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SLP(C)No. 15761 OF 2003

ITEM No.53

Court No. 9

SECTION XIA

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

Petition(s) for Special Leave to Appeal (Civil) No.15761/2003

(From the judgement and order dated 03/04/2003 in CRP 129/94  
of The HIGH COURT OF KERALA AT ERNAKULAM)

BHIMA & BORTHE'S JEWELLERY & ORS.

Petitioner (s)

VERSUS

P.P. SARAVANAN & ORS.

Respondent (s)

(With prayer for interim relief and office report)

Date : 08/03/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL  
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Petitioner (s)Mr. T.L.V. Iyer,Sr.Adv.  
Mr. T.G. Narayanan Nair,Adv.

For Respondent (s)Mr. Roy Abraham,Adv.  
Ms. Seema Jain,Adv.  
Mr. Himinder Lal,Adv.

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

Heard the learned counsel for the parties for a while.

Leave granted.

The civil appeal is allowed.

No costs.

[ T.I. Rajput ][ Shelly Sengupta ]  
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Bhima & Brothers Jewellery & ors. ...Appellant(s)

Versus

P.P. Saravanan & Ors. ...Respondent(s)

O R D E R

Leave granted.

The tenants who suffered an order of eviction under the impugned order are in appeal. The respondents-landlord filed a petition seeking eviction of the appellants under Sections 11(3) and Section 11(4) of the Kerala Building (Lease and Rent Control) Act, 1965 [for short, "the Act" ]. The learned Rent Controller dismissed the petition finding no bonafides on the part of the respondents in seeking eviction of the appellants from the premises in question, which finding was affirmed by the appellate authority. Thereafter, the respondents filed a revision petition before the High Court challenging the concurrent findings recorded by the Rent Controller as well as the appellate authority. The High Court, under the impugned order, exercising its jurisdiction under Section 20 of the Act, upset the concurrent findings and granted decree for eviction against the appellants.

- 2 -

The learned senior counsel for the appellants submitted that the High Court committed a manifest error in reversing the concurrent findings recorded by the Rent Controller as well as the appellate authority on a proper appreciation of evidence; under Section 20 of the Act, it was not open to the High Court to re-appreciate the evidence and reverse the concurrent findings unless such findings arrived at by the Rent Controller and the appellate authority were perverse or based on no evidence. He took us through the relevant portion of the orders of the Rent Controller as well as the appellate authority to show how there has been proper appreciation of evidence placed on record. According to the learned counsel, the High Court could not set aside the order passed by the appellate authority, affirming the order passed by the Rent Controller.

Per contra, the learned counsel for the respondents made submissions supporting the impugned order. He submitted that even though the impugned order does not say that the findings recorded by the appellate authority, affirming the findings recorded by the Rent Controller, were not perverse but, as can be seen from the findings recorded by the appellate authority, the findings recorded were perverse.

The appellate authority, on re-examining the evidence of P.Ws. 1 and 2 coupled with the pleadings and looking to the documents placed on record, concluded that the respondents failed to establish that their requirement of the premises in question was bonafide. The appellate authority could not find any fault with the appreciation of evidence made by the Rent Controller and finding recorded by

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- 3 -

him. The Rent Controller as well as the appellate authority found that there has been material variance between the pleadings and the evidence led on behalf of the respondents. The respondents pleaded that they required the premises bonafidely for carrying on the business of selling jewellery and electrical goods. In the evidence, their case was that they being goldsmiths, they could prepare jewellery and sell them. Both the Rent Controller and the appellate authority found that there was variance between the pleadings and the evidence. Both the courts have also recorded a finding that the respondents did not have the necessary experience in taking up the profession of goldsmithry and also taking into consideration other circumstances to conclude that their requirement was not bonafide. The High Court, in the impugned order, has observed that the respondents' case ought to have been accepted for ordering eviction of the appellants. In paragraph (10) of the impugned order, it is stated thus:

"It is true that under Section 20 of the Rent Control Act, our jurisdiction is different from the jurisdiction under Section 115 of the Code of Civil Procedure. According to us, appreciat

ion of evidence regarding Section 11(3) of the Act was not reasonable and hence, even though the courts below have concurrently found against the landlord, we are holding that the need has been proved. Hence C.R.P. No. 139 of 1994 is dismissed and C.R.P. No. 129 of 1994 is allowed ."

It is plain from what is extracted above that the High Court appreciated the evidence on record as if it was

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- 4 -

exercising the appellate jurisdiction. Further, it found that the appreciation of evidence made by the Rent Controller and the appellate authority was not reasonable. The High Court, in the impugned order, has also not shown as to how the appreciation of evidence by both the courts below was either perverse or the findings arrived at by them were not based on any evidence. The High Court has simply said that the appreciation of evidence made by the courts below was not reasonable. In our view, the High Court plainly exceeded its revisional jurisdiction under Section 20 of the Act. Assuming that the High Court could take a different view on re-appreciation of evidence, that itself was not a ground to disturb the concurrent findings of fact recorded by both the courts below, that too on a proper and objective appreciation of evidence. This being the position, the impugned order cannot be sustained. In the result, the civil appeal is allowed and the impugned order is set aside.  
No costs.

.....J.  
[SHIVARAJ V. PATIL]

.....J.  
[D.M. DHARMADHIKARI]

New Delhi,  
March 08, 2004.