

Krishan Lal Vs. Hanuman

Krishan Lal Vs. Hanuman

SooperKanoon Citation : sooperkanoon.com/701598

Court : Delhi

Decided On : Oct-21-1994

Reported in : 56(1994)DLT216; 1994(31)DRJ235

Judge : Mohd. Sharnim, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115

Appeal No. : Civil Revision Appeal No. 139 of 1993

Appellant : Krishan Lal

Respondent : Hanuman

Advocate for Pet/Ap. : Manish Malhotra,; G.L. Rawal,; Kuljit Rawal and;

Judgement :

Mohd. Shamim, J.

(1) The petitioner through the present revision petition has assailed the legality and the validity of the judgment and order dated March 20,1991 passed by Ms. Ravinder Kaur, Sub Judge 1st Class, Delhi, whereby she decreed the suit of the plaintiff/respondent under Section 6 of the Specific Relief Act against the defendant/petitioner for recovery of possession over a shop situated in premises bearing No. 1-67, West Patel Nagar, New Delhi, shown by red colour in the site plan Ex.PW1/1.

(2) Brief facts which led to the present revision petition are as under that the respondent/plaintiff (hereinafter referred to as the respondent) herein was a tenant of a shop forming part of property bearing No. I-67, West Patel Nagar, New Delhi, whereof the petitioner/ defendant hereinafter referred to as the petitioner for the sake of brevity) is a landlord on a monthly rent of Rs. 200.00 . The petitioner during the intervening night of 5th/ 6th April,1987 Along with his associates forcibly took possession over the said shop by breaking open the locks and removed the goods of the respondent worth Rs. 25,000.00 . The petitioner thus dispossessed the respondent forcibly, without due process of law. The respondent lodged the report with the police, but to no avail. Hence, arose the necessity for the institution of the suit for recovery of possession under Section 6 of the Specifics. Relief Act

(3) The petitioner in his written statement denied all the above said allegations. The defense as set up by the respondent is that the respondent entered into an agreement with one Kashmiri Lal and handed over the possession of the said shop to him. It was the said Kashmiri Lal who vacated the said shop out of his own free will on April 5,1987 and handed over the vacant possession of the said shop to the petitioner.

(4) The learned lower court was of the view that the respondent was forcibly dispossessed from the demised premises where he was running the shop of a barber and thus ordered that he be put back in possession vide impugned judgment and order dated March 20,1991. Aggrieved and dis-satisfied with the said judgment and order the petitioner has approached this Court.

(5) Learned counsel for the petitioner has vehemently contended that the learned lower court fell into a grave error by coming to the conclusion that the respondent was forcibly dispossessed from the tenanted accommodation. In fact the respondent handed over the possession over the said shop to one Kashmiri Lal for a consideration of Rs. 23,000.00 vide agreement and receipt both dated December 1,1986. The said Kashmiri Lal thereafter suo motu, voluntarily and out of his own free will vacated the said shop and handed over the vacant possession over the same vide agreement dated April 5,1987 (Ex.DW1/I). According to the learned counsel, thus the learned lower court should have held as such in favor of

the petitioner.

(6) I am sorry I am unable to agree with the contention of the learned counsel. Admittedly, this is not disputed in the written statement that the respondent was a tenant under the petitioner. There is no document worth the name on the record to show and prove that the respondent herein ever delivered the possession to the said Kashmiri Lal. In any case, the version of the petitioner appears to be just like a story from fairy tales which no reasonable and prudent man would be ready to believe. After all, why a man who is running a shop wherefrom he is eking out his existence would part with the possession over the same for a paltry amount of Rs. 23,000.00 as the petitioner has tried to make out a case. Furthermore, the petitioner failed to prove the agreement dated December 1, 1986 in between Kashmiri Lal and the respondent herein. Similarly, the receipt of the said date was also not proved. Ex. DW1/1 i.e. the agreement in between Kashmiri Lal and the present petitioner was also, according to the learned lower court, not proved in accordance with law. The petitioner for the best reasons known to him failed to produce said Kashmiri Lal who was the best possible witness to prove that he handed over the possession to the petitioner over the shop in dispute. DWs2 and 3 who are witnesses to Ex.DW1/1 have also not supported the case of the petitioner and failed to substantiate his version that the possession over the disputed shop was handed over to him by Kashmiri Lal.

(7) The respondent has placed on record the report of the local commissioner dated April 16, 1987. The occurrence in the instant case is dated 5/6th April, 1987. Thus, the said commission was immediately executed under the directions of the lower court just after the institution of the suit i.e. April 10, 1987, The suit as such was instituted immediately after the incident. The learned local commissioner found on his inspection that there was a hole of 2'6" x 2'6" in the right side of the wall of the shop. He further found that a fresh lock had been put on the doors of the impugned shop. According to the learned commissioner neither of the party was in possession of the impugned shop. One Pyare Lal was found in possession over the shop in dispute. As per the report of the local commissioner the shop was found to have been repaired. This proves in unequivocal terms that the petitioner was dispossessed during the intervening night of 5/6th April, 1987.

(8) There is yet another side of the picture. It is a well established principle of law that revisional jurisdiction under Section 115 of the Code of Civil Procedure would be exercised only in those discerning few cases where there has been an assumption of jurisdiction where none existed, or refusal of jurisdiction where it did, or where there has been material irregularity or illegality in the exercise of that jurisdiction. This Court does not find any such thing over here.

(9) There is yet another aspect of the matter. A High Court in exercise of its revisional jurisdiction would not interfere with an order passed by the learned lower court in case it comes to the conclusion that the impugned order is substantially just and proper in the circumstances of a given case even though there may be some legal infirmity. The above view was given vent to by Hon'ble Mr. Justice I.D.Dua of this Court (as he then was) as reported in *Sham Mohan Lal v . jai Gopal and another*, : AIR1968 Delhi104' It is true that this Court has full power to treat an appeal as a revision and a revision as an appeal when there is no statutory or other impediment in the way and when the interests of justice demand it. It, however, must not be forgotten that interference on revision has an element of discretion and even though there may be some legal infirmity in the order of the Court below, this Court may appropriately decline interference if it comes to the conclusion that the impugned order is substantially just and the exercise of the revisional powers is not called for in the larger interests of substantial justice.'

(10) In view of the above circumstances I am of the view that the instant case is not a fit case for interference by this Court. I thus do not see any force in the present revision petition. It is as such dismissed with costs at this preliminary stage of admission.