

Jawahar Lal v. Mangu Ram (J. V. Gupta, J.)

may have no means to subsist until the final order is passed."

In this situation such like interim orders passed by the trial Court are not to be interfered within revisional jurisdiction. Consequently, this petition fails and is dismissed with no order as to costs.

S.C.K.

Before J. V. Gupta, J.

JAWAHAR LAL,—Appellant.

versus

MANGU RAM,—Respondent.

Civil Revision No. 1410 of 1979.

June 5, 1987.

Code of Civil Procedure (V of 1908)—Order 26, Rules 8 and 10(2)—Commission issued for local investigation—Report of commission—Objections against report—Maintainability of such objections—Value of report of Local Commissioner.

Held, that there is no provision for filing objections to the reports made by the Local Commissioners after local investigations. Even otherwise, if objections are allowed to be filed to such like reports made by the local commissioners, then there will be no other way to find out the exact position of the site in dispute. The inspection by the local commissioner is made in the presence of the parties. Therefore, the said report is to be ordinarily accepted by the Court appointing the Local Commissioner unless any inherent defect could be pointed out therein. (Para 5).

Petition under section 15(6) of the Haryana Urban (Control on Rent and Eviction) Act, 1973 for revision of the order of Shri Balbir Singh Lather, I.A.S. Appellate Authority under Rent Control Act, Haryana, Gurgaon, dated 6th October, 1976, affirming that of Shri Deep Kishore Singh, H.C.S. Rent Controller, Ballabgarh dated 5th May, 1976 dismissing the application.

M. S. Jain with Adish Gupta, Advocate, for the petitioner.

I. K. Mehta, with Anjali Sehgal, Advocate, for the respondents.

JUDGMENT

J. V. Gupta, J.

(1) This revision petition is directed against the orders of the authorities below whereby the ejectment application filed on behalf of the landlord has been dismissed.

(2) The landlord sought the ejectment of his tenant on the sole ground that the building had become unsafe and unfit for human habitation. The said application was filed in the year 1973, i.e., about 14 years back. Since both the authorities below found that the building had not become unsafe and unfit for human habitation, the landlord moved an application in this Court for appointing a local commissioner to find the present condition of the building. Consequently,—*vide* this Court order dated April 23, 1987, Shri D. Khanna, an Advocate of this Court, was appointed as a local commissioner to visit the premises, in dispute. He was directed to inform the counsel for the parties before visiting the building and to find out the present condition thereof as well as the repairs, if any, made by the tenant during the pendency of this petition or otherwise without the permission of the landlord. The local commissioner has submitted a detailed report dated May 8, 1987. With the said report, he has also filed certain photographs taken by him at the spot for which reference has been made in the report. It appears that the local commissioner has taken pains to find out the exact position of the premises as it exists at the spot.

(3) The shop, in dispute, consists of four *khans*. The local commissioner has discussed the condition of all the *khans* separately in detail. He has also prepared the rough site plan, Annexure R.1, which contains the signatures also of the persons present. However, objections dated May 29, 1987, have been filed on behalf of the tenant. Along with the said objections, he has also filed certain photographs of the demised premises as well as the site plan prepared by one Rattan Lal Yadav, civil draftsman.

(4) The learned counsel for the tenant submitted that from the report of the local commissioner, no case was made out that the building was unsafe and unfit for human habitation. Moreover, according to the learned counsel, no photographs have been filed by

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the local commissioner with respect to *khan* No. 1. Even the conclusions with respect to the other *khans* of the shop, in dispute, are not correct.

(5) After hearing the learned counsel for the parties and going through the report of the local commissioner, I am satisfied that the building is unfit and unsafe for human habitation and that the tenant is liable to be ejected therefrom on this ground. Though objections to the said report have been filed on behalf of the learned counsel for the tenant, yet he was unable to point out any provisions of law whereunder the same were maintainable. Order XXVI rule 8, Code of Civil Procedure, deals with the commissioners to make local investigations. Sub-rule (2) to rule 10 thereof provides that the report of the commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record, but the Court or, with the permission of the Court, any of the parties to the suit may examine the commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation. Thus, there is no provision for filing objections to such reports made by the local commissioners. Even otherwise, if objections are allowed to be filed to such like reports made by the local commissioners, then there will be no other way to find out the exact position of the site, in dispute. The inspection by the local commissioner is made in the presence of the parties. Therefore, the said report is to be ordinarily accepted by the Court appointing the local commissioner unless any inherent defect could be pointed out therein. In this case, no request was made on behalf of the tenant to examine the local commissioner in this Court touching any of the matter referred to him or mentioned in his report, nor do I find any occasion for the same.

(6) Admittedly, the application for ejection was filed more than 14 years back. The building is an old one. The landlord himself purchased the same from the original owner in the year 1921. From the report of the local commissioner, it is quite evident that the building is an old one and it is only *khan* No. 1, which according to the local commissioner was being actually used by the tenant as a cloth shop. Thus, from the facts and circumstances of the case as revealed by the report of the local commissioner, it is quite evident that the building has become unsafe and unfit for human habitation.

(7) Consequently, this revision petition succeeds and is allowed. The impugned orders are set aside and the eviction order is passed against the tenant. However, the tenant is allowed three months' time to vacate the premises; provided all the arrears of rent, if any, are paid and an undertaking, in writing, that he will vacate the premises after the expiry of the said period of three months and hand over their vacant possession to the landlord, is given before the Rent Controller, within one month from today and the future rent is paid monthly regularly by the tenth of every month, in advance.

S.C.K.

Before S. P. Goyal, J.

LAKSHMI CHAND,—*Petitioner.*

versus

SARLA DEVI,—*Respondent.*

Civil Revision No. 3541 of 1986.

June 5, 1987.

Specific Relief Act (XLVII of 1963)—Sections 6, 6(4) & 41 Clauses (a) & (b)—Code of Civil Procedure (V of 1908)—Order 39, Rules 1 and 2, Section 151—Forcible dispossession of person in occupation—Suit to recover possession by such person—Suit decreed—Execution of such decree—Suit for injunction to stop execution—Such suit—Whether competent—Prayer for interm injunction—Grant of such prayer.

Held, that a suit for injunction restraining a person, who has been wrongfully dispossessed, from executing the decree passed under Section 6 of the Specific Relief Act, 1963, for recovery of possession is held to be competent, it would obviously result in rendering the provisions of Section 6 of the Act nugatory. Moreover such a suit is expressly barred by the provisions of Section 41(a) of the Act which provides that an injunction cannot be granted to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent the multiplicity of proceedings. Again, the phraseology used in Section 6(4) of the Act also makes it clear that the suit has to be for establishment of title and recovery of possession. This phraseology was purposely used in view of the provisions of Section 41(b) of the Act. If a suit for injunction could be maintainable, then the Legislature would have used the words "to recover possession thereof".

(Paras 3 and 5).