

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6277 OF 1999

PUSHPA SINGH(DEAD)BY LRS. & ORS.

Appellant (s)

VERSUS

C. PALA SHARMA & ORS

Respondent(s)

(With office report)

Date: 02/05/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH
HON'BLE MR. JUSTICE ALTAMAS KABIR

For Appellant(s)

Ms. Sandhya Goswami,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(Sukhbir Paul Kaur)
Court Master

(Vijay Dhawan)
Court Master

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6277 OF 1999

PUSHPA SINGH(DEAD) BY LRS. & ORS.

.....APPELLANT(S)

VERSUS

C. PALA SHARMA & ORS.

.....RESPONDENT(S)

O R D E R

This appeal by special leave is directed against

the judgment and order of the High Court of Judicature

at Allahabad, Lucknow Bench, Lucknow in Writ Petition

No.129(R/C) of 1998 dated March 23, 1999. By the order

impugned, the High Court in the exercise of its writ

jurisdiction, while allowing the Writ Petition filed by

Respondent No.1, directed that the Respondent No.1 be

restored possession of the premises in question, from

which she is alleged to have been evicted in execution

of a decree for eviction obtained by the appellant

herein.

The facts of the case may be briefly noticed :-

The premises in question was owned by Smt. Pushpa Singh and Smt. Vijaya Bhardwaj (both of them since deceased). Both of them are represented by their

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legal representatives. The premises in question, is situate at Hasanganj, Lucknow known as Sudha Sadan. The landlords filed an application under Section 21 of the U.P. Act No.13 of 1972 against the tenant namely, Dr. Sewa Ram Sharma, father of Respondent No.1 herein. The application for eviction was rejected on 15.2.1978 but an appeal against the said order was allowed on 24.5.1980. Pending the appeal, Dr. Sewa Ram Sharma died and in his place, his widow Smt. Shanti Sharma and his son Ashutosh Sharma were brought on record as his legal representatives. It is not disputed that the tenant Dr.

Sewa Ram Sharma had four other married daughters. It is

also not in dispute that the order of eviction gained

finality.

An application for execution of the decree was

made on 29.5.1982 against Smt. Shanti Sharma and

Ashutosh Sharma. It was stated in the said application

that Smt. Shanti Sharma and her son Ashutosh Sharma had

left for Canada permanently and were living there. On

20th September, 1997, Shri M.G. Bhardwaj, husband of

Smt. Vijaya Bhardwaj informed the Court that Shri Sewa

Ram Sharma had died and her son Ashutosh Sharma was

residing in Canada. It was stated that the premises

were in the occupation of Smt. Ranu Sharma who had no

right to reside in the premises in question.

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The case of the respondent appears to be that

Smt. Ranu Sharma is an alias for the name of the

Respondent No.1. Respondent No.1 also claims to be out

of the daughters of the original tenant Dr. Sewa Ram
Sharma.

On May 30, 1998, a suit for injunction was filed
by Respondent No.1 herein against her eviction from the
premises in question. An order of temporary injunction
was obtained. However, this suit being R.S.No.225 of
1998 was also dismissed on 12.7.1999 since the matter
was not pursued by the Respondent No.1.

In the execution case, warrant for delivery of
possession was issued on 16.9.1998 but the Respondent
No.1 filed a hand-written Writ Petition and obtained an
order of stay from the High Court on 27.9.1998, though
that was a Sunday. According to the appellant, the
decree had been executed and possession taken before the
issuance of the order of stay.

On 5.12.1998, a proper Writ Petition was filed
by Respondent No.1 and in the aforesaid Writ Petition,

the impugned order had been passed. By Order of April

6, 1999, this Court stayed the operation of the order of

the High Court and ultimately special leave was granted

on 1.11.1999. That is how this appeal has come up for

hearing before us today.

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Despite service of notice, no one appears on

behalf of the respondents.

From the facts noticed above, it is apparent

that an application for eviction was filed in which an

order of eviction was passed. That order of eviction

attained finality and steps for execution of the decree

were taken. In that proceeding the landlords obtained

delivery of possession of the premises in question.

It is surprising that in the execution

proceeding, no objection was taken by the respondent and

instead, a Writ Petition was filed challenging the

validity of the execution proceeding on the ground that

after the death of her mother, the Respondent No.1 ought

to have been substituted in her place in the execution

proceeding. The High Court has allowed the Writ

Petition solely on the ground that in the execution

proceeding the name of Respondent No.1 was not

substituted in place of Smt. Shanti Sharma, the widow of

the original tenant.

We fail to understand how the High Court

entertained a Writ Petition of the nature filed by the

Respondent No.1. If it was the case of the Respondent

No.1 that the decree could not be executed for any valid

reason, or was not binding upon her such objections

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should have been taken in the execution proceeding

itself. Instead, she filed a suit for injunction but

that was also dismissed since it was not duly

prosecuted. It is not necessary for us in this

proceeding to express any opinion on the maintainability

of such a suit, which in any case, has been dismissed.

In our view, the Writ Petition was not maintainable, and whatever objections the Respondent No.1 had to the execution of the decree obtained by the appellants ought to have been raised in the execution proceeding itself. The writ jurisdiction ought not to have been exercised in these facts and circumstances when another remedy was provided by law. We, therefore, allow this appeal and set aside the judgment and order of the High Court.

No order as to costs.

.....J.

(B.P.SINGH)

.....J.

(ALTAMAS KABIR)

MAY 2, 2006