

Sarwan Kumar & Anr vs Madan Lal Aggarwal on 6 February, 2003

Equivalent citations: AIR 2003 SUPREME COURT 1475, 2003 (4) SCC 147, 2003 AIR SCW 819, (2003) 1 SCR 918 (SC), 2003 (1) SCR 918, 2003 (2) ALL CJ 1419, 2003 (1) UJ (SC) 513, (2003) 5 ALLINDCAS 764 (SC), 2003 (2) SLT 1, 2003 (1) SCALE 722, 2003 (2) ACE 178, 2003 SCFBRC 269, 2003 (5) ALLINDCAS 764, (2003) 1 JT 607 (SC), 2003 ALL CJ 2 1419, 2003 (6) SRJ 179, (2003) 1 RENCJ 85, (2003) 1 RENCRC 347, (2003) 1 RENTLR 248, (2003) 1 SUPREME 946, (2003) 1 SCALE 722, (2003) 1 WLC(SC)CVL 349, (2003) 3 INDLD 971, (2003) 50 ALL LR 793, (2003) 2 ALL WC 989, (2003) 3 CAL HN 4, (2003) 1 CURCC 198, (2003) 103 DLT 20

Bench: Syed Shah Mohammed Quadri, Ashok Bhan

CASE NO.:

Appeal (civil) 1058 of 2003

PETITIONER:

Sarwan Kumar & Anr.

RESPONDENT:

Madan Lal Aggarwal

DATE OF JUDGMENT: 06/02/2003

BENCH:

Syed Shah Mohammed Quadri & Ashok Bhan

JUDGMENT:

J U D G M E N T (arising out of SLP No. 18553 of 2001) BHAN, J.

Leave granted.

The short point which falls for determination in this appeal is :

whether a decree for ejectment passed by a civil court qua a commercial tenancy in the State of Delhi before the declaration of law by the Supreme Court in Gian Devi Anand Vs. Jeevan Kumar, 1985 Suppl.(1) SCR 1, that such a tenancy is heritable, is executable or the judgment-debtors can successfully object to the execution of the decree on the ground that same was passed by a court lacking inherent jurisdiction and therefore inexecutable?

Property No. 212/IX, Chawri Bazar Delhi, was owned by Smt. Sarla Devi, wife of the respondent-landlord (hereinafter referred to as "the decree- holder"). She let out the suit premises in 1969 at a monthly rent of Rs. 75/- for commercial purposes to late Shri Amar Nath, predecessor-in-interest, of the appellants (hereinafter referred to as "the judgment-debtors"). Smt. Sarla Devi died on 28th January, 1980. She had executed a will dated 25th April, 1979 in favour of the decree-holder. The Decree-holder obtained the letters of administration by filing a probate case No. 41 of 1980. By virtue of the probate given in his favour the decree-holder became the owner of the suit premises.

The decree-holder served a notice to quit under Section 106 of the Transfer of Property Act, 1882 on late Shri Amar Nath. Amar Nath in response to the notice to quit stated that he was not a tenant in his personal capacity and the tenant in the tenanted premises was a partnership firm M/s Pelican Paper and Stationary Mart in which he was one of the partners. Amar Nath expired on 27th January, 1982. The decree-holder filed a suit for possession and mesne profits against the judgment-debtors in the court of District Judge, Delhi stating therein that Amar Nath was the tenant of the suit premises in his individual capacity. It was alleged that the tenancy in favour of the judgment-debtors being the legal heirs of the original tenant was not heritable. Judgment-debtors were not served personally. Service on them was affected through publication in the newspaper in February, 1985. An ex-parte decree of possession/recovery of mesne profits was passed against them. Civil Court recorded a finding that Amar Nath after the termination of tenancy became the statutory tenant and on his death the tenancy came to an end and accordingly a decree for possession of the suit premises along with the arrears of rent of damages was passed.

Thereafter, on 1st July, 1985 the decree-holder filed the execution application. On 21st August, 1986 judgment-debtors filed an application under Order 9 Rule 13 for setting aside the ex-parte decree which was dismissed by the trial court on 25th January, 1993. Judgment-debtors filed a regular first appeal in the High Court against the order of the trial Court. On 26th July, 1995, the High Court stayed the proceedings in the execution petition. On 7th September, 1998 the appeal filed by the judgment-debtors was dismissed by the High Court. The judgment-debtors thereafter filed Special leave Petition (Civil) No. 20667 of 1998. Same was dismissed leaving it open to the judgment-debtors to raise the question regarding the executibility of the decree before the appropriate forum. The following order was passed.

"Learned counsel appearing for the petitioners urged that since the petitioners are protected tenants, neither any decree for eviction can be passed nor can such decree be executed against them. We are not inclined to go into this question as it is not the subject matter of the order under appeal. The special leave petition is dismissed. It is open to the petitioners to raise this ground before the appropriate forum, if available to them under law."

Soon after the dismissal of the special leave petition the judgment- debtors filed regular first appeal No. 39 of 2000 in the High Court against the original decree dated 2nd April, 1985 passed by the civil court along with an application for condonation of delay of almost 15 years in filing the appeal. Interlocutory application for condonation of delay was rejected and consequently the regular first appeal No. 39 of 2000 was dismissed on 24th January, 2000 being barred by time.

After the dismissal of the special leave petition by this Court the execution proceedings revived. The judgment-debtors filed its objections under Section 47 of the Code of Civil Procedure (CPC) objecting to the execution of the decree, inter alia, on the ground that commercial tenancy in the State of Delhi was heritable in view of the law declared by this Court in the case of Gian Devi Anand's case (supra) and therefore the civil court lacked the inherent jurisdiction to pass such a decree. After the death of the statutory tenant the possession of the judgment-debtors did not become unlawful and illegal. They continued to have estate in the tenanted premises which were heritable and the jurisdiction of the civil court to pass an order of ejectment was barred under Section 50 of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act"). Under the Act tenancy rights of commercial premises which were heritable would devolve on the legal heirs under ordinary law of succession.

Executing Court over-ruled the objections filed by the judgment- debtors holding that the executing court could not go beyond the decree which had obtained finality. The executing court could not refuse to execute the decree passed by civil court only because subsequently Supreme Court in Gian Devi Anand's case (supra) held that the commercial tenancy was heritable. Appellants being aggrieved filed a petition under Article 227 of the Constitution of India against the dismissal of their objections to the execution of the decree. High Court took the same view regarding the applicability of the law declared by this Court in Gian Devi Anand's case (supra) and relying upon the decision of this Court in Bharmappa Nemanna Kawale & Anr. Vs. Dhondi Bhima Patil & Ors., 1996 (8) SCC 243. The High Court held as under:

"In such matters, the doctrine of prospective/retrospective overruling shall have to yield place to the doctrine of res judicata and whenever a matter has been finally decided the decree could not be declared to be nullity simply because by a subsequent judgment it was clarified that the civil court had no jurisdiction and the matter should have been tried by the Rent Controller."

Delhi High Court in Gian Devi Anand Vs. Jeevan Kumar case reported in 1980 (17) DLT 197, which was in appeal before the Supreme Court in Gian Devi Anand's case (supra) took the view that commercial tenancy was not heritable and therefore on the death of the original tenant the contractual tenancy comes to an end and the protection afforded to a statutory tenant under the Rent Act is not available to the heirs and legal representatives of the statutory tenant. In the appeal preferred against the judgment of Delhi High Court, a Constitution Bench of this Court overruled the view taken by the High Court and after referring to the relevant provisions of the Delhi Rent Control Act, 1958 extensively before and after its amendment by Act 18 of 1976 took the view:

"Accordingly, we hold that if the Rent Act in question defines a tenant in substance to mean a tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against him is passed, the tenant even after the determination of the tenancy continues to have an estate or interest in the tenanted premises and the tenancy rights both in respect of residential premises and commercial premises are heritable. The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant."

On the question as to who would inherit the tenancy right, it was observed:

"In the absence of any provision regulating the right of inheritance, and the manner and extent thereof and in the absence of any condition being stipulated with regard to the devolution of tenancy rights on the heirs on the death of the tenant, the devolution of tenancy rights must necessarily be in accordance with the ordinary law of succession."

In the same judgment this Court held that the landlord can seek the eviction of the tenants of the properties which were covered by the Rent Act only on the grounds specified in the Rent Act.

It is not in dispute before us that to a premises to which the Rent Act applies, eviction can only be ordered by the authorities/rent controller constituted under the Rent Act and the civil courts have no jurisdiction to entertain suits for eviction of the tenants from the premises to which the Rent Act applies. Further, it is not in dispute that the owners of tenanted premises whether residential or commercial, is permitted by the Rent Controller to seek eviction of the tenant only on the grounds specified in the Rent Act. Counsel for the respondent-decree holder did not also dispute that after the declaration of the law by this Court in *Gian Devi Anand's case* (supra) (judgment was delivered on 1st May, 1985) any decree passed by the civil court would be non-est having been passed by a court lacking inherent jurisdiction. But according to him to the decrees passed prior to the declaration of the law by this Court in *Gian Devi Anand's case* (supra) this rule would not apply. According to him such decrees are valid and lawful having been passed by the court of competent jurisdiction at the time of passing of the decree and therefore capable of being executed. The decrees passed prior to the declaration of law in *Gian Devi Anand's case* (supra) did not cease to be operative and inexecutable in view of the law laid down in that case. In other words, contention is that *Gian Devi Anand's case* (supra) would be prospective in application and would not be applicable to the decree which was passed prior to the judgment of the Supreme Court in *Gian Devi Anand's case* (supra). As against this counsel for the appellant relying upon the decision of this Court in *Dr. Suresh Chandra Verma & Ors. Vs. The Chancellor, Nagpur University & Ors.*, 1990 (4) SCC 55, and *Lily Thomas & Ors. Vs. Union of India & Ors.*, 2000 (6) SCC 224, contended that this Court does not legislate and only interprets the law and when a particular provision is interpreted then it in effect declares the law as it is stood from the beginning as per its decision and it would be deemed as if that was the law. It is open to the Court to protect the earlier decision to make the rule applicable

prospectively and save the decisions which have already become final or have been given effect to. In the absence of any specific observations to the effect that the law declared in Gian Devi Anand's case (supra) would be prospective in operation and would not apply to the decrees already passed by the civil courts, it cannot be held that the rule laid down in Gian Devi Anand's case (supra) would not apply to the decrees which had been passed by the civil court having no jurisdiction to do so. In Dr. Suresh Chandra Verma & Ors. (supra) this Court held:

"The second contention need not detain us long. It is based primarily on the provisions of Section 57(5) of the Act. The contention is that since the provisions of that section give power to the Chancellor to terminate the services of a teacher only if he is satisfied that the appointment "was not in accordance with the law at that time in force" and since the law at that time in force, viz. On March 30, 1985 when the appellants were appointed, was the law as laid down in Bhakre case which was decided on December 7, 1984, the termination of the appellants is beyond the powers of the Chancellor. The argument can only be described as nave. It is unnecessary to point out that when the court decides that the interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise. This being the case, since the Full Bench and now this Court has taken the view that the interpretation placed on the provisions of law by the Division Bench in Bhakre case was erroneous, it will have to be held that the appointments made by the University on March 30, 1985 pursuant to the law laid down in Bhakre case were not according to law. Hence, the termination of the services of the appellants were in compliance with the provisions of Section 57(5) of the Act."

In Sarla Mudgal (Smt.) President, Kalyani & Ors. Vs. Union of India & Ors., 1995 (3) SCC 635, this Court considered the validity of the second marriage of a Hindu husband after conversion to Islam without having the first marriage dissolved under the law. It was held that such a marriage would be void in terms of the provisions of Section 494, IPC and the husband would be guilty of the offence under Section 494, IPC. It was held:

"Answering the questions posed by us in the beginning of the judgment, we hold that the second marriage of a Hindu husband after conversion to Islam, without having his first marriage dissolved under law, would be invalid. The second marriage would be void in terms of the provisions of Section 494 IPC and the apostate-husband would be guilty of the offence under Section 494 IPC."

In Lily Thomas & Ors. Case (supra) while rejecting the contention that the law declared in Sarla Mudgal's case (supra) could not be applied to persons who had solemnised marriages in violation of the mandate of law prior to the date of the judgment, this court held:

"We are not impressed by the arguments to accept the contention that the law declared in Sarla Mudgal case cannot be applied to persons who have solemnised marriages in violation of the mandate of law prior to the date of judgment. This Court

had not laid down any new law but only interpreted the existing law which was in force. It is a settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the court does not legislate but only gives an interpretation to an existing law. We do not agree with the arguments that the second marriage by a convert male Muslim has been made an offence only by judicial pronouncement. The judgment has only interpreted the existing law after taking into consideration various aspects argued at length before the Bench which pronounced the judgment. The review petition alleging violation of Article 20(1) of the Constitution is without any substance and is liable to be dismissed on this ground alone."

Invocation of the doctrine of prospective overruling relying upon Bharmappa Nemanna Kawale's case (supra) by the High Court is misplaced. In Bharmappa Nemanna Kawale's case (supra) civil court passed to decree for eviction against the tenant holding that he was not a tenant which decree became final. When the plea of jural relationship of landlord and tenant was negatived by the executing court the landlord filed a writ petition in the High Court in which the High Court directed the executing court to go into that question. On these facts this Court over-turning the decision of the High Court held:

"Shri Bhasme, the learned counsel for the respondents, contended that in view of the specific language employed in Section 85-A of the Bombay Tenancy and Agricultural Lands Act, 1948 (67 of 1948) the only competent authority that has to go into the question is the revenue authority under the Act and the civil court has no jurisdiction to go into the question whether the appellant is a tenant or not. Therefore, the High Court was right in directing the executing court to go into the question. It is rather unfortunate that the respondent has allowed the decree holding that he is not a tenant to become final. Having allowed it to become final, it is not open to him to contend that he is still a tenant under the Act and therefore the decree is a nullity. Under those circumstances, the executing court was right in refusing to entertain the objection for executing the decree. The High Court was not justified, in the circumstances, in directing the executing court to consider the objection."

This Court neither considered the doctrine of prospective overruling nor did it go into the question of executability of a decree passed by a court having no jurisdiction. This court overruled the view taken by the High Court because the tenant let the earlier civil court decree to the effect that he was not a tenant became final. The decree passed by civil court under the circumstances was perfectly valid. Question of jural relationship of landlord and tenant could not be gone into by the executing court afresh. It was a short judgment and no other point was considered by this Court in the said judgment.

For the first time this Court in *Golak Nath Vs. State of Punjab*, AIR 1967 SC 1643 accepted the doctrine of "prospective overruling". It was held:

"As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its "earlier decisions"

is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

The doctrine of "prospective overruling" was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of "prospective overruling" the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. Invocation of doctrine of "prospective overruling" is left to the discretion of the court to mould with the justice of the cause or the matter before the court. This Court while deciding the Gian Devi Anand's case (supra) did not hold that the law declared by it would be prospective in operation. It was not for the High Court to say that the law laid down by this Court in Gian Devi Anand's case (supra) would be prospective in operation. If this is to be accepted then conflicting rules can supposedly be laid down by different High Courts regarding the applicability of the law laid down by this Court in Gian Devi Anand's case (supra) or any other case. Such a situation cannot be permitted to arise. In the absence of any direction by this Court that the rule laid down by this Court would be prospective in operation the finding recorded by the High Court that the rule laid down in Gian Devi Anand's case (supra) by this Court would be applicable to the cases arising from the date of the judgment of this Court cannot be accepted being erroneous.

This Court in Sushil Kumar Mehta vs. Govind Ram Bohra 1990 (1) SCC 193 after referring to and exhaustively dealing with and following various judgments of this Court held that a decree passed by a civil court in a rent matter, the jurisdiction of which was barred by the Haryana Urban (Control of Rent & Eviction) Act, 1973, having been passed by a court lacking inherent jurisdiction to entertain the suit for ejectment was a nullity and the judgment-debtors successfully could object to the execution of the said decree being a nullity.

The facts of the said case were almost identical to the facts of the present case. The facts which led to the decision in that case were: landlord filed a suit in the court of Senior Sub Judge for ejectment and recovery of arrears of rent and damages for use and occupation of a shop at Gurgaon, let out to the tenant. An ex parte decree was passed. Issue regarding jurisdiction of the civil court was framed and the same was decided against the tenant. Application under Order 9 Rule 13 to set aside the ex parte decree was dismissed. It was confirmed on appeal. Revision was dismissed by the High Court. When the landlord filed the application for execution of the decree to obtain possession, the tenant objected under section 47 of CPC contending that the decree of the civil court was a nullity as the premises in question were governed by the Rent Act. The Controller under the Act was the only

competent forum for claims of ejectment on fulfillment of the conditions enumerated in the Rent Act. That the civil court was divested of jurisdiction to take cognizance and pass a decree for ejectment of the tenant. The objection was overruled by the executing court and further the revision filed by the tenant was dismissed by the High Court. Simultaneously, he also filed a writ petition under Article 227 which was also dismissed. Against the dismissal of the writ petition under Article 227 the appeal was filed in this Court. It may be mentioned that a issue regarding the jurisdiction of the civil court to try a suit for ejectment was framed and decided in favour of the landlord in the civil suit. Tenant had also been divested of the possession in execution of the decree passed by the civil court. This Court after exhaustively referring to the number of previous judgments of this court held that to a building let out and governed under the Rent Act the only competent authority to pass the decree for ejectment was the Rent Controller constituted under the Rent Act and the civil court lacked the inherent jurisdiction to take cognizance of the cause and pass a decree of ejectment therein. It was further held that objection to the execution of the decree being a nullity having been passed by a court lacking inherent jurisdiction could be raised in execution proceedings and the finding recorded in decree that the civil court had the jurisdiction would not operate as res judicata. It was held:

"Thus it is settled law that normally a decree passed by a court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned. A decree passed by a court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a coram non judice. A decree passed by such a court is a nullity and is nonest. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party.."

[Emphasis supplied] {Para 26} In para 27, it was further observed:

"In the light of this position in law the question for determination is whether the impugned decree of the civil court can be assailed by the appellant in execution. It is already held that it is the Controller under the Act that has exclusive jurisdiction to order ejectment of a tenant from a building in the urban area leased out by the landlord. Thereby the civil court inherently lacks jurisdiction to entertain the suit and pass a decree of ejectment. Therefore, though the decree was passed and the jurisdiction of the court was gone into in issue Nos. 4 and 5 at the ex parte trial, the decree thereunder is a nullity, and does not bind the appellant. Therefore, it does not operate as a res judicata. The courts below have committed grave error of law in holding that the decree in the suit operated as res judicata and the appellant cannot raise the same point once again at the execution."

[Emphasis supplied] Appeal was allowed. Since the possession had already been taken in execution of the decree the Court ordered restoration of the possession to the tenant and thus observed:

"This Court would relieve the party from injustice in exercise of power under Article 136 of the Constitution when this Court noticed grave miscarriage of justice. It is always open to the appellant to take aid of Section 144 CPC for restitution. Therefore, merely because the decree has been executed, on the facts when we find that decree is a nullity, we cannot decline to exercise our power under Article 136 to set at nought illegal orders under a decree of nullity. The appeal is accordingly allowed. But in the circumstances parties are directed to bear their own costs."

This decision was later on followed by this Court in *Urban Improvement Trust vs. Gokul Narain* 1996 (4) SCC 178. We need not refer to the earlier decisions of this Court taking the same view which have been referred to and find mentioned in *Sushil Kumar Mehta's case* (supra).

In the present case because of the operation of Section 14 of the Act the only authority to pass a decree for ejectment of the tenanted premises is the Rent Controller appointed under the Act and Section 50 of the Act specifically bars the jurisdiction of the civil court to entertain any suit or proceeding in so far as it relates to the eviction of any tenant from the premises which were covered by the Delhi Rent Control Act. The civil court lacked the inherent jurisdiction to take cognizance of the cause and to pass a decree. Challenge to such a decree on the ground of nullity could be raised at any later stage including the execution proceedings. Tenancy of the building was governed by a special Act and therefore the decree passed by the civil court was a nullity and therefore inexecutable. Judgment-debtors had not filed their written statement in the civil court and no issue regarding the jurisdiction of the civil court to try the suit was framed. Tenant in the special leave petition in this Court raised the contention that the eviction decree passed by the civil court could not be executed against them. This Court refused to go into that question as it was not the subject matter of the order under appeal. It was left open to the judgment-debtors to raise this ground before the appropriate forum, if available to them under law. The only forum where the judgment-debtors could raise the objection regarding the executability of the decree was in the execution proceedings which they did. Since the jurisdiction of the civil court was barred, the decree passed by it was a nullity and the judgment-debtors could successfully raise objection regarding the executability of such a decree. The executing court erred in holding that judgment-debtors could not raise the objection to the executability of the decree being nullity having been passed by a court lacking inherent jurisdiction to do so. This Court in *Gian Devi Anand's case* (supra) did not lay down any new law but only interpreted the existing law which was in force. As was observed by this Court in *Lily Thomas's case* (supra) the interpretation of a provision relates back to the date of the law itself and cannot be prospective of the judgment. When the court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it stood right from the beginning as per its decision. In *Gian Devi Anand's case* (supra) the interpretation given by the Delhi High Court that commercial tenancies were not heritable was overruled being erroneous. Interpretation given by the Delhi High Court was not legal. The interpretation given by this Court declaring that the commercial tenancies heritable would be the law as it stood from the beginning as per the interpretation put by this Court. It would be deemed that the law was never otherwise.

Jurisdiction of the civil court has not been taken away by the interpretation given by this Court. This Court declared that the civil court had no jurisdiction to pass such a decree. It was not a question of taking away the jurisdiction it was the declaration of law by this Court to that effect. The civil court assumed the jurisdiction on the basis of the interpretation given by the High Court in Gian Devi Anand's case, which was set aside by this Court.

For the reasons stated above, the appeal is accepted. The order passed by the High Court as well as the executing court regarding the executability of the decree passed by the civil court are set aside. It is held that the jurisdiction of the civil court to pass the decree for ejectment was barred. A decree passed by a Court having no jurisdiction over the subject matter would be a nullity and the judgment-debtor can object to the execution of such a decree being a nullity and non est. Its invalidity can be set up whenever it is sought to be enforced including the stage of execution of the decree or any other collateral proceedings. We are conscious of the fact that it would work a great hardship on the respondent-decree holder who would not be able to reap the benefit of the decree passed in his favour having won at all the stages but the vagaries of law cannot be helped. Accordingly, appeal is accepted. Orders of the High Court and the executing court are set aside. It is held that the decree obtained by the decree-holder cannot be executed being a nullity and non est. The parties are directed to bear their own costs.