

PETITIONER:
BIBEKANANDA BHOWAL (DEAD) BY LRS.

Vs.

RESPONDENT:
SATINDRA MOHAN DEB (DEAD) BY LRS.

DATE OF JUDGMENT: 16/04/1996

BENCH:
MANOHAR SUJATA V. (J)
BENCH:
MANOHAR SUJATA V. (J)
PUNCHHI, M.M.

CITATION:
1996 AIR 1985 JT 1996 (4) 597
1996 SCALE (3)567

ACT:

HEADNOTE:

JUDGMENT:
(With Civil Appeal Nos. 3052-3056 of 1995)

J U D G M E N T

Mrs.Sujata V.Manohar.J.

The dispute relates to 3 Kathas 9 Chataks of land situated in a commercial ares of Silchar in District Cachar. The land originally belonged to Surendra Nath Sen and his two other co-sharers. Under a deed of settlement dated 25.3.1939 Surendra Nath Sen gave a settlement of this land to Satindra Mohan Deb for a period of 27 years commencing from 14.4.1939 and expiring on 13.4.1965. The respondents in all these appeals are the heirs and/or successors in title of Satindra Mohan Deb (hereinafter referred to as the 'Debs'). According to the Debs, after obtaining this settlement they built some permanent construction on a portion of this land.

Bibekananda Bhowal, the predecessor of the present appellants took settlement of 1 Katha 7 Chataks of land out of the total land admeasuring 3 Kathas and 9 Chataks from Satindra Mohan Deb on or about 17th of April 1953. He claims to have constructed a single storey building on the land taken under this settlement. He started a pharmacy business in this building which is known as Bhowal Medical Hall. The business was being run by Bibekananda Bhowal with his two brothers. For the sake of convenience the heirs and/or successors-in-interest of Bibekananda Bhowal (since deceased) who are the appellants before us are hereinafter referred to as the ' Bhowals'.

The Debs filed Title Suit No. 41/1956 in the court of the Assistant District Judge, Silchar against the Bhowals for possession of 1 katha and 7 Chataks of land and the building thereon in the occupation of the Bhowals. The Assistant District Judge decreed the suit by his judgment and order dated 13.7.59 in favour of the Debs. In appeal, however, the parties arrived at a compromise. A decree in terms of the compromise was passed by the appellate court on

10. 5 .1965. The relevant terms of the compromise decree are as follows:-

"A. That the defendant-appellant will give up possession of an area of 7' x 7 ' more or less in the south-western corner of the room in suit in his possession in favour of the plaintiff within one month from the date of this compromise and will allow the plaintiff within that period an access to that area. The said space will be walled up to the ceiling at the cost of the plaintiff and within one month. In the event of noncompliance with the terms contained above for his default the defendant appellant will be liable to ejectment in execution of the decree passed in the suit in terms of the compromise.

B. That the plaintiff will be entitled to build the upper storey above the building in suit at his expense and a stair case in the aforesaid south-western portion given up by the appellant through the opening already in existence for access to the said upper storey. The defendant appellant will have no manner of right or claim for possession in the aforesaid upper storey after construction.

C. That on compliance of the terms mentioned in paragraph I the defendant appellant shall remain in possession of the room in suit minus the area mentioned in paragraph I as a monthly tenant according to English Calender month for a period of 10 year from 1st May. 1965 till 30th April, 1975 and a rent of Rs. 225/- per month, rent for each month being payable within the 14th day of the succeeding month. The defendant appellant also undertakes to pay as he had been paying the Municipal Tax in respect of the room in his possession.

D. That the defendant-appellant shall not sublet any portion of the said room in his occupation nor transfer his tenancy right to any one else. The defendant-appellant will vacate and deliver possession of the room in his possession to the plaintiff or his assign or representative in interest on the expiry of the said period of 10 years without any notice from the plaintiff'.

E. The defendant-appellant will have also the right to vacate the room or surrender the tenancy even

before the expiry of the aforesaid period of 10 years on giving one month's previous notice to the plaintiff.

I. In the event of any breach of any condition mentioned above the defendant appellant will be liable to ejectment by appropriate action in a Court of law."

Pursuant to the compromise decree the Bhowals handed over possession of an area of 7' x 7' as described in Clause A of the compromise decree. This was disputed by the Debs who took out Execution Application No. 18/65 for obtaining possession of this area of 7' X 7'. In this application which was decided by the Assistant District Judge on 7.2.1972 he has recorded the contention of the Bhowals that as far back as in 1965 they had already apportioned the area and delivered possession of that area to the Debs. The District Judge, however, passed an order for handing over possession of the said area to the Debs and Execution Application No. 18/65 was disposed of accordingly. The Debs also filed an Execution Application No.15/66 for an amendment of their execution application to get possession of the entire land and building in the occupation of Bhowals. This application, however, does not appear to have been pursued. It was allowed to be dismissed on 12.4.1972.

The lease of 3 Kathas 9 Chataks of land which was executed by Sen in favour of Satindra Mohan Deb in 1939 expired on 13.4.1965. We are not here concerned with the question whether this lease was renewed in favour of Deb or not. On the expiry of the period of the lease Bibekananda Bhowal the original sub-lessee and his two brothers purchased from the original owner Satindra Nath Sen the entire 3 Kathas and 9 Chataks of land by a registered sale-deed dated 24.6.1966.

After purchasing the entire land Bhowals filed Title Suit No.41/1966 subsequently re-numbered as Title Suit No.5/1972 against Satindra Mohan Deb for a declaration (1) that they were the owners of the entire 3 kathas and 9 Chataks of land, (2) for confirmation of their possession over 1 Katha and 7 Chataks of land i.e. the land which they had taken on sub-lease from the Debs. (3) for recovery of possession of the portion of Debs by evicting the Debs. This suit was decreed on 31.7.1973. In appeal, however, (First Appeal No.458/1973) the Gauhati High Court partly allowed the appeal filed by the Debs. It held, modifying the decree of the trial court, that the Bhowals were not entitled to the possession of the land occupied by the Debs by evicting the Debs. The High Court also set aside the decree awarding compensation of Rs.200/- per month against the Debs for illegal occupation of the said land. The High Court also set aside the order of injunction passed by the trial court restraining the Debs from realizing the rent. The High Court confirmed the decree of the trial court to the extent that it declared the title of the Bhowals over the entire land consisting of 3 Kathas 9 Chataks. as also insofar as it declared the possession of 1 Katha and 7 Chataks of land out of this land and the building thereon, by the Bhowals. In Execution Application No.1/1987 taken out by the Bhowals in that suit, the Bhowals deposited a sum of Rs.9,000/- in court being the value of the structure standing on 1 Katha and 7 Chatkas of land in their possession as per the directions given by the trial court and became the owners of the said structure in execution of that portion of the decree of the trial court which had been

upheld by the High Court.

In 1972 the Debs also filed Title Suit No.133/72 against the Bhowals for eviction of the Bhowals from 1 Katha 7 Chataks of land and the building thereon on the ground, inter alia, that the Bhowals had not handed over possession of the said land and building on the expiry of ten years as set out in the compromise decree dated 10.5.1965. This suit is still pending.

Now we come to the litigation giving rise to the present appeals. In 1975 the Debs took out another execution application being Title Execution No.4/75 in The Title Suit No.41/56 for execution of the compromise decree of 10.5.1965. The Debs sought possession of 1 Katha 7 Chataks of land and building from the Bhowals in execution of the compromise decree. The Bhowals filed objections under section 47 of the Civil Procedure Code to this execution application being Misc. Case No. 27/1975. It was contended by the Bhowals that under the terms of the compromise decree the relationship of landlord and tenant was created afresh between the parties and the Debs were not entitled to obtain possession of the said land and building in execution of the compromise decree. It was also contended by the Bhowals that by reason of the decree obtained by them in their Title Suit no.41/1966 as modified by the High Court in first appeal 458/73, they could not be evicted from the said land and the building standing thereon in execution of the earlier compromise decree of 10.5.1965, as they were protected by the subsequent decree between the same parties. These objection was allowed and the Execution Application No.4/75 was dismissed.

The Debs filled Misc. Appeal Nos. 13 and 14/1976 from the above decision. The appeals were allowed by the District Judge on 10.6.1981. The Bhowals filed two second appeals being Second Appeal Nos.9 and 10 of 1981 before the high Court. In view of the amendment to the Civil Procedure Code. however, to be on the safe side they also filed two Revision Petitions from the same judgment and order of the District Judge being Revision Petition Nos. 114 and 115 of 1981 before the High Court. The High Court dismissed the two second appeals as not maintainable by its order dated 8.7.1981. It, however, admitted the two revision petitions. The two revision petitions were also dismissed thereafter on 27.1.1987. The Bhowals asked for a review of the order of 27.1.1987 but the review petition was also dismissed on 1.7.1987. Civil Appeal Nos.3055-56/1985 are against the orders passed by the High Court dated 27.1.87 and 1.7.87 in two Revision Petition Nos.114 and 115 of 1981. Civil Appeal No.6649/1983 is from the order of the High Court dated 8.7.1981 dismissing the two second Appeals bearing Nos. 9 and 10 of 1981.

After the dismissal in 1987 of their revision petitions by the High Court the Bhowals made a further application in execution proceeding No.4/75. This was numbered as misc. case No.23/1987. In this application the Bhowals contended that the compromise decree had become unexecutable. This misc. case was allowed by the executing court on 30th of May, 1988. A civil revision being civil revision 335 of 1988 was filed by the Debs before the High Court. The High Court reversed the order passed by the executing court and held by its order of 25.9.1992 that the compromise decree was executable. Civil Appeal No.3052 of 1995 which is before us is from this decision of the High court dated 25.9.92 in civil revision 335 of 1988.

The Bhowals made a Review Application No.11/92 before the High Court to review its order of 25.9.1992. This was

dismissed by the High Court by its order of 20.1.1993. Civil Appeal No.3054/95 which is before us is from this order of 20.1.1993 dismissing the review application.

Thus Civil Appeal Nos.6649 of 1983, 3055 and 3056 of 1995, 3052 of 1995 and 3054 of 1995 deal with the execution of the compromise decree of 10.5.1965.

Are the Debs entitled to evict the Bhowals from land admeasuring 1 Katha and 7 Chataks as also the building standing thereon, in execution of the compromise decree of 10.5.1965? It is necessary to first examine the terms of the consent decree of 10.5.1965. Clause A of the consent terms has been set out earlier. It requires the Bhowals to give up possession of an area of 7' x 7' in the South-Western corner of the room in the suit property. The clause further provides, "In the event of non-compliance with the terms contained above for his default the defendant appellant (Bhowal) will be liable to ejectment in execution of the decree passed in the suit in terms of the compromise". Clearly, therefore, if the Bhowals do not give up possession of this area of 7 x 7', they can be ejected from this portion in execution of the compromise decree.

The next part of the compromise decree deals with possession by the Bhowals of the rest of the building located on 1 Katha 7 Chataks of land. Under Clause C of the consent terms the Bhowals are permitted to remain in possession of the rest of the building as monthly tenants of the Debs for a period of ten years from 1st of May 1965 till 30th of April, 1975 on payment of a rent of Rs.255/- per month. Clause D prohibits the Bhowals from sub-letting or transferring any portion of the said premises. It further provides that on the expiry of the period of ten years the Bhowals will vacate and deliver possession of the said premises to the Debs. Clause I provides, "In the event of any breach of any condition mentioned above the defendant-appellant (Bhowals) will be liable to ejectment by appropriate action, in a court of law". There is a striking difference in the language used in Clause A relating to ejectment and in Clause I relating to ejectment. Clause A clearly contemplates ejectment of the Bhowals in execution of the compromise decree if they do not hand over possession of an area of 7' x 7'. However, in respect of their tenancy relating to the rest of the building. If they commit any breach of any of the conditions stipulated in the compromise decree (which would presumably include the condition relating to handing over possession on the expiry of ten years) the Bhowals are liable to ejectment by appropriate action in a court of law. This is in contradistinction to the ejectment in execution of the compromise decree contemplated under Clause A. In this context, ejectment by appropriate action in a court of law can only mean ejectment by taking action by filing a suit or taking any other proceeding in a court of law. Clearly the parties did not contemplate ejectment by execution of the compromise decree of relation to a breach of Clause C. This difference in the phraseology of Clauses A and I is understandable because a tenant who may otherwise be liable to ejectment may be protected by provisions of the Rent Act or by any other provision of law. This issue can only be adjudicated properly in an appropriate proceeding and not in the execution of a decree. Had the intention been to allow the Bhowals only permissive possession for a period of ten years, and ejectment thereafter in execution of the compromise decree the decree would have so provided. It does not do so. Therefore assuming that the tenancy of the Bhowals has come to an end, the Debs cannot eject the

Bhowals from the building in their possession without taking appropriate legal action by filing a suit for ejectment or in any other manner as may be permissible in law; but not by applying for execution of the compromise decree.

There is also a further hurdle in the way of the Debs. The compromise decree was passed as far back 10.5.1965. Subsequently, in the Title Suit No.41/66 filed by Bibekananda Bhowal and his two brothers, the trial court passed a decree in favour of the Bhowals under which the title of the Bhowals to the entire land of 3 Kathas and 9 Chataks was declared. They were also declared as entitled to possession of 1 Katha 7 Chataks of land and the building standing thereon. The decree of the trial court further provided that the Bhowals could obtain Khas possession of the structures standing on 3 Kathas 9 Chataks of land by payment of Rs.27,000/- to the Debs. This was the value of the structures as determined by the trial court. Of these, the structure which was standing on 1 Katha 7 Chataks of land was valued at Rs.9000/-. This portion of the decree of the trial court including its valuation of the structures at Rs.27,000/- was upheld by the High Court in appeal. The High Court set aside only the decree of the trial court granting to the Bhowals Khas possession of the land in the occupation of the Debs (i.e. 3 Kathas 9 Chataks of land less 1 Katha 7 Chataks of land) and the building standing thereon. This was because the High Court held, inter alia, that the Debs as lessees of the said land had constructed buildings on the portion of land in their possession and were entitled to the protection of Section 5 of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955. On an application for clarification, the High Court clarified that it had not pronounced on the nature of the possession of the Bhowals in respect of the building standing on 1 Katha 7 Chataks of land in their possession. In view of this clarification, the Bhowals applied by Title Execution Application 1/1987 for execution of the decree in respect of the building in their occupation. As per the valuation of the trial court they deposited in the execution court a sum of Rs.9,000/- as the value of the structure. The decree was executed accordingly in respect of the structure in their occupation. Thus the Bhowals became the owners of the structure in their occupation. This order passed by the executing court in Title Execution No.1/87 has not been challenged by the Debs. By supervening events, therefore, the Bhowals are now the owners of, inter alia, 1 Katha 7 Chataks of land as also the structure standing thereon. In view of this decree which is binding on the Debs who were parties to it, the right of the Debs to eject the Bhowals from the structure standing on 1 Katha 7 Chataks of land has now come to an end. Assuming that despite the execution levied in Application No.1/1987 in Title Suit No.41/1966, any right of eviction survives in the Debs, such a right can best be litigated in a separate suit and not in execution of an old compromise decree which did not contemplate ejectment of the Bhowals from the suit structure by execution of the compromise decree.

Learned counsel for the appellants (Bhowals) has also contended that just as the Debs were held to be protected tenants under Section D of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955, the Bhowals, in turn, are also protected by the same Section 5 assuming that they are tenants of the Debs. There is evidence to show that the building on 1 Katha 7 Chataks of land was constructed by the Bhowals and/or their predecessor interest after the execution of the lease within the period permissible under Section 5 of the said Act. The rights which are available

to a lessee against a lessor are also made available under said Act to a sub-lessee as against his lessee. There is nothing in the compromise decree to indicate that this protection of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955 was meant to be taken away. This contention has considerable merit.

The consent decree of 10.5.1965 had created and/or continued the relationship of landlord and tenant as between the Deb and the Bhowals for a further period of ten years. If the Bhowals are entitled to the protection of Section 5 of the Assam non-agricultural Urban Areas Tenancy Act, 1955, they are entitled to avail of this protection in a court of law. Such a question cannot be decided in execution proceedings. The compromise decree did not contemplate ejection of the Bhowals from the suit building in execution of the compromise decree. It provided that they would be ejected by taking an appropriate proceeding in accordance with law. The Civil Appeals 3055-56 of 1995 and 3052 of 1995 as also 3054 of 1995 are required to be allowed in the above circumstances.

In Civil Appeal No.6649 of 1983 the appellants (Bhowals) have contended that they are entitled to maintain second appeals against the decision of the District Judge dated 17.6.76 in Title Execution No.4/75 along with Misc. Case No.27/1975. The appellants contend that Misc. Case No. 27/75 raising objections under Section 47 of the Civil Procedure Code was filed under the Unamended Code of Civil Procedure under which any order passed on such application was to be treated as a decree. A first appeal and a second appeal would lie from such a decree. The Amending Act of 1976 provided that an appeal from an order passed on an application under Section 47 of the Civil Procedure Code was no longer maintainable. However, the right of filing an appeal and a second appeal which had accrued to the appellants on the date when they filed Misc. Case No.27/75 could not be taken away by the Amending Act of 1976 since the Amending Act was not retrospective. We need not examine this contention in the present proceedings. The appellants had filed second appeals as well as revision applications -- the latter, out of abundant caution in case second appeals were held not maintainable. The decisions in the second appeals as well as the revision applications are before us in Civil Appeal No. 6649/83 and Civil Appeal Nos. 3055-56 of 1995. Since these appeals have been heard together, it is not material whether we allow one set of appeals or the other set of appeals. Hence we are not examining the merits of this contention.

One civil appeal remains. That is Civil Appeal No.3053 of 1995. In 1983, the Bhowals i.e. Bibekananda Bhowal and his two brothers filed Title Suit No.113 of 1983 in the court of the Sadar Munsif, Silchar. They prayed for (i) a declaration that they are entitled to remain in possession of land admeasuring 1 Katha 7, Chataks and the building standing, thereon (ii) for a declaration that the Debs have no right to interfere with the peaceful possession of the Bhowals in respect of the said land and the building thereon and for (iii) a permanent injunction restraining the Debs from entering on the suit land and the building thereon and from changing the structure of the building by renovating the same or by making any extension thereto. By Misc. Case No.12/83 the Bhowals asked for an interim injunction restraining the Debs from entering the suit premises and from changing the structure of the said building either by renovating it or by making any extension thereto. This interim injunction was granted. Misc. Appeal No.60/83 which

was filed by the Debs against the order granting the injunction was dismissed. The Debs came by way of a revision before the High Court, being Civil Revision No.27/1986. The High Court by its order dated 25.9.1992 allowed the revision application holding that the Bhowals had no prima facie case and injunction should not have been granted. Civil Appeal No.3053/95. which is before us, is from the order of the High Court dated 25.9.1992 refusing to grant interim injunction to the Bhowals in their Title Suit No.113/83.

In view of what we have observed hereinabove and particularly in view of the rights which have accrued to the Bhowals as a result of the decree passed in Title Suit No.41/1966 as modified by the High Court, and as executed in Title Execution No. 1/87, the Bhowals do have a good prima facie case to retain possession of the building in question. The trial court was, therefore, right in granting an interim injunction and the first appellate court was right in dismissing Misc. Appeal No.60/83 which was filed by the Debs against that order. The judgment and order of the High Court dated 25.9.1992 is, therefore, set aside and the order of the first appellate court is restored.

The appeals are allowed accordingly with costs.