

Uttam Singh Vs. Raghubir Singh

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Court : Delhi

Decided On : Sep-05-1997

Reported in : 1997VAD(Delhi)671; 69(1997)DLT302; 1997(43)DRJ331

Judge : Mohd. Shamim, J.

Acts : [Specific Relief Act, 1963](#) - Sections 6

Appeal No. : First Appeal No. 380 of 1996

Appellant : Uttam Singh

Respondent : Raghubir Singh

Advocate for Pet/Ap. : G.N. Aggarwal,; I.S. Mathur and; Manisha Gupta, Advs

Judgement :

Mohd. Shamim, J.

(1) The appellants through the present appeal have taken exception to a judgment and order dated November 20, 1996 passed by an Additional District Judge, Tis Hazari Courts, Delhi, whereby he allowed the application moved by the plaintiff/respondent No. 1 (hereinafter referred to as the respondent No. 1 for the sake of convenience) for the grant of mandatory injunction directing the appellants (hereinafter referred to as the appellants in order to facilitate the reference) to hand over possession over the property bearing No. 3443(1/2), Gali Lallu Missar,

Qutab Road, Sadar Bazar, Delhi (hereinafter referred to as the disputed property for the sake of brevity).

(2) Brief facts which gave rise to the present appeal are as under: that the respondent No. 1 filed a suit for recovery of possession under Section 6 of the Specific Relief Act against the appellants herein with the allegations that the respondent No. 1 is the owner/landlord of the property bearing Municipal No. 3443(2), Gali Lallu Missar, Qutab Road, Sadar Bazar, Delhi. He let out the said property to one Pt. Kishan Chand son of Shri Tare Chand in the year 1951-52 shown by red colour in the site plan annexed with the plaint. The said Pt. Kishan Chand has illegally sub let, assigned or parted with possession over the said property to the appellant No. 1 without the consent of the respondent. Consequently the respondent No. 1 filed a suit for eviction against the said Pt. Kishan Chand under Section 14(1)(b) of the Delhi Rent Control Act. The said suit was registered as eviction Petition No. 130/92. The said petition was allowed vide judgment and order dated March 9, 1994 and an order of eviction was passed against the said Pt. Kishan Chand).

(3) Respondent No. 1 thereafter applied for execution of the said order whereupon learned Additional Rent Controller issued warrants of possession in favor of the respondent No. 1 against the said Pt. Kishan Chand. The said order of eviction was executed through the bailiff of the Court on August 22, 1994 and the respondent No. 1 was delivered the vacant possession over the disputed property on the aforementioned date at about 4.30 p.m.

(4) The appellant No. 1 Along with his associates in between 8/9.00 p.m. on the above said date i.e. August 22, 1994 with the connivance of the local police broke open the lock put up by the respondent No. 1 over the disputed property and got into possession over the same after removing the goods belonging to the respondent No. 1. The respondent No. 1 lodged a report with the police and a case under Section 448/34 Indian Penal Code was registered against the appellants. After forcible dispossession of the respondent No. 1 by the appellants, the appellant No. 1 on or about September 1, 1994 filed objections under Sections 25 & 37 of the Delhi Rent Control Act read with Section 47 of the Code of Civil

Procedure in Execution Case No. 33 of 1994 in the Court of Additional Rent Controller where through he challenged the eviction order dated March 9, 1994. However, later on the appellant No. 1 got the said petition dismissed in default on September 9, 1994. The suit has been filed within six months from the date of dispossession of the respondent No. 1 from the disputed property. The appellants are thus jointly and severally liable to restore the possession over the disputed property to the respondent No. 1.

(5) The appellants resisted the claim of the respondent No. 1, inter alia, on the following grounds: that the suit for eviction being Suit No. E-130/92 was filed by the respondent No. 1 in collusion with his real brother Pt. Kishan Chand. The said suit was barred by Section 50 of the Delhi Rent Control Act as there existed a relationship of landlord and tenant in between the appellant No. 1 and respondent No. 1. The Court does not have the necessary pecuniary jurisdiction to entertain the suit as the market value of the disputed property is more than Rs. 20 lacs. The suit is under-valued for the purposes of Court fee and jurisdiction. The suit is bad for misguide of the parties as Smt. Raj Kumar (defendant No. 5) has never been in possession over the disputed property. In fact she is the mother of appellant No. 2 who by a sheer coincidence was present in the disputed property on August 22, 1994 in connection with collecting the salary of her son. The suit is bad for non joinder of Pt. Kishan Chand. It is wrong and false that the disputed property was ever let out to Pt. Kishan Chand. The fact is that the appellant No. 1 is the tenant under respondent No. 1 since the year 1950. Initially the rate of rent was Rs. 30.00 per mensem but subsequently it was raised to Rs. 100.00 per month on persistent demand of the respondent No. 1. The respondent No. 1 never issues the rent receipt after receiving the rent though the appellant No. 1 has been regularly paying the rent to respondent No. 1. The disputed property was let out to appellant No. 1 for commercial purposes and he had been carrying on the business of dyeing of cotton threads there since the commencement of the tenancy. The appellant No. 1 was also registered under the Delhi Shops & Establishments Act. The appellant is in possession of a number of documents which show his continuous occupation over the disputed property. The appellant No. 1 was also provided with an alternative plot by the Delhi Development Authority bearing No. A-115, Wazirpur Industrial Area, Delhi in lieu of the disputed property as he was

asked to shift from the non conforming area in the year 1968-70. Now the disputed property is being used by the appellant No. 1 as a godown cum residence of the labourers. However, sometimes the appellant No. 1 also reside there with his family members, including the other appellant i.e Nos. 2 to 4. It is false and preposterous that Pt. Kishan Chand was the tenant of respondent No. 1 and that he had sub let assigned or otherwise parted with possession over the disputed property to the appellant No. 1. It is also wrong that the appellant No. 1 had been working with Pt. Kishan Chand on contract basis. The fact is that the bone of contention in between the parties is the rate of rent. The respondent No. 1 asked the appellant No. 1 to increase the rent from Rs. 100.00 to Rs. 200.00 per month in view of the high rate of rent prevalent in the market. The appellant No. 1 did not yield to the pressure of respondent No. 1. It led to the strained relations in between the parties. The eviction order was obtained by practicing fraud on the Court. The eviction decree as such is a nullity and void ab initio. It is not binding and enforceable against the appellant No. 1. The appellant No. 1 was not made a party in the eviction proceedings. In fact, the eviction suit was filed against Pt. Kishan Chand, real brother of respondent No. 1, though the respondent No. 1 was fully aware of the fact that the appellant No. 1 was in possession over the disputed property and was as such a necessary party to the eviction proceedings. The appellant No. 1 was thus never granted an opportunity to defend his right and title to the disputed property. Respondent No. 1 in collusion with his real brother Pt. Kishan Chand obtained a decree at the back of appellant No. 1 fraudulently. It is wrong and false that the warrant of possession was ever executed and the vacant possession was ever delivered over the disputed property to the respondent No. 1. The report of the bailiff in this regard is forged and fictitious. However, it is true that the respondent No. 1 with the help of bailiff and his other associates threatened to take forcible possession over the disputed property. It was on the said date that the appellant No. 1 came to know about the alleged eviction decree. The appellant No. 2 immediately contacted the Police Control Room. The police came to the spot and took the parties to the police station Sadar Bazar, Delhi. The respondent No. 1 admitted his mistake and promised before the police to file an eviction petition against the appellants. A report vide Dd No. 14A was recorded in connection therewith at the police station. Thus, the possession over the disputed property

was never delivered to the respondent No. 1 on August 22, 1994. However, later on appellant No. 1 came to know that the bailiff of the Court in collusion with the plaintiff and Pt. Kishan Chand had written a false and incorrect report on the back of warrant of possession that the vacant possession over the disputed property was delivered to the respondent No. 1. The report of the bailiff in this regard is false, forged and fictitious. The suit is false and frivolous. It is liable to be dismissed.

(6) Respondent No. 1 Along with the suit moved an application under Order 39 Rules 1 & 2 read with Section 151 of the Code of Civil Procedure for ad interim mandatory injunction where through he prayed that the appellants, their servants and agents be directed to restore the possession over the disputed property shown by red colour in the site plan, to the respondent No. 1. The appellants filed a reply thereto.

(7) The learned lower Court after hearing the learned counsel for both the parties and after the appraisal of the evidence on record, found that there was more than a prima facie case in favor of respondent No. 1. Balance of convenience according to the Court below was also in favor of respondent No. 1. He further opined that in case the mandatory injunction was not granted the respondent No. 1 was likely to suffer irreparable loss and injury which could not be compensated in terms of money. He thus allowed the application and directed the appellants to hand over the vacant possession over the disputed property to respondent No. 1. He further directed that respondent No. 1 after having taken possession over the disputed property would hold the same for and on behalf of the Court and would maintain the status quo with regard to the possession and title of the disputed property.

(8) Aggrieved and dis-satisfied with the said judgment and order the appellants have approached this Court by way of the present appeal.

(9) Learned counsel for the appellants Mr. Gopal Narain Aggarwal has vehemently contended that it is a well established principle of law that in a case where the relief claimed in the suit is the same which is being claimed through an application for ad interim injunction the Court would decline the said relief. The learned counsel further contends that the appellants in the present case through the

impugned order have been deprived of an opportunity to prove their case inasmuch as the relief sought for through the present suit has already been granted in favor of the respondent No. 1 against the appellants. The next contention raised by the learned counsel for the appellants is that the appellant No. 1 was admittedly not made a party in the eviction proceedings which were initiated against Pt. Kishan Chand. (vide eviction petition No. E-130/92, entitled Shri Raghbir Singh vs. Pt. Kishan Chand) though the respondent No. 1 was fully aware of the fact that Pt. Kishan Chand was not in possession and occupation over the disputed property and it was the appellant No. 1 who was in occupation over the same. Thus, the said decree dated March 9, 1994 is void ab initio and is simply a nullity and as such is to be ignored. The appellants were never evicted from the disputed property in pursuance of the judgment and decree dated March 9, 1994 on August 22, 1994 as claimed by respondent No. 1 and the report of the bailiff in this regard was false, forged and fictitious.

(10) Learned counsel for respondent No. 1 Mr. Ishwar Sahai, Senior Advocate, on the other hand, has argued that there is no bar in the way of the Courts to grant the relief of mandatory injunction on an application for ad interim injunction though the relief sought in the suit is also the same as that claimed in the application if the Court comes to the conclusion that it was a fit case for the grant of the said relief. However, it is true that the Court would be slow to grant such a relief. The learned counsel next contends that since the appellants were unauthorised occupants, with no legal status whatsoever, hence the respondent No. 1 was under no obligation to implead them as a party in the above said eviction proceedings. It is wrong that the possession over the disputed property was not taken over from the appellants by the respondent No. 1 on August 22, 1994 in pursuance to the eviction order dated March 9, 1994 (vide report of the bailiff dated August 22, 1994).

(11) It is manifest from the arguments of the learned counsel for the appellant canvassed above that the case of the appellants is that they are still in occupation over the disputed property since the possession over the same was not taken over by respondent No. 1 in pursuance to the judgment and decree dated March 9, 1994 passed by Ms. Sunita Gupta, Additional Rent Controller, on August 22, 1994.

The report of the bailiff is a forged and fabricated document. The same cannot be relied upon. Thus, there is absolutely no question, whatsoever, of the appellants re-occupying the disputed property as they continue to be in occupation of the same. Learned counsel for the respondent Mr. Ishwar Sahai has urged to the contrary.

(12) The Courts have not been provided with any instrument to ascertain the truth and the falsehood of the claims made by the parties. They have to disengage the truth from the falsehood with the help of the circumstances and the facts which have been put forward before the Court. It is said that the 'Rule of distinguishing what is true from what is false in history is based on its possibility or impossibility in a given situation' (per Ibn Khaldun). The same rule can very much be made applicable by the Courts when they are called upon to separate the grain from the chaff while deciding the cases which come up before them for adjudication.

(13) With the above background let us now examine the facts of the case and try to find out as to on whose side prima facie the truth is? Admittedly the eviction order was passed against Pt. Kishan Chand, the alleged tenant in the disputed property, on March 9, 1994 in Suit No. E-130/92. After having armed himself with the said eviction order the respondent No. 1 Along with the bailiff went to execute the said order on August 22, 1994 as is manifest from the report. As per the said report the appellants were evicted and the possession over the disputed was handed over to the respondent No. 1. Learned counsel that the said report is a forged and fictitious and fabricated document. The question is why should a decree-holder (a the respondent No. 1 was) have obtained a false report? Did he stand to gain anything? Obviously the reply is an emphatic 'No'. Admittedly a decree-holder is interested in execution of his decree. This is all the more so when the decree is for possession over a property. Thus, a decree-holder would leave no stone unturned in securing the possession in case of a decree for eviction. If he obtains a false report, as argued by the learned counsel for the appellants Mr. Aggarwal in the present case, in that eventuality his decree would become infructuous, inasmuch as it would be against his own interest. As per the report of the bailiff in the present case the possession has been delivered whereas this is not the reality, as per the version of the appellants. In case of such a false report

the decree-holder i.e. the respondent No. 1 would not be in a position to approach the Court over again by way of a suit for recovery of possession as the decree had already been satisfied with the result that the judgment-debtor would continue to remain in possession happily and merrily over the disputed property for all times to come. Man, it is said, is the most selfish being on the surface of the earth. He would never, act to his detriment that is against his own interest. In the above circumstances this Court is not prepared to place any reliance on the contention of the learned counsel for the appellants that the report of the bailiff is a forged and a fictitious one as the same is an impossibility in the present set of circumstances.

(14) The next contention put forward by the learned counsel for the appellant is that the appellant No. 1 is a tenant in the disputed property since 1950 under the respondent No. 1 on a monthly rent of Rs. 100.00 . Initially the rate of rent was Rs. 30.00 per mensem. Subsequently it was raised to Rs. 100.00 per month (vide para 1 of the written statement, reply on merits, in Suit No. 605/94). The appellants surprisingly enough have not placed even a tiny piece of paper in support of the said contention in order to show prima facie that in fact the appellant No. 1 is in occupation over the disputed property as a tenant. Neither a rent note nor a rent receipt in token of the payment of rent was ever placed on record to prima facie suggest that it was so.

(15) Furthermore, a tenant when he takes a particular property on rent it can be expected of him that he fully knows with regard to the exact rate of rent as well as the time and the year in which the property was taken on rent. Curiously enough the appellant No. 1 herein does not know even these rudimentary things. He has taken an altogether different stand in the civil suit filed by him against the respondent No. 1 and Municipal Corporation of Delhi, being Suit No. 470/84. He has stated in the plaint (vide para 2) that the disputed property was let out to him for residential cum commercial purposes in the year 1960 on a monthly rent of Rs. 40.00 . The said averments are altogether different from the averments made in the present suit i.e. Suit No. 605/94. The appellant herein thus has got a different tale to tell on the point of rate of rent as well as with regard to the year in which the disputed property was let out. This goes to show that the appellant is not sure of his stand. He has not come out with the truth that is why he is wavering and

tottering and is not in a position to take a firm stand. He has thus taken different stands at different times. He has set up yet again a different story during the course of his objections which he preferred in Execution No. 33/94. According to para 1 of the said objections he is a lawful tenant under the respondent No. 1 since the year 1950 on a monthly rent of Rs. 100.00 .

(16) Learned counsel for the appellant has then led me through certain documents in order to prima facie show and prove that the appellant No. 1 has been in occupation over the disputed property since the year 1950. In this connection, he has shown me a photocopy of the premium receipt. The learned counsel contends on the basis of the same that it goes to show that Shri Uttam Singh took some policy on April 15, 1955 on the address of the disputed property. The premium receipt, however, bears the date of 14th June, 1965. Thus it cannot be inferred there from that the appellant was a tenant in the disputed property since 1950. Then there is a photocopy of the registration certificate issued under the Shops & Establishments Act on August 30, 1960 in the name of the appellant on the address of the disputed property. The appellants have also relied on the photocopies of certain envelopes alleged to have been received by the appellant No. 1 on the address of the disputed property in the year 1961, 1967 and 1968. Learned counsel has laid much stress on a letter from the Land Sales Officer of the Delhi Development Authority to the appellant No. 1 on the address of the disputed property which goes to show that Plot No. 115, Block A, Wazirpur Industrial Area has been allotted to him in the draw of lots held on May 14, 1968. The learned counsel on the basis of the above documents has contended that the said documents go to prima facie show and prove that the appellant No. 1 has been in occupation over the disputed property since the year 1950 as a tenant therein.

(17) There is no dispute with regard to the factum of possession of the appellant No. 1 over the disputed property inasmuch as the case of the respondent No. 1 is that the disputed property was let out to one Pt. Kishan Chand in the year 1950 who had subsequently sub let, assigned or otherwise parted with possession over the disputed property. Initially, Pt. Kishan Chand engaged the appellant to work on contract basis in the disputed property and he worked in that capacity up to 1980

(vide para 10 of the written statement filed in Suit No. 470/84 entitled Uttam Singh vs. M.C.D. and Raghbir Singh). Thus, the possession of the appellant No. 1 over the disputed property is not being challenged. What has been challenged by the respondent No. 1 is that the appellant No. 1 is not a lawful occupant and is thus liable to be evicted on account of the decree having been passed against the lawful tenant i.e. Pt. Kishan Chand.

(18) Learned counsel for the respondent on the other hand has referred to quite a good number of documents which go to prima facie show and prove that it is a fact that the disputed property was let out to Pt. Kishan Chand. He has in this connection led me through certified copy of the letter dated August 8, 1955 addressed to Pt. Kishan Chand on the address of the disputed property. Then there is a photocopy of the license issued by the licensing department of the Municipal Committee, Delhi dated December 18, 1964 in the name of Pt. Kishan Chand on the address of the disputed property. Photocopy of the extract from the Inspection Book pertaining to the year 1968-69 reveals that Pt. Kishan Chand is in possession over the disputed property on a monthly rent of Rs. 25.00 . Similarly letter dated January 4, 1971 from the Licensing Officer, Municipal Corporation of Delhi, addressed to Pt. Kishan Chand on the address of the disputed property again goes to prima facie show that it was he who was in possession over the disputed property. Photocopy of the letter dated September 1, 1972 from the Licensing Department to Pt. Kishan Chand on the address of the disputed property shows that he was asked to appear before him Along with the licence. There is yet another letter dated September 19, 1972 from the Licensing Department, Municipal Corporation of Delhi to Pt. Kishan Chand on the address of the disputed property. Photocopies of the receipts dated April 12, 1973 and March 1974 are with regard to renewal of the license issued in the name of Pt. Kishan Chand on the address of the disputed property. Photocopy of the rent receipt dated April 4, 1976 shows that Shri Raghbir Singh received rent pertaining to the month of February and March 1976 from Pt. Kishan Chand. Then there are factory license receipts dated March 4, 1978, March 9, 1978, April 3, 1979 and March 27, 1980 in the name of Pt. Kishan Chand on the address of the disputed property. There is again a rent receipt dated October 30, 1983 issued by Shri Raghbir Singh to Pt. Kishan Chand in token of the receipt of rent. Show cause notice dated December

1, 1985 issued to respondent No. 1 by the Municipal Corporation of Delhi again goes to show that Pt. Kishan Chand is in occupation over the disputed property. The above documents prima facie go to show and suggest that it was Pt. Kishan Chand who was in occupation over the disputed property as a tenant therein. Thus, the occupation of the appellant No. 1 in the disputed property cannot be explained prima facie in any other way except that he was inducted into the disputed premises either as a sub tenant or as a contractor working for and on behalf of Pt. Kishan Chand.

(19) Learned counsel for the appellants Mr. Aggarwal has strenuously argued that the appellant was in occupation of the disputed property and was running a factory therein for dyeing and bleaching of cotton threads which was located in a non conforming area. He was thus, asked to shift to a conforming area by the Delhi Development Authority as per their Scheme which was floated by them in the year 1960-70. The learned counsel in this connection has referred to a letter in the year 1968 (the date is not legible) from the Land Sales Officer, Delhi Development Authority to the appellant. A perusal of the same shows that Plot No. 115 in Block A, Wazirpur Industrial Area was allotted to the appellant in the draw of lots held on May 14, 1968. The learned counsel has contended on the basis of the said letter that it goes a long way to show and prove that the appellant was in occupation over the disputed property as a tenant under the respondent No. 1. Had it not been so he would not have been allotted a plot in lieu of the disputed property. The argument of the learned counsel is devoid of any force. The said letter, I feel, does not -- the Court anywhere. There is no mention therein that the said plot was allotted in lieu of the disputed property as the same was situated in a non conforming area. The said letter simply shows that the plot bearing No. A-115, Wazirpur Industrial Area was allotted to the appellant in the draw of lots held on May 14, 1968. Thus I feel that the appellant cannot draw any sustenance from the said letter.

(20) Admittedly the defense as put forward by the learned counsel for the appellant is that the appellant was running a factory for bleaching and dyeing of cotton threads in the disputed property. If this is so the best evidence to substantiate the said assertion was a license from the Municipal Corporation of

Delhi under Section 417 of the Delhi Municipal Corporation Act. Curiously enough the appellant has not placed on record even a tiny piece of paper in the form of --. The respondent No. 1, in the other hand, has placed quite a good number of copies of the license issued by the Municipal Corporation of Delhi on record to show and prove that in fact it was Pt. Kishan Chand who was running the factory in the disputed premises for dyeing and bleaching of threads, adverted to above.

(21) Respondent No. 1 filed a suit against the appellant No. 1 for recovery of damages to the tune of Rs. 3,000.00 on the ground that the appellant No. 1 falsely alleged himself to be a tenant in the disputed property (vide paras 2 and 3 of the plaint in Suit No. 26/89). The appellant put in contest in the said suit. The said suit ultimately came up for hearing before Shri J.R.Aryan, Sub Judge, Delhi who vide his judgment dated 20th January, 1990 decreed the suit for recovery of damages. The issue No. 1 framed in the said suit was to the effect as to whether the defendant (Shri Uttam Singh) was a tenant in the suit premises. The finding of the lower Court was against the appellant No. 1. The learned lower Court found that the appellant was not a tenant in the disputed premises. Admittedly the said judgment and decree was not appealed against. Hence it has become final in between the parties. The findings of the said judgment are binding in between the parties. Thus, the appellant cannot be permitted to allege to the contrary in the present proceedings. The impugned finding would operate as *res judicata* against the appellant No. 1. The above view was given vent to by a Division Bench as : AIR1954 Cal505 , Baidyanath Chanda and others v. The State.

(22) 'WHERE a decree is *ex parte* only in the sense that after filing the written statement and taking part in the proceedings for a considerable time, the defendant defaults in appearance during the last stages, it cannot be said that the decision at most operates as *res judicata* on the questions directly decided. The principle laid down in 1939 Act. It is not applicable in such circumstances. Besides, it is well settled that even if a decree be *ex parte*, it will operate as *res judicata* in respect of all grounds of defense against the actual claim in the suit as also all matters inconsistent with such claim which might and ought to have been raised.'

(23) It was next urged by the learned counsel for the appellant that the appellant though in possession over the disputed property since long was not impleaded as a respondent in the eviction proceedings which were initiated against Pt. Kishan Chand in suit E-130/92. According to the learned counsel it was not intentionally done so because the impugned decree which was passed against Pt. Kishan Chand in the above suit on 9th March, 1994 was a collusive decree in favor of one brother against the other. The learned counsel thus argues that the appellant No. 1 was a necessary party and he should have been impleaded in the said eviction proceedings. Hence the said judgment and decree is not binding on the appellant No. 1. The learned counsel in support of his arguments has led me through quite a good number of authorities. It was observed in : AIR1983 Delhi432 , *Devi Dayal Dixit v. M/s. Rashtriya Electrical and Engineering Co.*

(24) 'WHERE in a suit for eviction a party who had been in occupation of the premises for quite some time before the institution of the suit, claimed to be the original tenant, and not the person proceeded against, he would have a right to be impleaded as a party defendant.'

(25) The same view was again reiterated by a learned Single Judge of this Court as : AIR1993 Delhi99 , *Shri Hem Chand Jain v. Shri Anil Kumar and Others*. He has then placed reliance on the observations of a learned Single Judge as : AIR1983 Kant27 , *Smt. Yamuna v. A. Rama Amin and others*. According to the facts of the said case the petitioner - sub lessee claimed himself to be a legal sub tenant. Hence, it was held that he should have been impleaded as a party to the eviction proceedings in order to give him an opportunity to prove that the sub lease was a valid one. To the same effect are the observations as , *Satish Chand v. Bhonrilal and another*.

(26) Learned counsel for the appellant after having drawn inspirations from the said authorities has argued with great zeal and favor that the facts in the instant case are similar to the facts in the above cited authorities. Hence it should be held that the appellant should have been impleaded in the above said eviction proceedings i.e. the suit E-130.92, and failure of the respondent to implead him as a respondent in the said proceedings caused irreparable loss and damage to the

appellant and as such the said decree cannot be binding on him.

(27) I am sorry I am unable to agree with the contention of the learned counsel for the appellant. I have already held above that there is not even a iota of evidence on record to show prima facie suggest that the appellant No. 1 was in occupation over the disputed property as a tenant under the respondent No. 1. Thus, the picture which emerges before this Court in view of the above is that the respondent is in occupation over the disputed property. The question, in view of the above, arises whether each and every person who is in occupation over the disputed property is entitled to be impleaded as a respondent in an eviction proceedings? My answer to the above question is a definite 'no'. It is only in those discerning few cases where a person shows prima facie that he is in lawful occupation over the disputed property that he is required to be impleaded as a respondent in order to give him an opportunity to be heard and to defend himself in the eviction proceedings. However, the same principle cannot be so extended so as to embrace within its fold even the cases of unlawful occupants. I am supported in my view by the observations of their Lordship of the Supreme Court as : [1964]7SCR760 *Rupchand Gupta v. Raghuvanshi (Private Limited and another)*..... 'Taking the last action first, viz., Raghuvanshi's omission to implead the appellant, it is quite clear that the law does not require that the sub lessee need be made a party. It has been rightly pointed out by the high Court that in all cases where the landlord institutes a suit against the lessee for possession of the land on the basis of a valid notice to quit served on the lessee and does not implead the sub lessee as a party to the suit, the object of the landlord is to eject the sub lessee from the land in execution of the decree and such an object is quite legitimate. The decree in such a suit would bind the sub lessee. This act harshly on the sub lessee; but this is a position well understood by him when he took the sub lease. The law allows this and so the omission cannot be said to be an improper act.' It was observed by a learned Single Judge of this Court as reported in 1970 R.C.R. *Shri Tara Chand v. Mst. Marrium Bi and another*..... 'Learned counsel for the appellant said that the appellant should have been made a party to the eviction proceedings, which are vitiated by his non-joinder. It is not necessary or even permissible to make a person a party to the eviction proceedings unless he has a right to continue to occupy the premises even after

the tenant is vacated. The appellant would have had such a right if he had been entitled to the benefit of Section 18(1) of the Act having complied with the provision of Section 17(2) thereof. Since he was not such a person his non-joinder was correct.'

(28) It has then been urged for and on behalf of the appellant that since the appellant was in possession over the disputed property on the date of the presentation of the suit for recovery of possession i.e. October 25, 1994 hence the relief sought through the application under Order 39 Rules 1 & 2, Civil Procedure Code moved Along with the suit for restoration of the possession (vide para 15 of the application) over the disputed property could not have been granted as the same would tantamount to decreeing the suit without giving an opportunity to the appellant to lead evidence in support of his defense version. The learned counsel contends that the balance of convenience was in favor of the appellant who was in possession over the disputed property. Hence, the learned lower Court should have directed the parties to maintain the status quo till the disposal of the suit and it was premature on his part to adjudicate upon the rights of the parties and to decide the same.

(29) The next limb of the argument advanced by the learned counsel for the appellant is that an injunction on the application for ad interim mandatory injunction can be granted only in those discerning few cases where the Court wants to restore the status quo ante which existed on the date of the suit. Admittedly, in the present case the respondent No. 1 was out of possession and appellant No. 1, on the other hand, was admittedly in possession over the disputed property. Hence the application for ad interim mandatory injunction should have been dismissed instead of being allowed. The learned counsel in support of his argument has led me through : [1990]1SCR332 Dorab Cawasji Warden v. Coomi Sorab Warden and others, wherein it was observed by the Hon'ble Supreme Court'. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last known-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But

since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable loss, Courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction. (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favor of the one seeking such relief.

(30) To the same effect are the observations of a learned Single Judge as reported in 1981 RLR 56, Mohinder Singh v. Dharamvir Radhesham, and 1973 R L R58, Kashmiri Lal v. University of Delhi.

(31) Learned counsel for respondent No. 1, Mr. Ishwar Sahai, Senior Advocate, on the contrary has vehemently argued that there is no such law that in case the relief sought through the suit and the relief prayed for in an application for ad interim injunction under Order 39 Rules 1 & 2, Civil Procedure Code are the same in that eventuality the ad interim injunction cannot be granted as is the case in the instant case. However, it is true that the Court would be very slow in granting the said relief and would grant the same only when it comes to the conclusion that grave injustice has been done to the petitioner who has been thrown away from a property in which he was in lawful occupation and a person who has got no right or title to the said property has occupied the same. The learned counsel in support of his argument has relied upon a judgment passed by a Division Bench of the Calcutta High Court as : AIR1985 Cal248 , Indian Cable Company Limited v. Smt. Sumitra Chakraborty,.....' In my opinion the principle on the point as it emerges on review of the authorities thereon is that if a Court is called upon to grant any relief on any interlocutory application which when granted would mean granting substantially the relief claimed in the suit, the Court will be very slow and circumspect in the matter of granting any such prayer. It is indeed true that such a relief should be granted only in exceptional cases. Though exercise of such a

discretion should be limited to rare and exceptional cases, still at the same time no Court should think, as has been the view taken by the learned Subordinate Judge, that in law there is any absolute bar to the Court granting such a relief. In deserving cases, the Court should not hesitate to come in aid of a litigant and uphold the cause of justice by granting such a relief.' The same view was reiterated by a Division Bench of the Delhi High Court as reported in 1996 Rajdhani law Reporter 112, Dr. Peter George v. Janak J. Gandhi, and : AIR1993 Delhi293 Shri Hari Mohan Sharma and others v. C.S.R. Poultry Research and Breeding.

(32) Btindent = It is crystal clear from the catena of authorities alluded to above, that there is no bar to the grant of the relief of mandatory injunction on an application under Order 39 Rules 1 & 2, Civil Procedure Code if the relief sought through the application is the same which is prayed for in the suit itself. However, the Court would be slow and circumspect and they would be on their tiptoe and guard while granting such a relief because the said relief can be granted only in those discerning few cases where the Court comes to the conclusion that a grave injustice would be done to the petitioner in case such a relief is not granted. If the Court is of the view that the opposite party has got no legs to stand upon and non granting of the injunction would result in injustice to the petitioner then the Court would not hesitate in coming to the rescue of such a petitioner, nay, this Court feels it would be their duty to stand by the side of such a petitioner and to come to his rescue by redressing his grievance.

(33) With the above background let us now try to apply the ratio of the said authorities to the problem in hand. Admittedly the respondent No. 1 has prima facie proved that the possession over the disputed property was delivered to him by the bailiff of the Court on August 22, 1994 (as per the report of the bailiff of the said date). However, subsequently thereafter the appellants are alleged to have broken open the lock and got into the possession over the disputed property. Thus, I think the respondent No. 1 has proved that he has got more than a prima facie case in his favor inasmuch as in case the relief of ad interim mandatory injunction was not granted he would have remained out of possession over his own property for no fault of his for over a number of years. Admittedly the suit in

the instant case was filed on October 25, 1994. The respondent is still out of possession of his own property whereas the appellant No. 1 who is alleged to have unlawfully occupied the disputed property has been reaping the fruits of his illegal acts. Should a Court remain a mute spectator to such travesty of justice? The answer is `no'. Rather it is the duty of the Court to come to the help of the petitioner in such cases by granting the relief. It is well known that the Court will always try to undo those acts which have been illegally done or would restore to a party a thing which has been unlawfully taken away from him. Balance of convenience is also in favor of respondent No. 1 inasmuch as he is the lawful owner of the disputed property whereas the appellant is prima facie a trespasser in the said property. Thus, the balance of convenience is in favor of respondent No. 1 that he should be put back into possession over the disputed property. In case the injunction is not granted at this stage in that eventuality the respondent No. 1 would remain out of possession and we do not know as to for how many years as the delays in the final disposal of the case are proverbial and not unknown or hidden from anyone. In case the injunction is not granted then the respondent No. 1 would suffer irreparable loss and injury and it would be difficult to assess the said loss in terms of damages.

(34) In view of the above, I do not see any force in the present appeal. The order of the learned lower Court dated November 20, 1996 is hereby confirmed. Consequently, the appeal is dismissed with costs.

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