

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6246 OF 2009

(Arising out of S.L.P. (C) No.14628 of 2006)

Arun Kumar Keshari

...Appellant(s)

Versus

Ganesh & Ors.

...Respondent(s)

O R D E R

Leave granted.

The suit filed by Smt. Sushila Devi - predecessor of the appellant herein for eviction of the tenant, namely, Panna alias Pannalal on the ground of default in payment of rent and subletting the tenanted premises, i.e., shop to Bullu alias Bhagelu was decreed by Additional Small Causes Judge, Varanasi (hereinafter referred to as "the trial Court") vide judgment dated 17.11.1999. The revision filed by Bullu and Pannalal under Section 25 of the Provincial Small Cause Courts Act, 1887 [for short, "the Act"] was dismissed by Additional District Judge, Varanasi (appellate Court), which independently evaluated and analysed the pleadings and evidence of the parties and concurred with the findings recorded by the trial Court on the issues of default and subletting.

Bullu and Pannalal challenged the orders of the trial and appellate Courts by filing writ petition, which has been allowed by the impugned order. The learned Single Judge upset the concurrent findings recorded by the two courts, set aside the order of eviction and dismissed the suit. Hence, this appeal by special leave.

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We have heard learned counsel for the parties and perused the record. The trial Court after threadbare consideration of the factual matrix of the case and evidence of the parties, recorded a categorical finding that Pannalal was tenant of the demise premises, i.e., shop and that the tenant not only committed default in payment of rent, but also sublet the shop to Bullu without the consent of the landlord. The trial Court specifically rejected the theory that Purushottam and not Pannalal was the tenant. The trial Court further held that Bullu cannot claim any right over the shop in question.

These findings were confirmed by the appellate Court.

The High Court interfered with the concurrent findings of fact without advertting to the pleadings of the case and evidence produced by the parties. It has not come to the conclusion that the findings of fact recorded by the two courts were perverse. Rather the writ petition has been decided only on the basis of surmises and conjectures.

Learned counsel appearing for the respondents also failed to point out any patent infirmity in the findings recorded by the trial Court and appellate Court on the issue of subletting. Therefore, the order passed by the High Court cannot be sustained.

Accordingly, the appeal is allowed, impugned order rendered by the High Court is set aside and the writ petition filed by the respondents is dismissed.

The respondents are granted time till 30th June, 2010, to vacate the premises in question upon filing usual undertaking in this Court within four weeks from today.

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It is directed that in case the respondents fail to vacate the premises in question within the aforesaid time, it would be open to the decree holder to file an execution petition for delivery of possession and in case such a petition has been already filed, an application shall be filed therein to the effect that the respondents have not vacated the premises in question within the time granted by this Court. In either eventuality, the Executing Court is not required to issue any notice to the respondents. The Executing Court will see that delivery of possession is effected within a period of fifteen days from the date of filing of the execution petition or the application aforementioned. In case for delivery of possession any armed force is necessary, the same shall be deputed by the Superintendent of Police within forty eight hours from the date requisition is received therefore. It is also directed that in case anybody else, other than the respondents, is found in possession, he shall also be dispossessed from the premises in question.

.....J.
[B.N. AGRAWAL]

.....J.
[G.S. SINGHVI]

New Delhi,
September 14, 2009.