

A

RAM CHANDRA VERMA

v.

SHRI JAGAT SINGH AND ORS.

JANUARY 30, 1996

B

[K. RAMASWAMY, S. SAGHIR AHMAD
AND G.B. PATTANAIK, JJ.]

Code of Civil Procedure, 1908 :

C

Order 21 Rule 97—Compromise decree—Execution of—Party found in possession—Entitled to obstruct execution defending his illegal dispossession—Independently, the party can file application claiming his possession—Said party not to be ejected from the premises in his possession except in accordance with law.

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3227 of 1996.

From the Judgment and Order dated 16.8.93 of the Sikkim High Court in C.F.A. No. 1 of 1991.

E

A.S. Bhasme for the Appellant.

G.S. Chatterjee for the Respondents.

The following Order of the Court was delivered :

F

Though notice has been sent on second occasion to respondent No. 3 on May 24, 1994, so far acknowledgment has not come back. Therefore, notice on 3rd respondent must be deemed to have been served. Respondents 1 & 2 are represented by Mr. G.S. Chatterjee.

Leave granted.

G

The respondents filed Suit No. 19/75 on May 19, 1975 for eviction of the tenant Harkesh Rai Agarwal on three grounds, namely, default, sub-letting and personal requirement. The suit was dismissed on August 25, 1975. Again another suit was instituted on September 25, 1975 for the same grounds. The suit was again dismissed. Pending appeal, Harkesh Rai and

H the respondent have compromised the matter. By compromise decree

dated November 26, 1981, Harkesh Rai agreed to surrender one room now in possession of the appellant. When execution was sought to be taken and the appellant resisted the execution, an application under Order 21 Rule 97 of CPC was filed to remove the obstruction which was ordered by the Executing Court. On appeal, the High Court by order dated August 16, 1983 in F.A.1/91 dismissed the appeal. Thus this appeal by special leave.

The question is : whether the appellant is bound by the compromise decree entered into by Harkesh Rai Agarwal and the respondents. It is settled law that unless the conditions for eviction are proved, the decree for eviction on compromise is a nullity. That apart, the property belongs to four persons and three brothers made an admission prior to partition that the appellant is in possession of a room admeasuring 15' x 30' as tenant and admittedly it fell to the share of Lunkaran Singhi. In view of those admissions made by the co-owners who have got joint interest and made their admissions against their interest, the admissions bind all the co-owners. In view of that admission, the necessary conclusion is this that the appellant is independently in possession of the premises admeasuring 15'x30' in his own right as a tenant.

In the compromise decree, ultimately, the High Court granted possession of the premises in occupation of the appellant. The appellant having been found in possession, he is entitled to obstruct execution defending his illegal dispossession in execution proceedings and he is also independently entitled to file application under Order 21 Rule 97 claiming his possession. In view of the fact that he was found to be in possession, the finding recorded by the Executing Court as upheld by the High Court that he is a licensee on behalf of Harkesh Rai Agarwal is clearly illegal. We, therefore, hold that the appellant cannot be ejected from the premises in his possession except in accordance with law. As regards the execution of the compromise decree is concerned, it would be open to the respondent to proceed against Harkesh Rai Agarwal in accordance with law.

The appeal is accordingly allowed. No costs.

G.N.

Appeal allowed.