

Smt. Shakuntala Devi and ors. Vs. Surinder Kumar and ors.

Smt. Shakuntala Devi and ors. Vs. Surinder Kumar and ors.

SooperKanoon Citation : sooperkanoon.com/888523

Court : Himachal Pradesh

Decided On : May-31-1989

Reported in : AIR1991HP13

Judge : Bhawani Singh, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 23, Rule 1

Appeal No. : Civil Revision No. 152 of 1988

Appellant : Smt. Shakuntala Devi and ors.

Respondent : Surinder Kumar and ors.

Advocate for Def. : G.C. Gupta, Adv.

Advocate for Pet/Ap. : Ajay Kumar, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Bhawani Singh, J.

1. This revision arises out of the judgment of the Appellate Authority (II) under the H. P. Rent Control Act, 1971 in case No. 13-S/14 of 1987/88 decided on 1-6-1988 as a Civil Misc. Appeal. By this judgment, the appellate authority allowed the

prayer of the landlords (hereinafter to be referred to as the respondents) Under Order 23, Rule 1, C.P.C. thereby permitting them to withdraw the petition with permission to file a fresh petition on the same cause of action. The tenants (hereinafter to be referred to as the petitioners) feel aggrieved by this judgment and, therefore assail the same by this revision petition.

2, The facts, in brief, are that the respondents filed an application under Section 14 of the H. P. Rent Control Act, 1971 before the Rent Controller, Shimla, on the ground that the petitioner had, without the permission of the respondents, committed such acts which have impaired materially the value and utility of the premises in question and that these premises were required by the respondents for the bona fide use and occupation and that the petitioners had acquired vacant possession of and got a residence in the urban area of Shimla. All these claims were contested by the petitioners and the following issues were framed by the Rent Controller:--

1. Whether the respondent has committed such acts which have impaired materially the value and utility of the premises in question? OPP
2. Whether the petitioners require the premises in question for their own use and occupation bona fide? OPP
3. Whether the respondents have acquired the vacant possession of residence of their own? OPP
4. Whether the premises in question form two separate and independent tenants and if so its effect? OPR
5. Whether the petition is not maintainable as alleged in preliminary objection Nos. 1 and 2 of the reply? OPR
6. Whether the tenants in the premises in question? OPR
7. Relief.

3. It appears from the judgment of the Rent Controller dt. 31-3-1986 that Issues Nos. 4 to 6 were not pressed by the petitioners and the remaining issues were,

therefore, taken up for decision. Under Issue No. 1 it was decided that the respondents had failed to establish that the value and utility of the demised premises had been impaired as alleged by them. Under Issue No. 2, it was also held that the claim of personal requirement by the respondents was not established and finally, the Court, it appears from the judgment, indicated in the alternative, in addition to its decision relating to this issue that this ground of bona fide requirement was not otherwise available to the respondents as after the amendment of the Act, the premises could partly be used for the purpose of business or trade and partly for the purpose of residence subject to the condition that the person who carried on the business or trade in the building resided there. The Court, therefore, concluded that the premises in question being partly for the purpose of business and partly for the purpose of residence, the ground of bona fide requirement was not available to the respondents. Issue No. 3 is not relevant for the purpose of controversy in this case.

4. This matter was taken to the Appellate Authority where an application under Order 23, R. 1, C.P.C. was filed by the respondents and the same was allowed after giving full hearing to the contesting parties. The petitioners have a grievance against this decision and, therefore, they challenge the propriety and legality of the same by way of this petition.

5. The sole question for determination in this petition is whether the application Under Order 23, Rule 1 of the Code of Civil Procedure could be allowed by the appellate Court and, if so, whether the discretion exercised by the appellate Court in this behalf can be considered to be judicially sound.

6. Sh. Ajay Kumar, learned counsel appearing for the petitioners has very seriously assailed the order of the appellate authority and contends that the appellate authority by allowing this application has acted with material irregularity, illegality and impropriety. It is further asserted that by doing so, it has caused immense dent and damage to the cause of his clients especially when the trial Court has given a finding in favour of his clients as to the non-maintainability of a joint petition relating to two independent tenancies. Finally it is argued that the appellate Court should not have allowed this application at such a late stage when

certain rights had vested in favour of the petitioners after a long trial of the case and after hearing the parties. Reference to AIR 1971 Allahabad 41 : 1970 All LJ 732 (Vidhydhar Dube and Ors. v. Har Charan and Ors.) and AIR 1973 Allahabad 212 : (1972 All LJ 575) (Kanhaiya and Ors. v. Mst. Dhaneshwari and Anr.) was also made.

7. Sh. G. C. Gupta, learned counsel appearing for the respondents has assailed all these submissions of Sh. Ajay Kumar. He has supported the impugned judgment.

8. I proceed to examine the respective submissions of the learned counsel for the parties.

9. A perusal of the issues framed by the Rent Controller in this case shows that the key issues touching the issues of separate and independent tenancies and non-maintainability of the petition have been left out from discussion and decision by the petitioners. The onus of proving these issues was primarily on the petitioners. The same having once been left out, nothing remained to be decided by the Rent Controller on this aspect of the matter. However, as this aspect was touched in the judgment, the respondents genuinely make a grievance of it and the only option left with them was to get out of it by any permissible method which they got while the appeal was pending before the Appellate Authority. There is substance in the argument of Shri G. C. Gupta, learned counsel appearing for the respondents that by this time his clients had come in possession of material which indicated two separate and distinct tenancies in respect of the shop and the residential portion, therefore, in view of the existing legal position, the joint petition for eviction was not maintainable. There could be no possible amendment of the existing petition, he asserts, as the difficulty being of formal nature could be overcome by withdrawal of the petition as a whole and proceeding in the matter by filing separate cases.

10. The submission of Shri Ajay Kumar is that the claim of the respondents has all through been contested by the petitioners and they cannot be permitted to withdraw the proceedings when once they have failed to get a decree in their favour from the Rent Controller. I am not impressed by this argument. Order 23, Rule 1 of the Code of Civil Procedure also applies to appeals and the appellate

Court, therefore, can allow the withdrawal of an appeal with liberty to bring a fresh case.

11. The judgments referred to by Shri Ajay Kumar are to the effect that in case a decree has been passed in favour of a party or a vested right has accrued to it, the plaintiff cannot, as a matter of right, withdraw the suit. The same can be done only with the permission of the Court. This appears to be the ratio of these decisions. After perusal of the facts of this case as described above, I am of the opinion that application Under Order 23, R, 1 of the C.P.C. is maintainable (1981 SLC 43, Bhagwah Singh v. Ramesh Kumar and Ors.) and the discretion exercised by the appellate Court in allowing this application of the respondents does not suffer from any illegality or impropriety as contended by Shri Ajay Kumar whose clients will be at liberty to oppose these applications, in accordance with law, if filed by the respondents, seeking their eviction.

12. The result is, there is no merit in this petition and the same is accordingly dismissed. However, the respondents will pay the petitioners costs to the extent of Rs. 500/- in addition to the costs of Rs. 500/- already allowed by the appellate Court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com