

(2011) 05 DEL CK 0454

Delhi High Court

Case No: Regular Second Appeal No. 18 of 2009

Shri Prabhu Dayal

APPELLANT

Vs

Shri Udal Ram (deceased)
through legal heirs and Others

RESPONDENT

Date of Decision: May 24, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 35

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Ashish Sharma, for the Appellant; Mukesh M. Goel, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

This appeal had impugned the judgment and decree dated 31.10.2008 which has reversed the finding of the trial judge dated 22.11.2005. Vide judgment dated 22.11.2005 the objections filed by Prabhu Dayal under Order 21 Rule 35 of the CPC (hereinafter referred to as "the Code") were accepted; it was held that the decree dated 20.02.2003 could not be executed against the objector namely Prabhu Dayal; he was a lawful tenant in the suit premises and could not be dispossessed; his objections stood allowed. The impugned judgment dated 31.10.2008 had reversed this finding; the objections of Prabhu Dayal stood dismissed; court was of the view that the decree holder was admittedly the owner of the suit premises; objector having been inducted in the suit property through the licensee, he could not claim any right after a decree of eviction had been passed against the licensee/judgment debtor.

2. The factual matrix is as follows:

(i) Prabhu Dayal claimed himself to be a tenant having been inducted in the suit premises by Shakuntla Devi and her husband Raj Govind; Raj Govind is the son of

Udal Ram. Admittedly the suit property is in the name of Udal Ram.

(ii) Contention of the Appellant was that Shakuntla Devi had inducted him in the suit property and this is evident from the fact that Davinder Kumar (another son of Udal Ram) who has been examined as PW-1 in a connected suit proceeding had received rent from Prabhu Dayal qua the suit property on behalf of his father.

3 This is a second appeal. It has been admitted and on 18.02.2011 the following substantial question of law was formulated:

Whether the Appellant/tenant could be evicted from the suit property on the basis of a decree passed by Civil Court on 20th February, 2003 in suit proceedings bearing No. 209/96 which was an inter se suit between the deceased Udal Ram, (father), son and Shakuntala (daughter-in law) where the tenant /Appellant was admittedly not a party? if so, its effects?

4. On behalf of the Appellant, it is pointed out that the impugned judgment dismissing the objections of the objector Prabhu Dayal is a perversity; the Court had failed to appreciate that Prabhu Dayal had been protected under a decree dated 05.07.1994 which was a judgment passed in the suit No. 47/02 (filed by the Appellant Prabhu Dayal against Shakuntla Devi) where a clear finding had been returned that the Plaintiff i.e. Prabhu Dayal is a lawful tenant in the suit shop and he cannot be evicted by force; it is pointed out that this was qua the same suit premises i.e. on shop on the ground floor of premises No. 1853/47, Nai Wala, Karol Bagh. This judgment of 05.07.1994 had not been considered in the impugned judgment; the Plaintiff being a lawful tenant, he could not have been ordered to be evicted; his objections could not have been dismissed.

5. On behalf of the Respondent it is pointed out that the impugned judgment suffers from no infirmity; it is not disputed that the Appellant Prabhu Dayal is claiming his title as a tenant from Shakuntla Devi; Shakuntla Devi was admittedly not the owner of the suit property; Udal Ram her father-in-law was the owner and he not having consented to this arrangement, the question of the Appellant having become a lawful tenant does not arise.

6. Record has been perused. Admittedly the suit land is owned by Udal Ram. This is undisputed. It is also not in dispute that the Appellant Prabhu Dayal is claiming himself to be a tenant of Shakuntla Devi; Shakuntla Devi is the daughter-in-law of Udal Ram; her husband is Govind Ram. There is no documentary evidence to substantiate the submission that Udal Ram had expressly or even impliedly permitted Prabhu Dayal to occupy the suit premises as a tenant. The title of Prabhu Dayal in these circumstances could be no better than that of Shakuntla Devi; Shukuntla Devi herself was a licensee. This fact is clear from the suit proceedings which had ensued between Udal Ram and Shakuntla Devi his daughter in law. Udal Ram had filed suit No. 209/02/96 for possession against Shakuntla Devi in 1997. His contention was that his daughter in law Shakuntla Devi (Defendant No. 1) and son

Raj Govind (Defendant No. 2) are licensees in the suit property; their license having been terminated, they should be evicted. Written statement of the Defendant had contested the suit proceedings. They had denied that they were licensees. This suit was decided vide judgment and decree dated 20.02.2003. The Plaintiff i.e, Udal Ram (Udal Ram had since expired on 25.12.1997 and his legal heirs i.e. daughters and sons have been brought on record) was held entitled to a decree of possession qua the suit property; while disposing of issue No. 1 it was held that the Defendants were licensees in the suit property and their license has since been validly terminated. This finding dated 20.02.2003 has since attained a finality. By virtue of this judgment, it was held that the Defendant i.e. Shakuntla Devi and her husband Raj Govind were only licensees in the suit property; they themselves being licensees, the question of their creating a tenancy in favour of Prabhu Dayal did not arise. It is also an admitted fact that in the decree dated 05.07.1994 (passed in Suit No. 47/02) the present decree holder (Udal Ram) was not a party.

7. Even otherwise, the suit property was owned by Prabhu Dayal. Shakuntla Devi could not have passed on a better title to Prabhu Dayal than which she herself possessed. In these circumstances, the impugned judgment had rightly noted that she has no right to create this lease in favour of Prabhu Dayal; Prabhu Dayal had no right to remain in possession of the suit property once a decree of eviction has already been passed against Shakuntla Devi.

8. In [Madhumati Kaur Vs. Harish Chander Khanna](#), a Bench of this Court had noted that a sub-tenant inducted by the tenant without the consent of the landlord has not to be impleaded as a necessary party; he had no independent title.

9. The judgment relied upon by learned Counsel for the Appellant reported in AIR 1989 Orissa 74 Bhagaban Behera v. Dhiraj Kumar Shivjee and Ors. is inapplicable to the facts of this case. It is not the case of the Appellant that his objections had not been considered and dealt with by the Executing Court; in fact the Executing Court had examined them and dismissed them on merits. The title of Shakuntla Devi was that of a licensee; this was clear from the judgment and decree dated 20.02.2003; the question of her inducting Prabhu Dayal as a tenant when she herself was a licensee only did not arise.

10. Substantial question of law is answered in favour of the Respondent and against the Appellant. There is no merit in this appeal. Dismissed.