

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 8074-8075 OF 2001

DHARMPAL GUPTA (D) BY LRS.

Appellant (s)

VERSUS

SUBODH KUMAR AND ORS.

Respondent(s)

(With appln(s) for directions and office report )

Date: 06/12/2007 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR  
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. Rajiv K. Garg, Adv.  
Mr. Ashish Garg, Adv.  
Mr. Annam D.N. Rao, Adv.  
  
Mr. P.N. Puri, Adv.  
Mr. Dhiraj, Adv.  
Mrs. Reeta Dewan Puri, Adv.

For Respondent(s)

Mr. Neeraj Kumar Jain, Adv.  
Mr. Bharat Singh, Adv.  
Mr. Sanjay Singh, Adv.  
Mr. Sandeep Chaturvedi, Adv.  
Mr. Ugra Shankar Prasad, Adv.  
  
Mr. Balbir Singh Gupta, Adv.  
Mr. Sandeep Narain, Adv.

Rr-Ex-Parte

UPON hearing counsel the Court made the following  
ORDER

The appeals are allowed in terms of the signed order. No order as to  
costs.

(Ajay Kr. Jain)  
Court Master

(Vijay Dhawan)  
Court Master

(Signed order is placed on the file)  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8074-8075 OF 2001

Dharampal Gupta (D) by Lrs.

.... Appellants

Versus

Subodh Kumar & Ors.

.... Respondents

ORDER

Heard learned counsel for the parties.

These appeals by special leave are directed against the judgment and order dated 18.12.2000 passed by a learned Single Judge of the Punjab & Haryana High Court in Civil Revision Nos. 4636/1999 and 4562/1999.

It is not necessary for us to go into very many details. Suffice it to say that originally an eviction petition was filed before the Rent Controller by the appellant Dharampal Gupta (now deceased) for eviction of the respondents from the premises in question being Shop No. XIX/154 situated at Committee Chowk, G.T. Road, Karnal, Haryana. The respondents appeared before the Rent Controller and agreed that there are arrears of rent and that they will vacate the premises by 31st March, 1998. In view of the agreement, the learned Rent Controller passed a judgment and decree dated 19.10.1995. But, some how or the other the premises in question were not vacated and possession was not handed over to the appellants before 31.3.1998. In these circumstances, the appellants initiated execution proceedings against the respondents. In the meanwhile, a suit was filed by respondent No. 1 herein in C.A. No. 7084/2001 for cancellation of the compromise decree and thereafter another suit was filed by Sita Devi respondent No. 1 in C.A. No. 7085/2001 for grant of injunction. The suit filed by respondent No. 1 in C.A. No. 7084/2001 was dismissed on 2.3.1998 against which an appeal was filed, which is still pending. Likewise the suit filed by Sita Devi for grant of injunction was also dismissed. In the appeal preferred against the said order of dismissal, no stay was granted.

Be that as it may, the fact remains that the premises in question belonged to the appellant Dharampal Gupta who happens to be the maternal uncle (Mama) of the respondent Subodh Kumar and brother of Sita Devi. In fact the deceased appellant Dharam Pal Gupta wanted to settle both the sons of his sister and as such let out the premises in question to the respondents for running a footwear business and also granted to them an agency of his brand of footwear. It appears that subsequently the respondents developed malafide intentions. Instead of being bonafide and honest towards their maternal uncle, they tried to grab the property, and this ultimately led the appellants to file a suit for eviction and a compromise decree was passed. The said compromise decree was not acted upon by Subodh Kumar in good faith and two suits were filed by the respondents against the said compromise decree. Both the said suits, in our opinion, were filed malafide. Once the respondents have entered into a compromise and gave an undertaking before the Court to vacate the premises on or before 31.3.1998, the

further litigation in the matter was unnecessary, unwarranted and frivolous. The matter went from one Court to another. Suffice it to say that after the eviction petition was decreed and in the appeal preferred against the said judgment and decree the handing over of possession of first floor was stayed. The learned Appellate Court also granted police assistance in order to take the possession of the ground floor of the premises. Against the said order of the Appellate Court an appeal was preferred before the High Court, which was dismissed. However the direction with regard to police assistance was reversed.

Since the respondents did not hand over the possession of the premises to the appellant before 31.3.1998, the appellants filed an execution petition. In the execution petition the respondents herein filed objections, which were dismissed. Aggrieved against the said dismissal of objections, the respondents preferred Civil Revisions before the High Court which were disposed of by order dated 18.12.2000, which is the subject matter of appeal before this Court. By the impugned order, a learned Single Judge of the High Court has set aside the order of the Executing Court dated 16.9.1999 and remanded the matter to the Executing Court with a direction to decide the objections filed by the respondents herein after framing of issues and giving an opportunity to produce evidence.

In our opinion, the High Court has no jurisdiction to direct the Executing Court to decide the matter after framing of issues. It is well settled that the Executing Court cannot go beyond the decree. This was a simple case of handing over of possession in terms of the undertaking given before the learned Rent Controller for handing over of possession of the premises in question. We fail to understand how the High Court in revisional jurisdiction directed the Executing Court to decide the execution proceedings after framing of issues. Therefore, we are of the opinion that the order passed by the High Court in revisional jurisdiction is without jurisdiction. Consequently, we set aside both the orders dated 18.12.2000 passed in Civil Revision No. 4636/1999 and 4562/1999 and allow these appeals. During the pendency of these appeals before this Court, the appellants No. 1(iii) and 1(iv) as also the respondent No. 1 have also filed applications under Section 340 Cr.P.C. for proceeding against the appellants. Both the said applications are malafide, misconceived and are dismissed. On the contrary, there is lack of bonafide on the part of the respondents and they have dragged the appellants to this Court merely for the purpose of taking possession of the premises, which was admittedly given to them

on rent. We would have saddled the respondents with heavy costs but on the special facts of the case we do not propose to do the same. However, we direct the respondent No. 1 (Subodh Kumar S/o Sher Singh) to hand over vacant physical possession of the first floor of the premises being Shop No. XIX/154, Committee Chowk, G.T. Road, Karnal, Haryana to the heirs of the deceased Dharam Pal Gupta within a period of three months from today. If the said respondent fails to hand over the vacant possession within the aforesaid period, it will be open for the appellants to get them evicted from the premises with the assistance of police.

The appeals are allowed. No order as to costs.

(A.K.MATHUR)

.....J.

(MARKANDEY KATJU)

.....J.

New Delhi  
December 06, 2007