

Supreme Court of India

Kamlabai vs Bhikchand Kishanlal And Ors. on 18 November, 1981

Equivalent citations: AIR 1982 SC 709, 1981 (3) SCALE 1788, (1982) 1 SCC 377, 1982 (14) UJ 21 SC

Bench: Y Chandrachud, A Varadarajan, A N Sen

JUDGMENT

1. Respondent No. 1 Balkisan and his step-brother Hanumandas (who is now represented by respondent 2), were joint owners of a structure admeasuring approximately 48' x 27' at Dhule, Maharashtra. The appellant's husband Mangaldas Chunilal, who was in possession thereof as a tenant, was conducting a flour mill in the said premises. Respondent No. 1 filed Suit No. 247 of 1965 against Mangaldas asking for possession of the particular portion of the property which had fallen to his share. Radhabai, the step-mother of Hanumandas, also filed a suit for eviction of Mangaldas in respect of the portion which had fallen to Hanumandas' share. That was Suit No. 234 of 1966. That suit was decreed by the trial court and the decision therein, not having been appealed from, has become final. The trial court had decreed Suit No. 247 of 1965 filed by respondent No. 1 also. Mangaldas filed an appeal against that decree and he succeeded in the District Court which allowed the appeal and dismissed the suit. Respondent No. 1, however, filed Spl. Civil Appln. No. 2685 of 1967 in the High Court of Bombay which was allowed and respondent 1's suit for eviction was decreed.

2. Respondent No. 1 applied for execution of the decree obtained by him and, in 1971, he succeeded in obtaining possession of the suit premises. It appears that there were certain moveable properties in the premises, consisting of parts of the flour mill which the appellant's husband was running. A notice was given to the appellant by the execution court, her husband having died in the meanwhile, to remove those move-ables, but she did not do so. The move-ables. were then removed to the court where they were lying from 1971 till 1975. In about 1975, they were sold in an auction to respondent No. 2 for Rs. 1,851.

3. The appellant then took proceedings in the Court of the learned Joint Civil Judge, Dhule, against respondent No. 1, praying that she should be put back in possession of the premises as well as the machinery. That application was taken through all its stages and ultimately, Civil Revision Application No. 521 of 1979 filed by her was dismissed by the High Court. The appellant took similar proceedings against respondent No. 2 which were also dismissed eventually by the High Court.

4. Being aggrieved by the common judgment dated Feb. 29, 1980 delivered by the High Court in the two Revision Applications, the appellant has filed this appeal by special leave. Special leave to appeal was dismissed against respondent No. 1 and leave was granted against respondent No. 2 only. Respondent No. 2 has not appeared in the present proceedings.

5. We have done our utmost to see whether some relief can be granted to the appellant who is in impecunious circumstances, but we find it impossible to do so. Her grievance is that the machinery which was removed from the premises was of the value of about Rs. 25,000 but was sold to respondent No. 2 for a paltry sum of Rs. 1,851. Her contention has been rejected by all the courts and frankly, we are unable to see any reason, on the basis on which her contention can at all be

accepted. She was given due notice to remove the machinery which she failed to do. In fact, she declined to accept the notice. The machinery was thereafter removed to the court premises where it was lying for nearly four years. There is no material on the record whatsoever on the basis of which we could come to the conclusion that the machinery was purchased by respondent No. 2 at a gross undervalue. If we were to direct it respondent No. 2 should be asked to bring back the machinery, it will, in all probability, be in a far worse condition than it was in when it was purchased by him in 1975. The appellant would undoubtedly be entitled to withdraw the sale proceeds of Rs. 1,851 which are still lying in the court and all we can do is to direct that the aforesaid amount shall be paid to her forthwith.

6. We are thankful to Shri Misra, who appears for the appellant as an amicus curiae on behalf of the Supreme Court Legal Aid Society. He says that respondents Nos. 1 and 2 should be called upon to pay a reasonable sum, ex gratia, to the appellant. We do not think that we can call upon the respondents to pay any such amount to the appellant. If the appellant had even the semblance of a right to the relief claimed by her, it may have been possible to persuade the respondents to contribute to the costs incurred by her. But we find that the appellant has no right whatsoever to the machinery which has been sold to respondent No. 2 in accordance with law.

7. Regretfully, therefore, we have to dismiss the appeal which we hereby do. There will be no order as to costs.

8. We exempt the appellant from payment of court-fees.