

CASE NO.:
Appeal (civil) 1595 of 2005

PETITIONER:
Gayatri Devi & Ors.

RESPONDENT:
Shashi Pal Singh

DATE OF JUDGMENT: 09/03/2005

BENCH:
D.M. Dharmadhikari & B.N. Srikrishna

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P.(C) No. 8962 of 2004)

Srikrishna, J.

Leave granted.

This appeal demonstrates how a determined and dishonest litigant can interminably drag on litigation to frustrate the results of a judicial determination in favour of the other side.

A property bearing No. 202 B Arjun Nagar, Safdarjung Enclave in New Delhi was purchased by the first appellant and her husband late R.S. Gupta under two sale deeds dated 1.5.1970 and 2.5.1974. On 1.11.1987 the appellant committed perhaps the gravest blunder of her life of letting out the suit property to the respondent-tenant at a monthly rent of Rs.1300/-, which subsequently came to be increased to Rs.1500/- w.e.f. 1.1.1990. The tenancy was for residential purpose. The appellant filed a petition for eviction of the respondent by invoking section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as 'DRC Act'). This petition was filed by late R.S. Gupta, husband of the appellant No.1 before us, who was also a co-petitioner in the said eviction petition. The ground put forward in the eviction petition was that the family of the appellant had expanded and there was bona fide requirement for personal use. This eviction petition was contested by the respondent who raised several grounds. To start with, the respondent raised a preliminary objection that there existed no relationship of landlord and tenant between the appellant no.1 and himself. He also denied that the appellant no.1 was the owner of the suit property. Curiously, however, he did not deny the payment of rent to the 1st appellant through her husband. The eviction petition no. E-223/94 was tried and allowed by the court of Additional Rent Controller. On the basis of the evidence recorded before him the Additional Rent Controller specifically found that it was established that the appellants who were the owners/landlord in respect of the suit premises. He also examined the case put forward on behalf of the appellants on merits and held that all the essential ingredients for eviction under section 14(1)(e) of the DRC Act had been proved. By his judgment dated 1.8.1998, a decree for eviction was made. The respondent challenged the decree for possession by his revision petition under section 25 of the DRC Act before the High Court vide CR No.1017/98. The learned single judge by his judgment dated 4.5.1999 dismissed the revision petition specifically upholding the findings of the court below that the present appellant no.1 was the owner in respect of suit property and that there was no force in the arguments that there was no relationship of landlord and tenant as between the present appellant no.1 and the present respondent. The

High Court also accepted the finding on the merits that the grounds for eviction had been made out. The respondent moved a special leave petition before this Court, S.L.P.(C) No.7234/99, challenging the judgment of the High Court. This special leave petition was summarily dismissed by this Court on 21.6.1999.

Despite his failure in all courts, the respondent did not hand over possession. The appellant filed an execution petition on 11.8.1999 for execution of the decree for possession. The respondent raised all kinds of frivolous objections including the objection that DRC Act was not applicable to the area in question; that the sale deed under which the first appellant claimed the ownership was a fraudulent document and could not be made the basis of eviction order; that the identity of the suit premises was different and that there was no relationship of landlord and tenant between them. All these objections were carefully evaluated by the executing court which took the view that all of them had been the subject matters of the trial before the decree was made that it was not open to the executing court to re-open questions settled before the decree was granted. The court also rejected the plea of fraud as no such plea had been raised during the trial. In this view of the matter the executing court overruled the objections raised in the execution proceedings. The respondent moved an appeal before the appellate court vide RCA No. 658 of 1999. The Rent Control Tribunal which heard the appeal dismissed the appeal in limine on 27.10.99. The revision petition moved before the High Court of Delhi, against the judgment of the Rent Controller was dismissed as withdrawn on 9.5.2000.

The respondent then filed a civil suit No. 167 of 1999 before the Civil Judge Delhi alleging that the decree for eviction had been obtained by playing fraud on the court. An application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure for interim relief was also moved in the said suit. The Civil Judge came to the conclusion that the plaintiff-present respondent had failed to make out a prima facie case and also failed to satisfy any of the requirements for grant of an injunction. Thus, he dismissed the application moved for interim injunction under Order XXXIX Rule 1 and 2 of the C.P.C. An appeal by the respondent, MCA No.5/2000, against this order was dismissed by the Senior Civil Judge, on 12.1.2000. The order of the appellate court was challenged by Revision No.CR 73 of 2000 before the High Court of Delhi. The said Revision application was also dismissed in limine on January 20, 2000.

The respondent then moved an application for review of the order dated 20.12.1999 before the Civil Judge at Delhi. The court finding no substance in the application rejected the same. Having found no leg to stand upon in any court of law, the respondent filed a second objection petition in the execution proceedings reiterating the very same objections as raised before, with the additional ground that there was fraud. This application was also dismissed as being frivolous with imposition of cost of Rs.1000/- on the respondent.

The respondent then moved a revision petition CRP 1193/2000 before the High Court in which the impugned order dated February 23, 2004 was made by the High Court taking the view that, if execution of the eviction decree was allowed, it would render the suit filed by the respondent infructuous, particularly when the respondent had acted on the "direction and advice of the executing court" to file a civil suit. It is this order which is impugned in the present appeal. The history of this litigation shows nothing but cussedness and lack of bona fides on the part of the respondent. Apart from his tenacity and determination to prevent the appellants from enjoying the fruits of the decree, there appears to be nothing commendable in the case. Even before us the same arguments of fraud, and that the appellants were not legally owners of the suit property, were pleaded.

In the first place, it appears to us that the revision petition before the High Court was wholly incompetent in view of the amended provision of section 115 of the CPC. The Revision Petition was entertained at a stage of an interlocutory proceedings. As laid down by this Court in Shiv Shakti Coop. Housing Society v. Swaraj Developers, an order interim in nature or which does not finally decide the lis, cannot be challenged by way of a revision under section 115 of the CPC.

In Ravinder Kaur v. Ashok Kumar and another a two Judge Bench of this Court observed:

"Courts of law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree-holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system."

In our view these observations aptly apply to the case before us. The learned counsel for the respondent relied upon the judgment of this Court in S.P. Chengalvaraya Naidu v Jagannath and United India Insurance Co. Ltd. V. Rajendra Singh and others to contend that there was a fraud played upon the court and the fraud unravels everything. As a general proposition, the proposition is right. But fraud must necessarily be pleaded and proved. In the entire history of litigation nothing was pleaded, much less proved, as fraud. We cannot countenance the plea of fraud without any basis.

In the result, we are of the view that the High Court grossly erred in entertaining the revision petition and granting relief which was unjustified both in law and on facts. The impugned judgment of the High Court is quashed and set aside. Considering that the respondent has deliberately delayed the execution, the executing court shall dispose of the execution proceedings with utmost dispatch.

In our view, the conduct of the respondent deserves condemnation which we indicate by imposition of exemplary costs of Rs.20,000/- on the respondent.