

Lajpat Rai Vs. Usha Rani

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Court : Delhi

Decided On : Feb-18-1980

Reported in : 1980RLR478

Judge : B.N. Kirpal, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17

Appeal No. : Criminal Revision Appeal No. 848 of 1977

Appellant : Lajpat Rai

Respondent : Usha Rani

Advocate for Pet/Ap. : Bikramjit Nayar,; Y.K. Jain and; Usha Kumari, Advs

Judgement :

B.N. Kirpal, J.

(1) The Civil Revision has been filed against the order dated 26th October, 1977 whereby Shri Ajit Bharihere, Sub-Judge 1st Class, Delhi had dismissed the petitioner-defendant's application under Order 18 Rule 17-A of the C.P.C.

(2) The plaintiff-respondents had filed a suit for possession against the present petitioner. It was alleged that the petitioner was a legal heir of the deceased Daropadi Devi who had been a tenant under the plaintiff respondents. It was

further alleged that the tenancy of the suit premises had been terminated during the life time of Daropadi Devi. The petitioner was in occupation of the suit premises and the suit was filed for possession of the same.

(3) The petitioner, during the course of the trial, moved an application under Order 18 Rule 17-A Civil Procedure Code for permission to lead additional evidence. In the said application petitioner also wanted to amend his written statement, so as to incorporate a preliminary objection said to arise out of a communication received from the Custodian of Enemy Property. The objection sought to be raised, was as under: 'That the plaintiff is not the owner of the premises and has no locus standi to file the present suit as the management of the property now vests with the Custodian of Enemy Property for India, Bombay.' 4. The aforesaid application was opposed. The Subordinate Judge referred to a decision of a single Judge of this Court (Dalip K Kapur, J) given in Civil Revision No. 398 of 1975 (Chum Lal v. Sukh Devi and others) and quoted the following observation from the said decision;

'THUS, the legal position would be that the plaintiff is entitled to claim possession from his tenant's legal representatives on the basis that the tenancy has come to an end. He does not have to prove his title in the property as would be the case if the suit was for recovery of possession simpliciter. The reason for this is that the estoppel prohibiting the tenant or his legal representative from denying the title or the plaintiff continues not only during the continuance of the lease, but also afterwards so long as the possession is not restored.'

It was held by the Subordinate Judge that the plaintiff-respondents were not required to prove their ownership and, therefore, there was no necessity to frame additional issue or permitting the defendant-petitioner to lead evidence with respect to ownership of the suit premises or to amend the written statement. The application was accordingly dismissed.

(4) The aforesaid decision has been challenged by Shri Nayar on behalf of the petitioner-defendant. It has been contended, and in my opinion rightly, that the very decision on which reliance has been placed by the Subordinate Judge in fact shows that the conclusion arrived at by the Subordinate Judge was incorrect. The suit in question was one for possession. What had been decided by Dalip K Kapur

J. in the aforesaid case was that a landlord does not have to prove that he is owner in order to claim possession from the tenant's representative on the basis that the tenancy was come to an , It is, however, stated that in the case of suit for recovery of possession implicate the posit on would be different. This is obvious from the following observations in the judgment: 'He does not have the prove his title in the property as would be the case if the suit was for recovery of possession simpliciter''

(5) There is no other reason given by the Subordinate Judge as to why the application should not be allowed. The only reason given by him is not correct In any event in order to fully adjudicate upon all the aspects & disputes between the parties it was in the interest of justice that the application should have been allowed. In a suit for possession it was material to find out as to whether the the plaintiff had any title to the property or not and as to whether he had right to recover possession of same It was the contention of the petitioner that as a result of the property vesting in the Custodian of Enemy Property all rights, title and interest of the respondents herein had come to an end. It was even contended that he was thereafter obliged to pay the rent to the Custodian as and when demanded by him. It will be useful to refer, at this stage, to a single Bench decision of this court reported as Zai-uddin v. Abdul Majid and others, : AIR1972 Delhi251 . During the execution proceedings it transpired that the property in question had vested in the Custodian of Enemy Property. This Court held as follows :

'HOWEVER,a Court dealing with the execution of a decree of a Civil Court was to come to know that the property sought to be attached and auctioned vested in the Custodian of Enemy Property it was to be its duty to institute an enquiry and discover for itself, as to whether the property did vest in the Custodian of Enemy Property or not Respondents 4 and 5 may have no locus stadi to prefer the objections but that did not relieve the Court of its judicial duty to give effect to the provisions of Section 9 of the Enemy Property Act Haying passed the order of attachment if the Court was to find that the property was exempted from attachment in view of the afore-quoted provision the Court had the jurisdiction on the judicial satisfaction to revoke the order of attachment.'

(6) It is evident, therefore, that in a suit for possession the Court cannot overlook the fact, if proved, that the property has vested in the Custodian of Enemy Property.

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