

(2010) 08 JH CK 0047**Jharkhand High Court****Case No:** None

Mrityunjay Kumar Pandey and
Others

APPELLANT**Vs**

Smt. Phulsahiban and Others

RESPONDENT**Date of Decision:** Aug. 2, 2010**Citation:** AIR 2011 Jhar 752 : (2010) 4 JLJR 345**Hon'ble Judges:** Narendra Nath Tiwari, J**Bench:** Single Bench**Judgement**

Narendra Nath Tiwari, J.

This appeal shall be heard on the following substantial questions of law:

(i) Whether learned Courts below have misdirected themselves in not properly considering the Ext. G, the order of this Court in which respondents had admitted the appellants as encroachers ?

(ii) Whether once the respondents having termed the appellants as encroachers, they are estopped from seeking eviction of the appellants alleging them as their tenants ?

2. Since Mrs. Ritu Kumar appears on behalf of the respondent Nos. 1-3, no notice need be issued to them.

3. Issue notice to the respondent Nos. 4 -14 by Registered Post with A/D as well as by ordinary process, for which requisites etc must be filed within one week, failing which this appeal, as against the concerned respondents, shall stand dismissed without further reference to a Bench.

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4. Heard learned Counsel for the appellants and Mr. Manju Prasad, learned Sr. counsel engaged by the respondent Nos. 1-3.

5. In this Interlocutory application the appellants have prayed for stay of the further proceeding in Execution Case No. 4/09, pending in the Court of the Sub-Judge-II, Dumka. It has been stated that during the pendency of this appeal, the appellants are proceeding to execute the decree under appeal. This appeal has been admitted for hearing by order dated 2.8.10 of this Court, after framing substantial questions of law. The appellants are, admittedly, in the possession of the suit premises which is their residential house. The execution of the decree would amount to render shelterless and the appellants shall be put to suffer irreparable loss and injury.

6. Mr. Manjul Prasad, learned Sr. counsel appearing on behalf of the respondents, opposed this application and submitted that the appellants are the tenants and that they have defaulted in payment of rent and the decree has been passed against the appellants. In spite of the decree, they are not paying the arrears of rent and they are also not paying the current rent.

7. In reply, learned Counsel for the appellants submitted that the appellants were/are not the tenants and they are in possession of the suit premises in question of their own right and title which they claimed in their pleading. The respondents had termed the appellants as encroachers in the writ petition filed before this Court, being C.W.J.C No. 2091/2001. The respondents were/are not the landlord and there was no occasion for paying any rent to them. Learned Courts below have committed serious errors in recording their findings ignoring Ext. G, the order of this Court passed in C.W.J.C No. 2091/2001.

8. Having heard learned Counsel for the parties, this Court is of the view that since this appeal has been admitted for hearing by framing substantial questions of law and since the suit premises is, admittedly, in the possession of the appellants, which is said to be their residential house, it is not desirable to disturb them during pendency of this appeal.

9. Considering the above, further proceeding in Execution Case No. 4/09, pending in the Court of Sub-Judge-II, Dumka, is stayed, subject to condition that the appellants shall deposit the arrears of rent as per the decree of the Court below within a period of two weeks as also that the appellants shall go on depositing Rs. 105/- per month (said to be rent) in the Court below by 15th of each month in advance. It is made clear that in case of failure on the part of the appellants in complying with the said condition, the respondents shall be at liberty to file an application for vacating the stay. It is also made clear that the aforesaid deposits made by the appellants shall not prejudice their defence/claim and shall be subject to the result of this appeal.

10. This interlocutory application stands disposed of.