

KAUSHALYA DEVI & ORS.

v.

SHRI K. L. BANSAL

December 3, 1968

[S. M. SIKRI, R. S. BACHAWAT AND K. S. HEGDE, JJ.]

Delhi and Ajmer Rent Control Act, 1952, s. 13—Compromise decree passed without regard to provisions of s. 13—If valid.

The appellant-plaintiffs filed a suit in February 1956, for the eviction of the respondent on the ground that the premises were required for their own use, that the defendant already owned a suitable house of his own, and that the respondent had defaulted in payment of rent, after the defendant had filed a written statement and issues had been framed a joint application was made by them that a compromise had been effected. The trial court decreed the suit in the plaintiff's favour in terms of the compromise which provided *inter alia*, for the ejectment of the defendant after 31st December 1958, and fixed the standard rent as agreed. The defendant, however, did not vacate the premises in December 1958, and presented an application in February 1959 under s. 47 C.P.C., challenging the validity of the decree alleging that it had been passed in contravention of the provision of Delhi and Ajmer Rent Control Act, 1952 and contending that the decree was, therefore, a nullity. He failed before the Sub-Judge and also in appeal before the Senior Sub-Judge. However, the High Court in revision held in his favour.

On appeal to this Court,

HELD : The High Court has rightly held that the decree was a nullity as the order passed on the basis of the compromise did not indicate that any of the statutory grounds mentioned in s. 13 of the Act existed. [1050 B]

Bahadur Singh v. Muni Subrat Dass, [1969] 2 S.C.R. 432, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 98 of 1966.

Appeal from the judgment and order dated September 7, 1962 of the Punjab High Court, Circuit Bench at Delhi in Civil Revision Application No. 140-D of 1961.

S. P. Sinha, G. Bhimsena Rao and M. I. Khowaja, for the appellants.

I. N. Shroff, for the respondent.

The Judgment of the Court was delivered by

Sikri, J. This appeal by certificate granted by the Circuit Bench of the Punjab High Court at Delhi is governed by the decision of this Court in *Bahadur Singh v. Muni Subrat Dass*(¹).

(1) [1969] 2 S.C.R. 432.

A The facts out of which the present appeal arises are these. One Raghunath Sharma, predecessor-in-interest of the appellants hereinafter referred to as the plaintiff—instituted on February 7, 1956, suit No. 53 of 1956 in the Court of Sub-Judge 1st Class, Delhi, for the eviction of his tenant, K. L. Bansal, hereinafter referred to as the defendant. He gave three grounds for ejectment in the plaint: (1) that the premises were required *bona fide* by the plaintiff for occupation as residence for himself and other members of the family, and that he had no other suitable accommodation to meet his *bona fide* residential requirements; (2) that the defendant already owned a house in Delhi which was suitable for him; and (3) that the defendant had defaulted in payment of rent.

C The defendant filed a written statement denying these allegations. Appropriate issues were framed on April 4, 1956. On June 5, 1956, an application was filed by the plaintiff and the defendant that a compromise had been effected on the following terms :

D “(a) Decree for ejectment be passed in favour of the plaintiff against the defendant, the decree will be executable after the 31st December, 1958, if the defendant does not give possession till then.

E (b) The standard rent of the premises be fixed at Rs. 40/- per mensem, instead of Rs. 50/- paid at present payable from the 1st July, 1956, till the defendant vacates the premises.

F (c) The amount in deposit with this Court be paid to the plaintiff which will be adjusted between the parties.”

F On July 6, 1956, the counsel for the parties and the plaintiff made a statement on solemn affirmation to the same effect, and on the same day the Court recorded the following order :

G “In view of the statement of the parties’ counsel and the written compromise, a decree is passed in favour of the plaintiff against the defendant.”

The decree was drawn up accordingly.

H The defendant, however, did not vacate the premises on December 31, 1958. On the other hand, he presented an application on February 16, 1959, under s. 47, C.P.C., challenging the validity of the decree alleging that the same had been passed in contravention of the provisions of s. 13 of the Delhi and Ajmer Rent Control Act, 1952 (XXXVIII of 1952), (hereinafter referred to as the Act) and hence the decree was a nullity. He failed

before the Sub-Judge, and also on appeal before the Senior Sub-Judge, Delhi.

The High Court, on revision, held that the decree was a nullity as the order passed on the basis of the compromise did not indicate that any of the statutory grounds mentioned in s. 13 of the Act existed. In *Bahadur Singh's* case⁽¹⁾ this Court held that the decree passed on the basis of an award was in contravention of s. 13(1) of the Act because the Court had passed the decree in terms of the award without satisfying itself that the ground of eviction existed. Bachawat, J., speaking for the Court, observed that "on the plain wording of s. 13(1) the Court was forbidden to pass the decree. The decree is a nullity and cannot be enforced in execution." This Court, accordingly, declared *inter alia* that "the decree in so far as it directs delivery of possession of the premises to the landlord is a nullity and cannot be executed."

The present case is also governed by the provisions of s. 13(1) of the Act and, as we have said before, this appeal must fail, in view of the judgment of this Court in *Bahadur Singh's* case⁽¹⁾. In the result the appeal is dismissed but there will be no order as to costs.

R.K.P.S.

Appeal dismissed.

(1) [1969] 2 S.C.R. 432.