

Ranjit Singh Vs. Manakchand

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Court : Rajasthan

Decided On : Feb-16-1987

Reported in : 1987(2)WLN862

Judge : Mohini Kapoor, J.

Appeal No. : S.B. Civil Rev. Petition No. 757 of 1986

Appellant : Ranjit Singh

Respondent : Manakchand

Disposition : Revision dismissed

Judgement :

Mohini Kapoor, J.

1. On 24-5-1980, the non-petitioner instituted a suit for eviction from his shop on grounds of default in payment of rent. The defendant was one Pratap Singh, who died during the pendency of the suit on 28-1-1981. The non-petitioner moved an application for bringing on record the legal representatives of deceased Pratap Singh and they were five sons and one widow. On 21-1-1982, the Court passed an order to bring on record only one of the legal-representatives as mentioned in the application and Uttamjeet Singh came to be substituted with the consent of the parties. Thereafter, his written statement was filed and the provisional rent was

determined under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 on 21-5-1982. It may be mentioned that the rent determined by the Court was not deposited by Uttamjit Singh.

2. On 24-2-1983, the present petitioner Ranjit Singh, who is also a son of Partap Singh moved an application for being made a party on the ground that he was also carrying on his business on the shop which was rented out to Pratap Singh and he was also his heir and should be made a party. This application was allowed on 6-13-1983, and he filed a written-statement on 8-2-1985. In the meantime on 27-2-1982, the non-petitioners moved an application under Section 13(3) of the Act for striking out the defence of the tenant as he had failed to comply with the order passed by the Court under Section 13(3) of the Act. This application has been accepted by the learned Munsif, by his order dated 26-3-1984 and has been confirmed in appeal by the Additional District Judge No. 2 Kota, by order dated 30-9-1986. Against this decision the petitioner has come up in this revision.

3. The main contention of the learned Counsel for the petitioner is that the Court did not implead all the legal representatives of deceased Pratap Singh on record and without bringing them on record, an order under Section 13(3) of the Act could not be passed. According to him when the present petitioner was not a party to the proceedings, he could not be expected to comply with the order under Section 13(3) and deposit the rent he cannot be made to face the consequences of non-deposit of the same.

4. On the other hand the learned Counsel for the non-petitioners, has laid emphasis on the fact that it was Uttamjit Singh, who was doing business in this shop while the present petitioner was doing some other work and it was with the consent of all the legal representatives that they had decided to appoint Uttamjit Singh as the person to contest the suit which had been filed against Pratap Singh. It is also contended that the present petitioner cannot be said to be a tenant in accordance with the provision of Section (3)(vii) of the Act as it is only person who is doing business in the shop who can be said to be a legal representative of the deceased tenant.

5. Having considered the contentions raised on behalf of both parties, I am satisfied that there is no illegality or irregularity in the decisions of both the court below, when the application for substitution of legal representatives of deceased Pratap Singh was decided then it was the consent of the parties that Uttamjit Singh was allowed to be made the legal-representative to represent all the other heirs and proceed with the suit. Having given his consent the present petitioner is bound by it and if subsequently he has been impleaded as a party then the case is to proceed from the stage he has been impleaded as a party and not be; reverted back to the stage of determining the rent under Section 13(3) of the Act. The order under Section 13(3) of the Act had been made earlier and the person who was representing the deceased Pratap Singh at that time was directed to make the payment and if he has failed to do so the consequences will be faced by him and the second legal representative cannot come forward to turn the clock backwards and claim a fresh determination under Section 13(3) of the Act.

6. Both the courts below have taken into consideration the material on basis of which they have arrived at the decision and it cannot be said that their decisions suffer from any error of jurisdiction.

7. This revision fails and is accordingly dismissed