

PETITIONER:
DALICHAND AND ANOTHER

Vs.

RESPONDENT:
C.SANTHOSH AGARWAL AND OTHERS

DATE OF JUDGMENT: 16/11/1999

BENCH:
K.T.Thomas, M.B.Shah

JUDGMENT:

Shah, J.

Leave granted.

This appeal by special leave is directed against the judgment and order dated 24.12.1998 of the High Court of Judicature at Madras passed in Criminal O.P. No.8926 of 1997. From the lengthy judgment written by the High Court it appears that Respondent No.1 has taken undue advantage of the proceedings under Section 482 of the Cr.P.C. However, for the dismissal of this appeal various proceedings, orders and arguments referred to by the High Court are not required to be dealt with now as the matter has reached only at an early interim stage of the litigation.

It is the say of the appellants that on 28.6.1978, appellant No. 1 entered into an agreement with one Smt. Sakunthala in respect of a portion of the space at Door No.7, Hanumantha Rayan Koil Street, Chennai for tenancy for residential purpose. In October 1987, the tenancy was converted for both residential and non-residential purpose. On 17.10.1996, the appellants received a letter from the respondent Nos. 3 and 4 claiming that they had purchased the premises in question by a registered sale deed dated 16.10.1996 and informing that the monthly rent be remitted to them. Admittedly, the appellants confirmed the same with the land lady. It is the case of the appellants that respondent Nos. 3 and 4 did not accept the rent from them; with the result the appellant sent the rent by way of demand draft on 30.12.1996 for the months of October and November, 1996 and again by way of pay order on 17.3.1997 for the months of December 1996, January and February 1997 with advocates notice. It is the further case of the appellants that on 5.7.1997, they left the premises locked for going out from Chennai and next day when they returned, they found that the premises were opened and stock worth Rs.1,73,823/- was missing. On 9.7.1997, a cheque for a sum of Rs. 4400/- being rent for March to June 1997 was sent along with Advocates notice and a complaint was lodged with the police, but the police refused to accept the same on the premise that it was a civil dispute. On 10.7.1997, the appellants filed a suit for injunction bearing O.S.No. 4705

of 1997 before the City Civil Court, Madras against respondents Nos. 3 and 4. The appellants further came to know that the landlord has set up one Santosh Agarwal, respondent no.1 to take possession of the premises in question. Thereafter, respondent no.1 filed CrI. O.P. No. 8926/97 in the High Court seeking directions to respondent no.2 for investigation of the said case by Crime Branch, CID, Chennai. Respondent no.2 appeared before the High Court on 11.7.1997 and the High Court directed respondent no.2 to break open and handover the premises to respondent no.1. Accordingly, the police handed over the premises in question to respondent no.1. On 22.10.1997, the appellants came to know about the proceedings of CrI. O.P. No.8926/97 and filed an application for impleadment as party respondents and also to vacate the interim order. On this application, the High Court directed the police to take possession of the premises in question from respondent no.1 and seal the same.

Thereafter, the High Court heard both the parties and vide its impugned order observed (in para no.118) that: -

..this Court (the High Court) is not able to accept the contention of either side. It may be that Dalichand would have vacated the premises and put sub-tenant Santhosh Agarwal in the said premises without the consent of the landlords and that subsequently, after some period Santhosh Agarwal would have shifted his loyalty to the landlords and entered into rental agreement with them or it may be that the landlords would have set up Santhosh Agarwal as a tenant in the premises, in order to show that he obtained possession from him without going to the court to evict the original tenant by following due process of law. However, on the materials available on record, this Court is not able to decide as to whose contention is true.

The High Court further deciding the question of powers of High Court under Section 482 Cr.P.C. observed (in para no.116) that: -

..this Court (the High Court) under Section 482 Cr.P.C. can direct the key to be handed over to the original tenant viz. Dalichand. This Court is not inclined to pass such orders, since the case of the landlords is that Santhosh Agarwal was made as a sub-tenant by Dalichand without consent of the landlords and thereafter, sub-tenant was recognised as direct tenant under him and fresh rental agreement was entered into between Santhosh Agarwal and the landlords, whereas the case of Dalichand is that Santhosh Agarwal was never a sub-tenant under him and Santhosh Agarwal was set up by landlords to get some interim orders from the Courts, in order to get the possession in a bid to evict Dalichand without following the due process of law.

As against this, in para 18, the Court has observed thus: -

Since this Court felt that Santhosh Agarwal, the petitioner herein, after getting the interim orders and taking possession of the premises, surrendered the possession to the landlords and absconded without giving any instruction to Mr. A. Thiagarajan, the counsel for the petitioner and without obtaining any permission from this

Court, in order to evade the process of the Court, warrant was issued against the petitioner.

The High Court held that the only authority which could decide about the lawful possession by granting the required relief is the Civil Court, where the suits of both the parties are pending and the Court has yet to pass the final order on the same. The High Court further directed the Principal Sessions Judge, Channai to have both the suits (viz. OS No.4699 of 1997 and OS No.4705 of 1997) to be taken for disposal by any one of the Courts to enable it to pass appropriate orders after allowing the parties to lead evidence and by deciding the various issues to be framed by the said Court. The High Court keeping in view of the conduct of respondent no.1, Santhosh Agarwal imposed and directed him to pay costs of Rs.10000/-. The Court further directed Mr. S.C. Shah, the counsel who was keeping the key of the premises on behalf of the court to continue to keep the key with him till the alternative arrangement is made by the Civil Court as interim measure or till final order is passed in those suits.

The learned counsel on behalf of the appellants contended that the High Court has failed to note that the tenancy has not been terminated and the landlord has not taken possession from the appellants. The appellants were dispossessed at the instance of respondents no.3 and 4, on 8.7.1997 with a view to cover up their illegal activities and they have abused the process of law by using respondent no.1 herein to get ratified the orders of the Court as if respondent no.1 was tenant and that he was dispossessed by the appellants herein. He further contended that the High Court was not justified in directing the appellants to get possession by getting interim order from the Civil Court, when the possession of the premises in question has been handed over to respondent no.1 by the interim order of the High Court and when the premises is covered by the provision of Tamil Nadu Buildings (Lease & Rent Control) Act.

In our view, considering the dispute between the parties and number of proceedings, operative part of the order passed by the High Court does not call for any interference except that portion of the order directing counsel Mr. S.C. Shah to keep the keys. In the present case, undisputedly the appellants were the tenants of the premises. Whether they had handed over possession of the premises to one Santhosh Agarwal as a sub-tenant or not would require consideration by the competent court. But, till that is decided, appellant can be handed over possession of the premises as a Court receiver. This would finally protect the rights of the parties. If it is ultimately held that the appellants were not entitled to retain the possession of the premises, appellant would hand over possession to the person entitled to it and would also pay mesne profit at the rate of Rupees one thousand per month. The appellant shall deposit the amount of mesne profit in the suit filed by him and the court would pass appropriate order at the time of disposal of the suit. If the appellant is not prepared to take possession as a Court receiver, then the order passed by the High Court directing the counsel Mr. S.C. Shah to keep in his custody the key of the premises on behalf of the court shall remain in operation.

The appeal stands disposed of accordingly with no order as to costs.

JUDIS