

Ashok Kumar Roy Vs. Chanda Devi and ors.

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Court : Delhi

Decided On : Nov-19-2003

Reported in : 2004IAD(Delhi)642; 108(2003)DLT747; 2004(72)DRJ413

Judge : R.S. Sodhi, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100 and 151 - Order 21 Rule 88; [Delhi Rent Control Act, 1958](#) - Sections 14(1)

Appeal No. : Regular Second Appeal No. 208 of 2003

Appellant : Ashok Kumar Roy

Respondent : Chanda Devi and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : K. Venkataraman, Adv

Disposition : Appeal dismissed

Judgement :

R.S. Sodhi, J.

C.M.713/2003: (for exemption)

Allowed subject to just exceptions.

R.S.A. 208/2003 & C.M. 712/2003 :

1. Regular Second Appeal 208 of 2003 is directed against the judgment and order dated 6.11.2003 of the learned Additional District Judge, Delhi, in R.C.A. No. 20 of 2003 upholding the order of the Civil Judge dated 26.4.2003 dismissing the objections of the appellant filed against the judgment and decree dated 30.9.1985 for possession passed in Suit No. 155/1982.

2. Brief facts of the case, as noted by the learned Additional District Judge, are that:

'1. This appeal would demonstrate the limits and the extent to which the appellant has exploited, misused and abused the judicial process for retaining the possession of the suit premises even after losing up to the Hon'ble Delhi High Court in 2nd appeal against decree of possession passed by the trial Court then presided over by Sh. Z.S. Solanki, Sub-Judge, Delhi on 30.9.1985. Indeed, my judicial conscience got pricked and was shaken to note how the litigating tyres studded in the philosophy of principles of natural justice were exploited to the hilt by the appellant in continuing to remain in possession on grounds which he knew were untenable in law.

2. Now it is time to give a factual matrix of the case which is as follows :

One Mr. A.C Roy was a tenant in the suit premises which comprised three rooms, kitchen, bathroom, latrine and a chhajja on the first floor of house No. 2408, Tilak Street, Pahar Ganj, Delhi. The premises was let out for residential purposes at a rental of Rs. 18.87 per month. The respondents are the owners and landlord of the suit premises. They terminated the tenancy of tenant Mr. A.C. Roy by notice of termination dated 24.9.1972 duly served on him. Thereafter, the respondents filed an eviction case against the tenant A.C. Roy on ground of bona fide need under Section 14(1)(e) of Delhi Rent Control Act, which stood dismissed in 1974. The tenant A.C. Roy expired on 17.2,1981 leaving behind his widow and three sons as his legal heirs. After the death of the tenant the respondents filed a suit for possession impleading the widow and two sons of deceased tenant A.C. Roy as parties in the suit. The appellant was not imp leaded in the array of defendants in

the suit for possession filed by the respondents in 1982. The said suit for possession was decreed in favor of the; respondents and the widow and the two sons of the deceased tenant were directed to hand over the vacant possession of the suit premises to the respondents vide judgment and decree dated 30.8.1985 passed by Mr. Z.S. Solanki the then Sub-Judge, Delhi. The first and second appeal against decree of possession filed by the legal heirs of deceased tenant were dismissed and the eviction decree granted by the trial Court on 30.9.1985 became final. The first appeal was dismissed by the Court of Sh. P.R. Thakur, then ADJ, Delhi vide judgment and decree dated 13.10.1992 and the second appeal was dismissed by the Hon'ble Delhi High Court speaking through Hon'ble Mr. Justice A.B. Saharya (as his lordship then was) vide its order dated 23.10.1992 passed in R.S.A. No. 79/1992. Thereafter the respondents filed an execution application for executing the decree of possession in their favor and in the meanwhile the appellant along with the other JDs filed a writ petition challenging the decree of possession which was dismissed as withdrawn by the Hon'ble Delhi High Court vide its order dated 16.4.1983. Immediately after the second appeal against decree of possession was dismissed by the Hon'ble Delhi High Court on 23.10.1992, the appellant filed objections against the decree on 29.10.1992. The objections were initially filed under Order 21 Rule 97, CPC but later on amendment was made in the objections and the objections were amended under Section 21 Rule 88, CPC r/w Section 151, CPC. The objections so filed by the appellant were dismissed on merits while order dated 25.3.1994 passed by the Court of Mr. Rajnish Kumar Gupta, the then Civil judge, Delhi. The appellant filed an appeal against the order of dismissal of his objections and his said appeal was accepted and the case was remanded back for decision on merits vide order dated 27.9.1995 passed by the Court of Mr. P.S. Teji, the then ADJ, Delhi. The respondents being the decree-holder feeling aggrieved by the remand order of the Court of Mr. P.S. Teji, ADJ, Delhi filed a Civil Misc. (Main) being No. 114/1996 in the Hon'ble Delhi High Court which was heard and disposed of vide order dated 29.9.1997 passed by Hon'ble Mr. Justice N.G. Nandi (as His Lordships then was). While disposing of the said Civil Misc. (Main) the High Court directed the trial Court to dispose of the objections of the appellant expeditiously within 3 months. However, despite directions of the Hon'ble High Court to dispose of the objections

on merits within 3 months to be computed w.e.f. 29.9.1997, the appellant took about three years in concluding his evidence in execution proceedings before the trial Court. The objector examined as many as 11 witnesses and when even after examining 11 witnesses he did not close his evidence, the evidence of the appellant was closed by the Court orders dated 10.1.2000. Being dissatisfied with the order of closure of evidence by the Court, the appellant chose to challenge the said order by filing a Revision in the Hon'ble Delhi High Court which was heard and disposed of by Hon'ble Mr. Justice S.N. Kapoor (as His Lordships then was) vide order dated 20.8.2000, granting one more opportunity to the appellant to adduce his remaining evidence, if any, subject to payment of cost of Rs. 10,000/-. The proceedings in the execution file reveals that the appellant left no stone unturned in delaying the disposal of his objections which he did as best as he could till the stage of arguments. Even While case was listed for final arguments, the appellant made an attempt to delay the proceedings by moving an application for framing of additional issues but his said application was dismissed by the executing Court vide order dated 25.9.2001. Ultimately the day of judgment on the objection of the appellant came when his objections were dismissed on merits by a detailed judgment of the executing Court running into 17 pages delivered on 26.4.2003. It is this judgment of the executing Court which is now subject matter of challenge in the present appeal.

3. The points against the impugned judgment which have been raised on behalf of the appellant in his written arguments as well as in the course of oral arguments are as follows:

i) The decree of possession granted by the trial Court in favor of the respondents on 30.9.1985 is a nullity because the Civil Court lacked jurisdiction to entertain the suit for possession filed before it. The objection of jurisdiction is based upon the provisions contained under Section 50 of [Delhi Rent Control Act, 1958](#).

ii) The respondents have failed to prove that they are the owners of the suit property.

iii) The appellant has an independent right in the suit premises having inherited the same from his deceased father who died as a contractual tenant. It is contended

that the notice of termination terminating the lease of appellant's deceased father vide notice dated 24.9.1972 (Ex. P-3) stood impliedly waived as the respondents had accepted rent from the deceased tenant even after termination of tenancy.

iv) The judgments referred and relied upon by the Counsels for parties before the executing Court were not correctly appreciated by the executing Court.'

3. The First Appellate Court by a well reasoned judgment dealt with the aforesaid objections, and returned a finding affirming the order of the Executing Court. The First Appellate Court also imposed costs quantified at Rs. 20,000/-. Counsel appearing before me has re-agitated the entire case and vehemently re-argued the case,

4. Having heard learned Counsel and having carefully gone through the judgment under challenge, I find that no substantial question of law that needs adjudication under Section 100 of the Code of Civil Procedure arises. The Supreme Court in *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors.*, JT 1999 (3) SC 164 has held that :

'In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the apex Court, or was based upon inadmissible evidence or arrived at without evidence,'

5. R.S. A. 208 of 2003 and C.M. 712 of 2003 are dismissed with no order as to costs.