

A

GURJOGINDER SINGH

v.

SMT. JASWANT KAUR AND ANR.

FEBRUARY 9, 1994

B

[S. MOHAN AND M.K. MUKHERJEE, JJ.]

C

Rent and Eviction/Code of Civil Procedure, 1908: S. 144, O.9. R.13.—Ex-parte order of eviction of appellant-tenant—Application for restitution of possession allowed—Warrant of possession issued—Objection filed by another person claiming himself to be bona fide transferee-in-possession under an agreement entered into between him and landlord—High Court holding objector as a bona fide transferee equating his status with that of a bona fide purchaser in an auction sale—Held, status of a bona fide purchaser in an auction sale in execution of a decree to which he was not a party stands on a different footing from that of a person who is inducted as a tenant by a decree-holder-landlord—Decree-holder was bound to restore to judgment-debtor subject matter of decree subsequently transferred to third person.

D

E

Respondent No.1, in execution of an ex-parte order passed against the appellant-tenant, obtained possession of the suit premises. The appellant unsuccessfully challenged the ex-parte order under Order 9 Rule 13 of the Code of Civil Procedure 1908. In appeal, the Rent Control Tribunal set aside the ex-parte order and revived the application for eviction. Thereafter, the appellant filed an application under s. 144 of the Code of Civil Procedure for restoration of his possession, which was allowed by the Rent Controller and warrant for possession was issued. Meanwhile respondent No. 2 filed an objection claiming himself to be a *bona fide* transferee-in-possession of the suit premises in terms of an agreement entered into between him and respondent no. 1. It was alleged that he did not know about the earlier eviction proceeding initiated against the appellant. The objection was overruled. The appeal preferred by the Respondent No. 2 was dismissed by the Tribunal. He preferred a second appeal which was allowed by the High Court, holding that respondent no. 2 was a *bona fide* transferee. Hence the appeal by the original tenant.

F

G

H

Allowing the appeal and setting aside the Order of the High Court, this Court

HELD: 1.1. The status of a *bona fide* purchaser in an auction sale in execution of a decree to which he was not a party stands on a distinct and different footing from that of a person who is inducted as a tenant by a decree-holder-landlord. A stranger auction purchaser does not derive his title from either the decree-holder or the judgment-debtor and, therefore restitution may not be granted against him but a tenant who obtains possession from the decree-holder-landlord cannot avail of the same right as his possession as a tenant is derived from the landlord. [796-H; 797-A]

1.2. In the instant case, it is the decree-holder who has put respondent No. 2 in possession and, therefore, when the decree has been set aside he is bound to restore to the judgment-debtor what he gained under the decree and subsequently transferred to respondent No. 2. [797-E]

1.3. The High Court was not right in equating the status of respondent no. 2 with that of a *bona fide* purchaser in an auction sale and in holding that respondent no. 2 as a *bona fide* transferee had independent right to occupy the suit premises and could not be evicted either in equity or in law not withstanding the order for restitution of possession passed in favour of the appellant under s. 144 of the Code of Civil Procedure. [796-F-H]

Binayak Swain v. Ramesh Chandra Panigrahi & Anr., A.I.R. (1966) S.C. 948 and *Zain-ul-Abdin Khan v. Muhammad Asghar Ali Khan*, (1888) I.L.R. All. 166 P.C., referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3307 of 1983.

From the Judgment and Order dated 25.1.1980 of the Delhi High Court in S.A.O. No. 417 of 1978.

Yogesh Kapur and A.D. Sikri for the Appellant.

V.C. Mahajan and Rishi Kesh for the Respondents.

The Judgment of the Court was delivered by

M.K. MUKHERJEE, J. 1. In February 1971 Smt. Jaswant Kaur, the respondent No. 1 herein, initiated legal proceeding before the Rent Controller for eviction of her tenant, the appellant herein, and in execution of the ex parte order passed therein obtained possession of the suit premises

A in October, 1971. Immediately thereafter the appellant filed an application under Order 9 Rule 13 of the Code of Civil Procedure which was dismissed by the Rent Controller. However, in appeal the ex-parte order of eviction was set aside by the Rent Control Tribunal and the proceeding for eviction filed by the respondent No. 1 was revived. On such revival the appellant filed an application under Section 144 of the Code of Civil Procedure before the Rent Controller for restoration of his possession which was allowed by an order dated May 13, 1977 and warrant for possession was issued. Before, however, possession could be taken pursuant thereto, the respondent No. 2 filed an objection before the Rent Controller contending that in terms of an agreement he had arrived at with the respondent No. 1 he took possession of the suit premises on May 1, 1973 as a tenant under her. He further contended that he was a *bona fide* transferee and that he did not know about the earlier eviction proceeding initiated against the erstwhile tenant. Consequently, he contended, he was not liable to be dispossessed pursuant to the warrant of possession. The Rent Controller overruled the objection so raised and the appeal preferred by the respondent No. 2 against the order of the Rent Controller was dismissed by Rent Control Tribunal. Thereafter he moved the Delhi High Court by way of a second appeal which was allowed on the ground that as a *bona fide* transferee the respondent No. 2 had independent right to occupy the suit premises and his right could not be disturbed either in equity or in law under Section 144 of the Code of Civil Procedure. Hence, this appeal by the original tenant.

2. In arriving at its conclusion that as a *bona fide* transferee the respondent No. 2 could not be evicted from the suit premises notwithstanding the order for restitution of possession passed in favour of the appellant the High Court equated the status of the respondent No. 2 with that of a *bona fide* purchaser in an auction sale. Then, drawing inspiration from the judgment of this Court in *Binayak Swain v. Ramesh Chandra Panigrahi & Anr.*, A.I.R. (1966) S.C. 948, the High Court held that the right of a *bona fide* purchaser or transferee stood on a footing different from that of the parties to the suit as the former had an independent right.

3. We are unable to share the view expressed by the High Court as in our considered opinion, the status of a *bona fide* purchaser in an auction sale in execution of a decree to which he was not a party stands on a distinct and different footing from that of a person who is inducted as a

tenant by a decree-holder-landlord. A stranger auction purchaser does not derive his title from either the decree-holder or the judgment-debtor and therefore restitution may not be granted against him but a tenant who obtains possession from the decree holder landlord cannot avail of the same right as his possession as a tenant is derived from the landlord. Even in the case of *Binayak Swain* (supra) which the High Court relied upon this Court has drawn a distinction between purchase made by a decree-holder and a stranger in auction-sale by quoting with approval the following observation made in the case of *Zain-ul-Abdin Kham v. Muhammad Asghar Ali Khan*, (1888) I.L.R. All. 166 (P.C.):

"It appears to their Lordship that there is a great distinction between the decree-holders who came in and purchased under their own decree, which was afterwards reversed on appeal, and the *bona fide* purchasers who come in and brought at the sale in execution of the decree to which they were no parties, and at a time when that decree was a valid decree, and when the order for the sale was a valid order."

4. In our view the above principle will apply in the case in hand as it is the decree-holder who has put the respondent No. 2 in possession and, therefore, when the decree has been set aside he is bound to restore to the judgment-debtor what he gained under the decree and subsequently transferred to the respondent No. 2.

5. We, therefore, allow this appeal, set aside the order of the High Court and direct restoration of possession to the appellant in terms of the order passed by the Rent Controller. Needless to say such restoration will abide by the result of the eviction petition filed by the respondent No. 1. However, there will be no order as to costs.

R.P.

Appeal allowed.