

Supreme Court of India

Maharaj Kishan vs Janendra Kumar Jain on 7 March, 1969

Equivalent citations: 1969 (2) UJ 280 SC

Author: Sikri

Bench: Sikri, Bachawat, Hegde

JUDGMENT Sikri, J.

1. This appeal by special leave is directed against the judgment of the Circuit Bench of the Punjab High Court, Delhi, accepting the revision under Section 35 of the Delhi and Ajmer Rent Control Act, 1952 (XXXVIII of 1952) here with referred to as the Act, filed by Janendra Kumar Jain, respondent before us, hereinafter called defendant No. 8. By this judgment the High Court set aside the concurrent findings of fact given by the learned Senior Sub-Judge, Delhi, and the learned Sub-Judge, First Class, Delhi, that the All India Jain Digamber Parishad hereinafter referred to as the Parishad had sublet or otherwise parted with the possession of the premises, Rishi Bhawan, let out to it in May 1944 by Maharaj Krishan, appellant before us & hereinafter referred to as the plaintiff.

2. The main complaint of the learned counsel for the appellant is that the High Court was not right in holding that the courts below had misread the evidence in the case, and it had exceeded its powers under Section 35 of the Act.

3. The relevant facts may briefly be stated. Maharaj Krishan brought a suit on July 8, 1957, against the members of the said Parishad (defendants Nos. 1-7)-- respondent Nos. 2-8 in the present appeal and Janendra Kumar Jain, defendant No. 8 respondent No. 1 in this appeal for a decree for ejectment against the respondents as well as for the recovery of arrears of rent on a number of grounds, one ground being that the Parishad had sublet, assigned or otherwise parted with the possession of the premises in dispute in favour of defendant No. 8 without the permission of the plaintiff. Defendants Nos. 1 to 4 & 6---respondents Nos. 2 to 5 and 7 did not appear and contest the suit, but defendants Nos. 5, 7 and 8--respondents Nos. 1, 6 to 8--resisted the claim of the plaintiff. They filed a joint written statement and defendant No. 8 also filed a separate written statement. Defendant No. 8 admitted that the Parishad was the tenant of the plaintiff but denied that the premises were let out to the Parishad for the residence of its Secretary. It was further stated that "the paper 'VIR' is published on behalf of All India Jain Digamber Parishad. This defendant is President of 'VIR' Editorial Board and chief Adviser of 'VIR'. Defendant No. 8 is having his office in that capacity in that building The Parishad is holding the office of the 'VIR' in the premises in dispute since the time it was let out to them." It was denied that defendant No. 8 was a sub-tenant of the Parishad or that he had been in occupation of the premises in that capacity.

4. The attorney of the plaintiff, as P. W. 7, stated in his evidence that before defendant No. 8 moved into the premises, Shri Ugar Sen and Ram Lal, Secretary, and Shri Bhagat Ram lived there.

5. Shri Bhagat Ram, Secretary All India Jain Digamber Parishad, stated that the house was taken on rent for the purpose of the office of the Parishad and Shri Ugar Sen Jain did not live in this house. He denied that he himself resided in this house. He further stated that defendant No. 8 was an old member of the Parishad and he was the editor of 'VIR' paper. He stated that regular accounts were

kept by the Parishad and the expenditure towards the running of the paper was entered into the accounts of the Parishad, but he did not produce any records of the Parishad.

6. Shri Banwari Lal Jain, who is described as editor, publisher & printer of 'VIR' paper stated that defendant No. 8 was a member of the Board of Editors, which consisted of five persons, but he was not mentioned as an editor in the paper. He stated that "if defendant No. 8 does any personal work of his own there, then Jain Parishad has not given any special written permission in this regard." In cross-examination he could not explain as to why in the copies of 'VIR' No. 21, Darya Ganj, has been mentioned as the place of printing and publishing of 'VIR'. He admitted that the telephone in Rishi Haven was in the name defendant No. 8.

7. The main evidence in the case on behalf of the defendants was given by Janendra Kumar Jain, defendant No. 8, and it is his evidence which the High Court held has been misread by the courts below. He stated that he had been a member of the Parishad for the last 20-25 years and that he came in occupation of the house under dispute in about 1950. He further stated:--

"I was President of the Jain Shitake Parishad. In this capacity I had talks with Digamber Jain Parishad, and it was settled that I can come to this house under dispute. The paper of Digamber Jain Parishad shall be benefited from me but the condition shall be this that the meetings of the Parishad shall continue to be held in the house. The work of paper 'Veer' shall go on and the expenses of the house shall not devolve upon the Parishad. This also that I shall pay the present rent and it shall be treated as donation to the Parishad. ... I am Chief of the Editorial Board of 'Veer' paper and I am also head of its committee. Meetings are held in this very house connected with the paper ... I have got the telephone installed in July, 1951, although the application was given sometime earlier. This telephone is in my name in my capacity as President of Jain Sahityakar Parishad for office purposes. I am Hindi writer. I have written about twenty five to thirty books ...."

In cross-examination he admitted that the office of Digamber Jain Parishad was in Dariba and it existed there since before 1938. He further stated that Jain Sahityakar Parishad is not a part of Digamber Jain Parishad, organisationally." Then he stated as follows:

"I have taken the house under dispute in my capacity as President, Jain Sahityakar Parishad from Digamber Jain Parishad, which was taken for the office of Jain Sahityakar Parishad. The conditions I have stated before-hand . . . Digamber Jain Parishad inform me and then conduct their meeting in this house. It is correct that now I have got exclusive possession (full control) of this flat because I am from the Parishad In this house any person can enter after informing me. Only a person from Digamber Jain Parishad can enter . . . The board in my name is fixed on this house, I publish my books in the name of Poorvdey Prakashan. Its board is also fixed on this house. I sell that publication also there. The printing of the books is also done there. The board of Digamber Jain Parishad is not on this house. I have removed it myself because the people used to get a strayed in respect of the Dariba office due to this board. I removed this board with the permission of the Parishad."

8. On this evidence and looking at the copy of the entry of the rent deed in the scribe's register, the learned Sub-Judge came to the conclusion that the premises were initially let out for the purpose of residence of the Secretary of the Parishad, though except for a brief period no Secretary ever resided there and that thereafter the premises were used as office of the Parishad. The learned Sub-Judge further came to the conclusion that defendant No. 8 admittedly had been enjoying the premises for his own benefit and was in exclusive control of the same, and that the payment of rent by defendant No. 8 was nothing but the payment by a sub-tenant; Accordingly he held that the plaintiff's claim that there had been subletting of the premises by the Parishad was clearly established.

9. Defendant No. 8 appealed but none of the other defendants filed an appeal. In the course of his Judgment the learned Senior Sub-Judge observed (and this is one of the passages which has been objected to by the High Court):--

"The defendant No. 8, however, admitted that he was in exclusive possession of the premises in dispute as the President of the Sahityakar Parishad, which was a body separate from the defendant Parishad, and that he had put up his own name-plate in the premises by removing the Board of the defendant Parishad."

The learned senior Sub-Judge further held that there was no reasonable rebuttal of the statement that in the beginning the Secretary of the Parishad actually resided in the premises in dispute and the plaintiffs claim was supported by the entry in the Register of the petition writer. He came to the definite conclusion that the letting purpose of the tenancy in dispute was the residence of the Secretary of the defendant Parishad. He further held that there was no documentary evidence to support the contention set up by defendant No. 8 that he was in occupation of the premises in dispute as the Chief Adviser of the Parishad and also in his capacity as the President of the Board of the Editors of the Organ of the prishad known as 'Vir'. The learned senior sub-Judge observed that no resolution of the Parishad in this behalf had been brought on the record and the withholding of this piece of evidence raised a strong presumption against the defendants. He further observed :

"Moreover, the statement of D.W. 8 himself is rather significant on this point. He has admitted in clear and unambiguous words that he was in exclusive possession of the premises in dispute as the President of the Sahityakar Parishad . . He, however, again came out with the truth when he admitted in so many words that the meetings of the Parishad could be held in premises in dispute with his permission, that he had put up his own name plate in the premises and removed that board of the Parishad on the asking of the Parishad since it was causing misunderstanding in the minds of the people as to the location of the office of the parishad."

The learned senior sub-Judge further noticed the fact that the telephone in the premises was in the name of defendant No. 8 & not in the name of the Parishad He observed that records or account books of the Parishad had been produced to support the contention that there had been a settlement between defendant No. 8 and the Parishad.

10. The learned senior sub-Judge concluded that it was established beyond any shadow of doubt that the premises in dispute were being used not for the residence of the Secretary of the Parishad

for which purpose the same had been let out by the plaintiff and that defendant No. 8 was in occupation and use of the same for his own personal business without the permission or content, of the plaintiff-landlord, which was necessary under the law.

11. Defendant No. 8 filed a revision against the order of the senior sub-Judge. Dulat. J., acceded to the contention of defendant No. 8 that there had been considerable misunderstanding of the evidence, if not misreading of it. He observed :

"The petitioner (defendant No. 8) never stated that the Jain Digamber Parishad could hold their meetings in the premises only with his permission which may have carried the implication that in law he was entitled to exclude the members of the Parishad from the premises. What he actually said was that the Parishad held their meetings in these premises and they do so after informing him . ..... Further petitioner (defendant No. 8) does not say that he was in exclusive possession of the premises. What he said was that he was in complete possession which; as a matter of fact, is perfectly true but does not carry with it the legal implications which the lower appellate Court seems to have put into it."

The learned Judge further observed that if the story of defendant No. 8 was true that he was the President of another society, that there was a talk about the disputed premises with the Jain Digamber Parishad, and that he was allowed to occupy the premises as it would be to the advantage of the Parishad, it did not constitute any subletting or parting with possession in the sense of legal possession but only constituted an arrangement under which the tenants permitted the petitioner (defendant No. 8) to use the disputed premises partly for his own work and the work of his other society and partly for work connected with the Jain Digamber Parishad. The learned Judge repelled the argument of the plaintiff that there was no evidence to support this version on the ground that really speaking no other evidence was there to throw light on the disputed facts except the evidence of defendant No. 8. The learned Judge did not deal with the other circumstances in the case or with the finding that the premises were originally let out for the purpose of the residence of the secretary of the Parishad.

12. It seems to us that the High Court erred in reversing the concurrent findings of fact arrived at by the courts below. We are not satisfied that there has been any misreading of the evidence given by defendant No. 8. It seems to us that there was ample material before the courts below for coming to the conclusion which they did. The High Court was not sitting as a court of appeal but as a court of revision. The scope of the powers of the High Court under sec 35 of the Delhi & Ajmer Rent Control Act, 1952, was considered by this Court in Hari Shankar v. Rao Girdhari Lal Chowdhury (1) where Hidayatullah, J., as he then was speaking for the majority, observed:--

"The phrase according to law" refers to the decision as a whole, and is not to be equated to errors of law or of fact simpliciter. It refers to the overall decision, which must be according to law which it would not be if there is a miscarriage of justice due to a mistake of law. The section is thus framed to confer larger powers than the power to correct error of jurisdiction to which Section 115 (C. P. C.) is limited."

He thought that the most accurate exposition of the meaning of such sections is that of Beamont, C. J.' in *Bell & Co. Ltd. v. waman Hemraj* (2) in the following passage:--

The object of Section 25 (Provincial small Cause Courts Act.

is to enable the High Court to see that there has been no miscarriage of justice, that the decision was given according to law. The section does not enumerate the cases in which the Court may interfere in revision as does Section 115 of the CPC, and I certainly do not propose to attempt an exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in which the Court which made the order had no jurisdiction or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard (sic) the burden of proof has been placed on the wrong shoulder (sic) Wherever the court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at."

13. This case was followed by this Court in *Malini Ayyanna Naicker v. Seth Menghraj Udhavdas* (3) Judgment delivered on February 13, 1969 when dealing with the scope of Section 75(1) of the Provincial Insolvency Act.

14. It seems to us that in this case the High Court interfered because it thought that the findings arrived at by the lower courts" were not correct on the evidence. Further, even in arriving at this conclusion it did not deal with all the evidence in the case, including the evidence relating to the finding that the premises had been let for the residence of the Secretary of the Parishad.

15. Before concluding we may mention that the learned counsel for the respondent No. 1 Mr. S. C. Manchanda, raised a preliminary objection that as no point had been taken before the High Court regarding the ambit of the powers of the High Court under Section 35 of the Act, it was not open to the appellant to raise that point here. We see no force in this contention. Whether a Judge has transgressed his powers under Section 35 of the Act can only be seen after he has given his decision.

16. In the result the appeal is allowed, the judgment and decree of the High Court set aside and the judgment and decree of the lower appellant court restored. The plaintiff-appellant will be entitled to his costs here against respondent No. 1. Respondent No. 1 will deliver vacant possession to the appellant within six months. Respondent No. 1 will within a week file an undertaking, signed by him and countersigned by counsel that he will deliver vacant possession (sic) to the appellant within six months.