

## **Kamleshwar Prasad vs Pradumanju Agrawal (Dead) By Lrs on 2 April, 1997**

**Equivalent citations: AIR 1997 SUPREME COURT 2399, 1997 (4) SCC 413, 1997 AIR SCW 2310, 1997 ALL. L. J. 1369, (1997) 3 SCR 508 (SC), 1997 SCFBRC 274, 1997 BOMRC 310, 1997 HRR 464, (1997) 4 JT 425 (SC), 1997 (4) JT 425, 1997 ALL CJ 2 930, (1997) 1 ALL RENTCAS 627, (1997) 2 PAT LJR 86, (1997) 30 ALL LR 307, (1997) 1 RENCRC 591, (1997) 1 RENTLR 522, (1997) 2 APLJ 58, (1997) 3 SCALE 400, (1997) 3 SUPREME 597**

**Author: K. Ramaswamy**

**Bench: K. Ramaswamy**

PETITIONER:  
KAMLESHWAR PRASAD

Vs.

RESPONDENT:  
PRADUMANJU AGRAWAL (DEAD) BY LRS....

DATE OF JUDGMENT: 02/04/1997

BENCH:  
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

**J U D G M E N T PATTANAIK, J.**

leave granted.

This appeal by special leave to appeal is directed against the judgment dated 17.2.1997 of the Allahabad High Court dismissing the writ petition filed by the appellant. The respondent landlord

field a petition for eviction to the appellant under Section 21(1)(a) of the U.P. Act XIII of 1972 inter alia on the ground at the bona fide requires the premises for carrying on his own business and he has no other means of livelihood. The tenant - appellant filed objections before the prescribed authority stating there in that the application for eviction has been filed on false and baseless allegation and in fact the respondent does not need the premises bona fide for starting his own business. The prescribed authority on consideration of the materials on record came to the conclusion that the landlord does not require the premises for his own use bonafide. The said prescribed authority also came to the conclusion that the tenant would be comparatively harrassed if an order of eviction for eviction having been rejected, the landlord preferred an appeal. The appellate authority re-appreciated the entire evidence on record and reversed the conclusion of the prescribed authority. The said appellate authority came to the conclusion that in the facts and circumstances to the case of the requirement of the landlord to start a cloth bushiness must be a bona fide requirement entitling him to get an order of eviction under Section 21(1)(a) of the Act. The appellate authority, therefore, set aside the order of the prescribed authority and directed eviction of the appellant. Being aggrieved by the order of the appellate authority, the tenant carried the matter to the High Court by filing a writ petition. During the pendency of the writ petition in the High Court the landlord died and was substituted by his legal heirs namely his widow, two sons and the married daughter. On behalf of the tenant, it was urged before the High Court that the landlord having died, the bona fide requirement which was found to have existed by the appellate authority no more survives, and therefore, taking into consideration the subsequent event the High Court must quash the order of eviction passed by the appellate authority. On behalf of the landlord it was contended that the order of the appellate authority in the eviction proceeding, is a decree and the decree having become final, In a proceeding under Article 226 of the Constitution, the High Court will not be entitled to take into consideration any subsequent event that had occurred and no that score it would not be appropriate for the High Court to interfere with the decree passed by the appellate authority. It was also contended that the requirement in question must exist on the day the application for eviction was filed and the same requirement having been found to be established by the competent forum who was required to go into the said question, it is no longer open to the High Court to interfere with the said finding in exercise of its supervisory jurisdiction under Article 226 of the Constitution. The High Court by the impugned judgment came to the conclusion that the decree for eviction has become final and the said finality cannot be disturbed on the application under Article 226 of the Constitution by taking into account the facts that the original landlord died during the pendency of the writ petition.

Mr. Manoj Swarup, learned counsel appearing for the appellant in this Court urged that the person for whose bona fide requirement the order of eviction has been passed by the appellate authority having died during the pendency of the writ petition. The said bonafide requirement no longer subsists and consequently the High Court should have taken that fact into consideration and should have interfered with the order passed by the appellate authority for the eviction of the tenant. The learned counsel further urged that no doubt the proceedings under Article 226 of the Constitution is not a continuation of the eviction proceedings under the Act, but all the same the High Court while exercising its power of supervisions under Article 226 of the Constitution is not denuded of its power to take into consideration the subsequent event that had happened which is necessary to be taken into consideration in the interest of justice. Accordingly, The High Court committed serious

error in not taking into account the facts of the death of the landlord for whose bona fide requirement the order of eviction had been passed by the appellate authority, and therefore, this Court should interfere with the said order of the High Court. Having given and anxious consideration to the contention raised by the learned counsel for the appellant and under the facts and circumstances of this case we are of the considered opinion that this case does not warranted interference by this Court under Article 136 of the constitution. Under the Act the order of the appellate authority is final and the said order is a decree of the civil court and decree to a competent Court having become final cannot be interfered with by the High Court in exercise of its power of superintendence under Article 226 and 227 of the Constitution by taking into account any subsequent event which might have happened. That apart, the fact that the landlord needed the premises is question for starting a bushiness which fact has been found by the appellate authority. In eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the Writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder son. In this view to the matter, we find no force in the contention of Mr, Manoj Swarup, learned counsel appearing for the appellant and we do not find any error in the impugned judgment of the High Court under Article 136 of the Constitution. The appeal, accordingly, fails and is dismissed but in the circumstances without any order as to costs.