
Before V. M. Jain, J

L.I.C. OF INDIA—*Petitioner*

versus

DERA SAMADH BABA SARV VIAPI, PATIALA
AND OTHERS—*Respondents*

C.R. No. 820 of 2000

11th July, 2000

Code of Civil Procedure, 1908—O.21 Rl. 36—Petitioners inducted as tenant by lessees—Decree of possession passed against lessees in suit for possession—Petitioners were also a party in the said suit—Decree holder files for execution—Present petitioners who are also judgment debtors are liable to be evicted from property in dispute alongwith tenants—Petitioners are not entitled to any protection either under O.21 Rl. 36 CPC or under the provisions of the East Punjab Urban Rent Restriction Act, 1949.

Held that the present objector-petitioners, who are also the judgment debtors in the decree passed in favour of the decree holder-respondent, are liable to be evicted from the property in dispute in execution of the decree in favour of the decree holder and the petitioners are not entitled to any protection either under Order 21 Rule 36 CPC, or under the provisions of the East Punjab Urban Rent Restriction Act, 1949. That being the position, the Executing Court was perfectly justified in dismissing the objection petitions filed by the petitioners and no fault can be found with the order dated 6th January, 2000 passed by the executing court in this regard.

(Para 9)

Argued by : B. R. Mahajan, Advocate.

G. S. Anand, Advocate.

Anuj Raura, Advocate.

Arun Palli, Advocate, *for respondent No. 1*

JUDGMENT

V. M. Jain, J.

(1) This judgment shall dispose of Civil Revisions 820 of 2000, 914 of 2000 and 926 of 2000 against the order dated 6th January, 2000 passed by the executing Court dismissing the objections of the present petitioners.

(2) The facts relevant for the decision of these revisions are that property measuring 1 bigha 10 biswas (1506 sq yds) situated near Fountain Chowk on The Mall, Patiala, belonged to Dera Samadh Baba Sarv Viapi (in short Dera) and was under the management of Mahant Jai Ram Dass, who executed a registered lease deed dated 16th February, 1955 in respect of the suit property in favour of Prem Kumar for a period of 99 years. A suit under Section 92, CPC, was brought against Mahant Jai Ram Dass for his removal from the office of Mohtmim, for having executed the said lease deed for 99 years in favour of Prem Kumar and in the said suit, Mahant Jai Ram Dass was ordered to be removed and Mahant Som Parkash was appointed as the Mohtmim of the Dera. Thereupon, Mahant Som Parkash on behalf of the said Dera filed a suit for possession in respect of the said property against Prem Kumar, defendant, and also against Bank of India, LIC of India and M/s Harbans Lal Ram Parkash (being the occupiers of the said property). After contest, the said suit was decreed by the trial Court,—*vide* judgment and decree dated 21st December, 1984 and a decree for possession was passed in favour of the Dera and against the defendants, subject to the provisions of Section 51 of the Transfer of Property Act. The said judgment and decree dated 21st December, 1984 were challenged by Prem Kumar, defendant, etc. before the District Judge and the learned Additional District Judge,—*vide* judgment and decree dated 23rd July, 1986, dismissed the appeal and also dismissed the cross-objections filed on behalf of the plaintiff. It may be mentioned at this stage that after Prem Kumar had taken the suit land on lease for 99 years from Mahant Jai Ram Dass on behalf of the Dera, said Prem Kumar had raised construction on the said land and had given possession of the suit property to Bank of India, LIC of India and M/s Harbans Lal Ram Prakash (objectors), as tenants. After the suit was decreed by the trial Court and upheld by the Additional District Judge, the Dera (decree-holder) took out execution proceedings for possession of the suit property. During those execution proceedings, the learned executing Court,—*vide* order dated 4th June, 1993, fixed the value of the super structures at Rs. 16.52 lakhs and also assessed the value of the plot at Rs. 15.00 lakhs. Subsequently,—*vide* order dated

19th October, 1993, the executing Court directed the decree-holder to deposit Rs. 16.52 lakhs within two weeks for purchasing the super structures as provided under Section 51 of the Transfer of Property Act, failing which Prem Kumar, judgment debtor, would deposit Rs. 15.00 lakhs as the value of the plot and would become the owner of the said plot. Both these orders dated 4th June, 1993 and 19th October, 1993 were challenged in this Court by way of two separate revision petitions viz. CR 2784 of 1993 and CR 3741 of 1993, which were decided on 10th December, 1994. The order passed by the executing Court fixing the value of the super structures and the plot was upheld by this Court, whereas the order fixing the period of two weeks for purchasing the super structures was set aside. Thereafter, the Dera (decree-holder) deposited the amount of Rs. 16.52 lakhs, being the cost of super structures and sought the issuance of warrants of actual possession. In the meanwhile, the occupants of the said property, namely Bank of India, LIC of India and M/s Harbans Lal Ram Parkash (present petitioners) filed separate objection petitions before the executing Court, taking up various objections and alleging therein that they being the tenants over the suit property were entitled to retain the possession in view of the protection given to them under Order 21 Rule 36, CPC, and only symbolic possession could be delivered to the decree-holder. These objections were contested by the decree-holder. After hearing both the sides, the learned executing Court,—*vide* order dated 6th January, 2000, dismissed all the three objection petitions. Aggrieved against this order of the executing Court, all the three objectors filed the abovementioned three revision petitions separately in this court.

(3) Notice of motion was issued. Counsel for the parties have been heard and record perused.

(4) Learned counsel for the petitioners submitted before me that they admittedly being the tenants over the suit property were entitled to the protection of the Order 21 Rule 36, CPC, as also the protection of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Rent Act). It was further submitted that the various authorities relied upon by the learned executing Court i.e. *B. Gangadhar v. BG Rajalingam* (1), *Puran Chand and Co. v. Ganeshi Lal Tara Chand and Ors* (2) and *Hanumant Kumar Talesara v. Mohan Lal* (3) were not applicable to the facts of the present case. In the alternative, it was submitted that if the above arguments did not find favour with this

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- (1) AIR 1996 SC 780
 - (2) AIR 1988 Delhi 1
 - (3) 1988 CCC 180 (SC)

Court, reasonable time might be allowed to the petitioners to make alternative arrangements for shifting from the disputed property.

(5) On the other hand, learned counsel for the respondent-decree holder submitted before me that all the objector-petitioners were parties to the civil suit for possession filed by the Dera against Prem Kumar, lessee and others and that decree for possession was passed by the trial Court, which was upheld by the appellate Court. It was further submitted that the executing Court could not go behind the decree, which had not protected the tenancy rights of the objector-petitioners. It was further submitted that the tenants could not have better rights than Prem Kumar, judgment debtor, and since they were claiming their right of possession under Prem Kumar, judgment debtor, they must go with him. Reliance was placed on *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and Ors.* (4), *Mrs. Suman Demani and Ors. v. Norman Joseph Ferreira and Ors.* (5) and *Hukum Singh Nadir Singh v. Hakumat Rai Nihal Chand* (6).

(6) After hearing both the sides and perusing the record, I find no merit in these revisions, which are liable to be dismissed.

(7) The facts are quite clear and admitted. The present petitioners were inducted as tenants by Prem Kumar after he had taken the land on lease and had raised construction thereon. The lease in favour of Prem Kumar was set aside by the Civil Court and a decree for possession was passed in favour of the Dera and against Prem Kumar (lessee) and the present petitioners, being the occupiers of the property in question. The present petitioners are thus claiming their right over the suit property under Prem Kumar. Even otherwise, the decree for possession was passed in favour of the Dera and against the defendants, including the present petitioners Bank of India etc.

(8) In AIR 1996 SC, 780 (supra), it was held by their Lordships of Supreme Court that where in a suit for declaration of title and vacant possession of land, the decree was passed by the trial Court directing handing over vacant possession of land by demolishing the shops constructed by the judgment debtor during pendency of suit, the said direction in execution of decree was not without jurisdiction. It was further held in the said authority that a tenant who claimed title, right or interest in the property through the judgment debtor or under the colour of interest through him, he was bound by the decree and

(4) AIR 1970 SC 1475

(5) 1987 (1) RLR 53

(6) AIR 1968 Punjab 110

that, therefore, the tenant need not be impleaded as a party-defendant to the suit. In 1988 CCC, 180 (supra), it was held by their Lordships of Supreme Court that the lease given by the mortgagee during the subsistence of the mortgage came to an end on the redemption of the mortgage and the tenant of the mortgagee in possession was not entitled to protection of the Rent Act against the mortgagor, after redemption of the mortgage. In AIR 1988 Delhi, 1 (supra), it was held by a Full Bench of Delhi High Court that the tenant inducted by a mortgagee in possession could not claim the benefit of the protection afforded by the Rent Control Legislation after the redemption of the mortgage. It was further held in the said authority that the general rule was that every subordinate interest must perish with the superior interest on which it was dependent and a mortgagee in possession might grant a lease but he could not create a lease of the mortgaged property which might enure beyond the termination of his own interest as a mortgagee. In AIR 1970 SC, 1475 (supra), it was held by their Lordships of Supreme Court that the executing Court could not go behind the decree even if it was erroneous on law or on facts. It was further held that objections with regard to the jurisdiction of the Court could not be raised for the first time in execution, if question depended upon investigation of facts. In 1987(1) RLR, 53 (supra), open land was on lease and the structures were constructed by the lessee on the open land and the landlord had obtained a decree for possession on the ground of breach of lease terms and for other breaches and the tenants of the lessee had raised obstruction to the execution of the decree. Under those circumstances, it was held by the Bombay High Court that where the decree-holder had obtained a decree for ejection against the judgment debtor in a suit on the ground that the judgment debtor had committed breach of terms of lease, his title to occupy as lessee was therefore terminated and if there was any person deriving title from the lessee, he would be bound by the decree passed against the judgment debtor. It was further held that the tenants were bound by the decree under execution and were not entitled to any protection under the Rent Act. In AIR 1968 Punjab, 110 (supra), it was held by a Full Bench of this Court that the title of pre-emptor in respect of pre-empted property accrued from the date on which purchased money and costs were paid by him and on such title accruing to him, the pre-emptor was entitled to delivery of possession from the vendee including any person who had happened to possess the property through the vendee after the original sale. It was further held that a tenant inducted by the vendee did not become the tenant of the pre-emptor and the pre-emptor was not bound by the tenancy.

(9) In view of the law laid down in various authorities referred to above and taking into consideration the facts and circumstances of the present case, in my opinion, the present objector-petitioners, who are also the judgment debtors in the decree passed in favour of the decree holder-respondent, are liable to be evicted from the property in dispute in executions of the decree passed in favour of the decree holder and the petitioners are not entitled to any protection either under Order 21 Rule 36, CPC or under the provisions of Rent Act. That being the position, in my opinion, the executing Court was perfectly justified in dismissing the objection petitions filed by the petitioners and no fault can be found with the order dated 6th January, 2000 passed by the executing Court in this regard .

(10) So far as the prayer made on behalf of the petitioners for granting them reasonable time to make alternative arrangements for shifting from the property in question is concerned, if any such request is made before the executing Court and an undertaking is filed before that Court, undertaking to vacate the premises in question within a specified period, the learned executing Court shall give reasonable time to the present petitioners to vacate the premises in question and to shift to some other place/places, on such terms as the executing Court may find suitable on the facts and circumstances of the present case.

(11) For the reasons recorded above, there is no merit in all these three revisions, which are hereby dismissed but with no order as to costs.

J.S.T.

Before M.L. Singhal, J

SURJEET KAUR & OTHERS—*Petitioners*

versus

NACHHATTAR SINGH—*Respondent*

C.R. No. 2677 of 2000

8th September, 2000

*Code of Civil Procedure, 1908—S. 115—Evidence Act, 1872—
S. 65 (c)—Secondary evidence—Term 'lost'—Lost must be absolute—If*