

Kayum Ali Vs. Alanoor

Kayum Ali Vs. Alanoor

SooperKanoon Citation : sooperkanoon.com/756720

Court : Rajasthan

Decided On : Feb-11-1976

Reported in : 1976WLN(UC)97

Judge : S.N. Modi, J.

Appeal No. : S.B. Exc. Second Appeal No. 30/71

Appellant : Kayum Ali

Respondent : Alanoor

Disposition : Appeal allowed

Judgement :

S.N. Modi, J.

1. The only point involved in this execution second appeal is whether the consent decree passed on 7-5-70 on the basis of compromise entered into between the parties is a nullity as, it has been passed in contravention of the provisions of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as the Act).

2. This appeal arises out of these facts. The respondent was a tenant of a room belonging to the appellant at a monthly rent of Rs. 3,50. The respondent did not pay rent to the landlord for a considerable period of time. Ultimately the plaintiff

landlord filed a suit for eviction and arrears of rent amounting to Rs. 245/- on 19-9-1966.

3. The suit was resisted by the tenant on various grounds which need not be mentioned here.

4. Evidence was led by both the parties in proof of the issues. On 7-5-70 a compromise petition was filed in the court which was signed by both the parties. The court recorded the compromise and passed a decree for eviction in accordance with the terms of the compromise. The contents of the compromise petition show that the tenant agreed to vacate the suit premises on or before 1-8-1970 & the landlord relinquished his right to recover the arrears of rent. When the tenant did not vacate the suit premises on 1-8-70, an execution petition was filed by the landlord on 7-8-70. Objection was raised on behalf of the tenant that the decree was a nullity as it was passed in contravention of the provisions of Section 13 of the Act. The relevant portion of Section 13 of the Act runs as under:

13. Eviction of tenants (1) No withstanding anything contained in any law or contract, no Court shall pass any decree, or make any order, in favour of a landlord, whether in execution of a decree or otherwise evicting the tenants so long as he is ready and willing to pay rent therefor to the full extent allowable by this Act, unless it is satisfied.

(a) that the tenant has neither paid nor tendered the amount of rent due from him for six months.

5. It will thus be clear that this section forbids a court to pass any decree in favour of a landlord evicting the tenant so long as he is ready and willing to pay rent therefor to the full extent allowable by the Act unless the tenant has neither paid nor tendered the amount of the rent due from him for six months. The mere fact that the decree passed is a consent decree passed on compromise does not empower a court to hold that a decree for eviction is in contravention of the provisions of Section 13 of the said Act. Even under Order 28 Rule 3 CPC the court before ordering that, the decree he passed is required to satisfy itself about the lawfulness of the agreement. The compromise petition presented by the parties in

the present case clearly goes to show that the landlord was to forgo all arrears of rent and the tenant was required to vacate the suit premises on or before 1-8-70. It is undisputed that on the date of the suit the tenant was a defaulter and he neither paid nor tendered rent for 6 months. The suit for eviction filed by the landlord therefore clearly fell within the purview of Section 13(1)(a) of the Act. Again, in the present case the decree or the compromise does show that the tenant was the defaulter in payment of rent for more than 6 months. Since in the instant case there was a clear indication in the compromise that the defendant was a defaulter in payment of rent, it constituted a good ground for eviction under Section 13(1)(a) of the Act. In such circumstances, it cannot be said that the decree passed by the court below was a nullity. I am fortified in my view by the decisions of the Supreme Court in *Nagindas v. Dalpatram* : [1974]2SCR544 and *Roshan Lal v. Madan Lal* : [1976]1SCR878 .

6. In the result the appeal is allowed with costs and the order passed by the courts below are set aside and it is held that the decree dated 7-5-70 is not valid. The costs of the courts below shall be borne by the parties.