

M.A. Shamsuddin Vs. the State and ors. (Nct of Delhi)

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Court : Delhi

Decided On : Feb-25-2011

Judge : Shiv Narayan Dhingra, J.

Acts : Code Of Criminal Procedure (Cr.P.C) - Section 145

Appeal No. : W.P (Crl.) No. 1430/2007

Appellant : M.A. Shamsuddin

Respondent : The State and ors. (Nct of Delhi)

Advocate for Def. : Mr. Pawan Sharma, Adv.

Advocate for Pet/Ap. : Mr. R.N. Vats, Adv.

Judgement :

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

1. The petitioner has filed this writ petition with a prayer that the Court should issue a mandamus directing that the possession of property bearing number 27, Second Floor, Sewa Nagar Market, New Delhi be handed over to the petitioner in view of the order dated 4th April, 1997 passed by learned ASJ.

2. The petitioner was the tenant in the property in question sometime in 1994. The owner of the property was one Mr. Narender Kumar living abroad and Mr. Atam Prakash, a relation of Mr. Narender Kumar was the landlord of the premises. Atam Prakash was living on the ground floor and the petitioner was living on the first floor as tenant. In 1994, the petitioner left the premises and went to Kerala. Atam Prakash claimed that the petitioner while going to Kerala handed over the keys of the premises in question to him. One Govindan Soman claimed that the petitioner, while leaving for Kerala, put him in the premises as a caretaker. A dispute arose between the two over possession and a DD entry no.12A was made in this regard at police station Kotla Mubarak Pur, New Delhi on 12th June, 1994. The police put two locks over the disputed premises and deposited two sets of key in the Malkhana and a report in this respect was sent to SDM. SDM issued a notice under Section 145 Cr.P.C to the parties including the petitioner, although the dispute was between Govindan Soman and Atam Prakash. No preliminary order was passed by the SDM. The proceedings were ultimately dropped by the SDM on 13th March, 1995 observing that there seemed to be no apprehension of breach of peace. He did not decide as to who was in possession of the premises. Atam Prakash in 1997 made an application before the SDM for handing over possession of the premises in question since the premises was still lying locked and the keys were with the police. The learned SDM vide order dated 4th April, 1997 passed an order that possession of the premises be handed over to the party with whose set of keys the locks open. The possession was thus handed over to Atam Prakash. This order of SDM was assailed before the learned ASJ and the learned ASJ set aside this order, however, the learned ASJ did not pass an order as to what should be done of the premises since the premises was lying locked prior to passing of the order of SDM and possession was with the police. After order of learned ASJ Govindam Soman filed an application before SDM for sealing the premises and the SDM dismissed the application observing that since no direction had been given by learned ASJ in respect of handing over of the possession and the proceedings had already been dropped so he had no authority to take possession from Atam Prakash and sealing the premises. Against this order of SDM a criminal revision was preferred before the learned ASJ and learned ASJ vide order dated 8th August, 2001 set aside the order of SDM of refusing to entertain the request of

Govindam Soman and directed SDM to adjudicate about the possession of the premises and hold an enquiry for limited purposes of ascertaining as to who among the respondent was in actual possession of the premises at the time of dispute and deliver the possession to him. This order of learned ASJ was assailed before this Court vide Criminal Revision No.474 of 2001 and this Court set aside the order of learned ASJ dated 8th August 2001 with no direction regarding possession of the premises. Now the petitioner has come up with the present writ petition that the possession be handed over to him.

3. I consider that this petition filed by the petitioner is not maintainable. The petitioner was a tenant and left the premises in 1994 and gone to Kerala. Dispute of possession arose between Govindam Soman and Atam Prakash. The petitioner was made a party because Govindam Soman claimed that he was a caretaker on behalf of petitioner. In case the petitioner considers that his tenancy was still continuing despite his giving possession either to Govindan Soman or to Atam Ram, he should file a civil suit for claiming possession. This writ petition seeking directions to police to take possession from Atam Prakash and hand it over to him would not lie. The petition is hereby dismissed with no orders to costs.

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