

ishwar Chand Vs. Radha Krishanan

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Court : Rajasthan

Decided On : Jan-21-1999

Reported in : 1999WLC(Raj)UC298; 1999(1)WLN140

Judge : V.S. Kokje, Actg. C.J.

Appeal No. : S.B. Civil Revision Petition No. 1718 of 1998

Appellant : ishwar Chand

Respondent : Radha Krishanan

Disposition : Petition allowed

Judgement :

V.S. Kokje, Actg. C.J.

1. Heard Shri R.K. Agarwal for the revision petitioner and Shri Sanjay Mehrish for the non-petitioner.

2. This litigation has a long history. A suit for ejectment was brought in violation of provisions of Section 14(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 which prohibits bringing of suit for ejectment from premises let out for commercial purpose within five years of letting out the premises on the ground of bona fide requirement. Admittedly, objection to the maintainability of the suit was not raised in the trial court, first appellate court and the second appellate

court and the suit was decreed despite this defect even by the second appellate court. When the decree was being executed, an objection was raised as to inexecutability of the decree on the ground that the decree was nullity being passed in a suit which was not maintainable. That objection was also over-ruled holding that it did not relate to execution, discharge, or satisfaction of the decree. The revision petition against the order of the executing Court was also dismissed by this Court. Thereupon a suit for declaration that the decree was nullity was filed. Along with the suit, an application for temporary injunction for staying execution of decree was also filed. The trial court allowed the application for temporary injunction against which a Misc. Appeal was filed in the District Court. The District Court set aside the temporary injunction. Against this order of the District Court, the present revision petition is directed.

3. Having heard the learned Counsel for the parties and having perused the impugned orders, I find that seriously debatable questions have been raised in the suit. It is being contended that when the suit itself was barred, the decree passed in such a suit would be a nullity. It has also been seriously argued that in such matters when the defect goes to the root of the decree, the principle of constructive res judicata would not be attracted. It is also contended that the protection granted by the statute to a tenant cannot be taken away even if he does not raise any objection because there could be no acquiescence against law and there could be no estoppel against law.

4. Without expressing any opinion on the merits of the controversy it can be said that the questions raised are not flimsy or frivolous. There are serious questions which have to be answered after hearing both the parties. When the suit itself is pending and the learned trial court thought it fit to grant a temporary injunction against eviction during the pendency of the suit, it was not proper for the appellate court to vacate that injunction and permit eviction even during the pendency of the suit. The impugned order passed by the appellate Court deserves to be and is, hereby, set aside. However, looking to the plight of the plaintiff who has fought up to this Court for obtaining a decree of eviction, which is still under challenge, it is necessary to direct the trial court to dispose of the suit expeditiously. Accordingly, the trial court is directed to dispose of the suit within a period of six months from

the date of receipt of a copy of this order either through the Registry or through the parties.

5. The revision petition is allowed as indicated above. There shall be no orders as to costs.

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