

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). 5345-5347 OF 2002

KANNAN NAMBIAR (D) BY LRS.

Appellant (s)

VERSUS

SHAIK NAJMUDDIN URF GULSHEER PASHA &ORS.

Respondent(s)

(With office report )

ALONG WITH THE PAPER BOOKS OF SLP(C) NO. 12872/2001

Date: 07/09/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN KUMAR

HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s)

Mr. Ranjan Mukherjee, Adv.

For Respondent(s)

Ms. Kiran Suri ,Adv

Nos. 1& 2 Ms. Kirti Renu Misra, Adv.

No. 5

Mr. Satish Vig, Adv. (Not Present)

UPON hearing counsel the Court made the following

O R D E R

C.A.Nos. 5345 & 5347/2002

These appeals have become infructuous and are disposed of as such

C.A. No. 5346/2002

The appeal is disposed of. The appellants are granted time till 30th June, 2006 from today to vacate the suit premises upon filing usual undertaking within eight weeks from today. In case of failure to file the undertaking, the decree will be executable forthwith.

[ Charanjeet Kaur ] [ Om Prakash ]  
Court Master Court  
Master

[ Signed order is placed on the file ]

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5345-5347 OF 2002

Kannan Nambiar (D) By Lrs. .. Appellant(s)  
Versus  
Shaik Najmuddin URF Gulsheer Pasha & Ors. .. Respondent(s)

O R D E R

C.A. Nos. 5345 & 5347/2002

Learned counsel for the appellants submits that since notice was not issued by this Court regarding the questions involved in these appeals, the appellants' tenants handed over possession of the suit premises to the respondents. These appeals have, accordingly, become infructuous and are disposed of as such.

C.A. No. 5346/2002

Notice was issued in this case only on the question of sub-letting and thereafter

leave was granted. The first Court passed a decree on account of sub-letting holding that in

the facts and circumstances of the case, the tenants had sub-let the premises in question. In

the Revision Petition filed before the High Court of Karnataka, the said decision on the

question of sub-letting was affirmed and the High Court of Karnataka gave two years' time to

the appellants to vacate the suit premises. The case of the respondents' landlords on the

question of sub-letting was that the original tenant

2/-

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namely, Kannan Nambiar was running a coffee bar in the suit premises. After his

death, his heirs sold all the utensils etc. which were used for running the coffee bar. They gave

the premises to one Joseph who was a Mechanic by profession to run a garage in the said

premises. The presence of Joseph in the premises was not denied. The case of the

respondents' landlords was that the family of the deceased original tenant was charging fixed

amount from Joseph for running the business as a mechanic. On the other hand, the case of

the tenants was that Joseph was employed by them as a mechanic and actually they were

running the business in the garage i.e. in the premises in question. Both the courts have

disbelieved the case set up by the tenants in this behalf. They have held that the premises have

been sub-let to Joseph. The appellants

have not been able to produce any cogent evidence in support of their case that Joseph

was

merely their employee and it is they who were running the garage for repair of vehicles. During

the course of hearing we have put it to the learned counsel appearing for the appellants that he

could show if there was any cogent and reliable evidence in support of appellants' case.

Learned counsel was unable to show any such evidence. Only thing that he was able to refer to

was oral evidence produced by the appellants. This evidence has been rejected by the courts

below and in our view rightly. Accordingly, we find no reason to interfere with the well-

considered findings of the courts below on the question of sub-letting.

The decree under

appeal passed is hereby affirmed.

..3/-

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Learned counsel for the appellants has prayed that the business in the garage is

being run by the appellants since long and the same is their only source of livelihood. Keeping

this aspect in view, the appellants are granted time till 30th June, 2006 from today to vacate the

suit premises upon filing usual undertaking within eight weeks from today. The appeal is,

accordingly, disposed of. In case of failure to file the undertaking, the decree will be

executable forthwith.

ARUN KUMAR ]

.....J[

[ A.K. MATHUR ]

.....J

NEW DELHI,

SEPTEMBER 07, 2005.