

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1362 OF 2013
(Arising out of SLP(C) No.33438/2010)

KAILASH PALIWAL

Appellant(s)

:VERSUS:

SUBHASH CHANDRA AGRAWAL

Respondent(s)

O R D E R

1. Leave granted.

2. This appeal arises out of an order dated 26.8.2010 passed by the High Court of Madhya Pradesh at Indore, whereby First Appeal No.752 of 2008, filed by the respondent herein, has been allowed and the judgment of the Trial Court in O.S. No.9A/2008 reversed.

3. It is not, in our opinion, necessary to recapitulate the factual backdrop in which the controversy arises, in detail. The order passed by the Trial Court as well as the First Appellate Court, sufficiently do that part. All that we need mention is that a suit seeking a decree for possession was

filed by the plaintiff-appellant herein against the defendant-respondent on the ground that the defendant-respondent was in occupation of the suit property despite termination of his tenancy by the plaintiff-appellant. The defendant-respondent herein disputed the alleged tenancy pleaded by the appellant and set up his own title based on a certain oral sale in his favour. The Trial Court eventually came to the conclusion that the jural relationship of landlord & tenant was established between the parties and accordingly decreed the suit in favour of the appellant.

4. Aggrieved by the decree passed by the Trial Court, the defendant-respondent preferred a regular first appeal before the High Court which, as noticed above, was allowed by the High Court reversing the judgment and decree passed by the Trial Court. The High Court was of the view that the relationship of landlord and tenant had not been established by the plaintiff-appellant and the suit, on that basis, was not maintainable. The High Court went a step further and remanded the matter back to the Trial Court with a direction that the Trial Court would try the suit

as a suit for possession based on title in which the defendant-respondent herein shall be free to raise all contentions available to him, including a plea based on adverse possession. The present appeal assails the correctness of the judgment and order.

5. Learned counsel for the appellant submitted that the High Court was in error in directing that the defendant-respondent was entitled to set up a plea based on adverse possession or that the plaintiff's title could be disputed by the defendant-respondent on the basis of the oral sale set up by him. Be that as it may, the plaintiff-appellant would, according to the learned counsel, prefer to file a fresh suit on the basis of title to the property by withdrawing the suit out of which the present appeal arises. He submitted that since the High Court had recorded a specific finding that the relationship of landlord and tenant had not been established by the plaintiff, the only option left for the plaintiff was to sue for possession based on the title of the property. That option, according to the learned counsel, could be exercised by way of filing a fresh suit instead of the suit for

possession based on tenancy being converted into a suit for possession based on title.

6. Learned counsel for the defendant-respondent had no objection to the withdrawal of the suit by the plaintiff-appellant, provided he is granted liberty to raise all such pleas as are open to him in law and on facts.

7. In the circumstances, therefore, we allow this appeal, set aside the judgment and orders passed by the Courts below, permit the plaintiff-appellant to withdraw the suit filed by him and file a fresh suit based on title to the property. We reserve liberty to the defendant-respondent to raise all such defences as may be open to him in law and on facts.

8. Parties are directed to bear their own costs.

.....J
(T.S. THAKUR)

.....J
(SUDHANSU JYOTI MUKHOPADHAYA)

New Delhi;
February 15, 2013.