the previous permission in writing of the competent authority institute any suit or proceeding for obtaining any decree or order for eviction of a tenant from a building m a slum area,. Following the decision of the full bench in Bardu Ram v. Ram Chander, 0043/1972 : AIR1972 Delhi34 the lower appellate court took the view that the suit instuted by Prabhli Dayal in the civil court was not maintainable. That that is the correct legal position can no longer be doubted. Since Prabhu Dayal had not obtained permission of the competent authority fur instituting the suit for possession from a building situated in the slum area and since Asharfi Dcvi must be held to be a tenant for the purposes of s. 19(1)(a) of the Act it must follow that Prabhu Dayal's suit was incompetent and could not be entertained. In a recent decision the Supreme Court has affirmed this view approving the full bench decision of this court in Bardu Ram's case (supra) : See Lal Chand v. Radhey Kishan (1977) 2 R.C.R. 512.

(7) But in this case what the lower appellate court has overlooked is that this very question was raised by Asharfi Devi as her principal defense in the suit. Two issues were raised. Both were decided against her by the trial court. The appellate court dismissed her appeal. The appeal in the High Court abated. thereforee, the decree for possession became final. Where the question of jurisdiction, inherent or otherwise, is raised and has been decided in the suit and a decree is passed on the basis that it has jurisdiction, the executing court cannot entertain any objections as to the jurisdiction of the court: See Perahlad Dora v. State Air 1960 Ori 21 Vassu Krishna, v. Jaoao Baptist Air 1971 Cioa 37 and Nahar Singh v. Prithi Snigh, . It can no longer be doubted that the decision of the trial court and the appellate court in the suit for possession was a wrong decision. Both the court of first institute and the senior subordinate judge in appeal gave their decisions before Bardu Ram's case was decided by the full bench in 1972. In Bardu Ram's

case the full bench decided' for the First time that even a person against whom an order of eviction has been obtained is a tenant for the purpose of s. 19 of the Act. The definition of 'tenant' under s. 2(1) of the Delhi Rent Control Act did not apply to s. 19 of the Act.

(8) The decree of possession became final between the parties, as I have said. It will not cease to be rest judicata merely because the view of law on which it was based is erroneous in the light of the subsequent full bench decision in Bardu Ram and the recent Supreme Court ruling in Lal Chand's case. The law insists on finality. It is true that the decision which has become linal can be shown to be wrong if there has been a change in the current of judicial decisions. Compatible with human filibility finalitt Is thc best and safest solution Having reached that solution the law closes Ilic book. In the interest of peace, security and certainty the law prevents further enquiry. There is a fundamental principle generally expressed in a Latin Maxim which can be translated : It is in the interest of society that there should be some end to litigation'. This fundamental principle is seen most characteristically in the recognition of our law by every system of law of the finality of a judgment.

(9) The decision of the lower appellate court proceeds on a fundamental misconception as it seems to equate an incorrect decision with a decision rendered without jurisdiction. A wrong decision is as much binding between the parties as a right one and may be superseded by appeals to higher tribunals or other procedure like review as the law provides. As was said by Lord Hobhouse in Malkarjun v. Narhari 27 LA. 216 :

'Acourt has jurisdiction to decide wrong as well as right. If it decides wrong the wronged party can only take the course prescribed by law for setting matters right : and if that course is not taken, the decisions, however wrong cannot be disturbed.'

(10) Even an erroneous decision by a court that it has jurisdiction over a matter falls within this principle so that where a court decides that it has jurisdiction to entertain a matter and on the basis of that decision adjudicates on the matter, the adjudication is not a nullity : See Manibhai Hathibhai C.W.E. Arbuthnot Air 1947 Bom 413, Krishnan-ilirthy v. Parthasarthy. Air 1949 Mad 780 and Satyaprakash

Sarkar v. Jagnnath, Mahaprabhu, Vol. xxxv (1969) C. L.T. 156. Asharfi Devi raised the question of the maintainability of the suit. That question was decided against her, albeit erroneously. The decree of possession has become final and binding between the parties and the executing court thereforee cannot go behind it and hold it to be a nullity.

(11) On the view taken in Bardu Ram's case and Lal Chand's casts (supra) the suit for possession was not maintainable as Prabhu Dayal did not obtain the permission of the competent authority. In Bardu Ram's case Khanna C.J. said :

'IT is thereforee, obvious that after the amendment made by Act 43 of 1964, no suit or other proceeding can be instituted against a tenant of property situated in a slum area without the requisite permission. Where the permission is refused, the question of making a decree or order for eviction and of the execution of the same would not arise because the suit or proceeding would itself be not maintainable. Clause (a) of sub-section (1) of Section 19 would act as a bar to the maintainability of such a suit or proceeding. .....'.

(12) To maintain a suit is to prosecute a suit with effect. To maintain an action or suit means to commence or institute it; the term imports the existence of a cause of action. This means that disability is in the suitor. Without permission of the competent authority he cannot sustain or support the action. This is to say the same thing that the court cannot entertain such an action. It has no jurisdiction. The suit is unentertainable and unmaintainable. But this very question of maintainability of the suit was decided against Asharfi Devi by the trial court. The decision of the trial court was upheld in appeal, it will now be re-opening a question already decided. The law does not permit this. The law itself is fully conscious of the evils of protracted litigation. The picture drawn by Charles Dickens in Bleak House of the long drawn out and ruinous lawsuit, Jarndyee v. Jarndyee shows that the process of investigation cannot go on indefinitely. Somewhere and at some time there has to be an end. Asharfi Devi cannot thereforee now be allowed to impugn the decree on the ground that the suit against her was not maintainable.

(13) For these reasons I allow the appeal and set aside the judgment of the lower appellate court and dismiss the objections of Asharfi Devi. The parties are however left to bear their own costs.

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