

RSA No. 2377 of 1987. [O&M]
Date of Decision: 11th March, 2015.

Jowala Singh & Ors. Respondents through
Mr. S.K.Sharma, Advocate.

- SURYA KANT, J. [ORAL]**

[3]. It appears that the appellant-landlord rented out the house to Jowala Singh and Mal Singh-respondents but Jarnail Singh - another son of Jowala Singh also started residing in that house. The appellant-landlord filed eviction petition against the tenants in which an eviction order was passed on 15.05.1963 and it attained finality. It appears that before the ejection order could be executed, a compromise took place between the appellant and Jowala Singh whereunder the appellant agreed to sell the house to Madho Singh son of Jowala Singh. However, Madho Singh could not honour the

agreement to sell and failed to pay the sale consideration on time. The appellant then filed a suit for Specific Performance against Madho Singh in which they again entered into a compromise to the effect that Madho Singh would deposit the due amount on or before 30.05.1970. Madho Singh again failed to deposit the due amount, hence the appellant sought execution of eviction order to secure the possession.

[4]. During the pendency of those execution proceedings, Jowala Singh and his two sons – Mal Singh and Jarnail Singh filed the instant suit for Permanent Injunction claiming that they could not be dispossessed from the house in dispute.

[5]. As there was already an eviction order passed against them, the civil Court dismissed the suit, for the appellant had initiated action to dispossess them in due course of law.

[6]. The first Appellate Court, however, vide the impugned judgment and decree dated 28.02.1987 partly allowed the appeal of Mal Singh and has dismissed that of Jowala Singh and Jarnail Singh holding that the order of ejectment qua Mal Singh is still to be executed and since he is in possession of the house as a tenant, he could not be dispossessed on the basis of decree passed in favour of appellant and against Madho Singh in the suit for Specific Performance.

[7]. Having heard learned counsel for the parties and on perusal of record, I find that the substantial question of law that arises for consideration in this case is whether the Civil Court could injunct a landlord from dispossessing his tenant despite in execution of eviction order passed by a Court of competent jurisdiction?

[8]. The first Appellate Court in Para No. 14 of the impugned judgment has completely misread or overlooked the evidence on record, pleadings as well as the candid admission made by Mal Singh. Admittedly an eviction order was passed under the Rent Act against Jowala Singh and his two sons – Jarnail Singh and Mal Singh. Even after acknowledging this fact in Para No. 14 of the order, the first Appellate Court erred itself in observing that since Mal Singh

is in possession of the house, he is entitled to seek injunction. Suffice it to say that the appellant had initiated lawful action against the tenant[s] and it was only after an eviction order was passed in his favour that he sought to evict the tenants. It was not a case of taking any forcible possession. No injunction could be granted by the Civil Court to restrain the landlord from executing the eviction order passed under the Rent Act. Mal Singh was also one of the Judgment-Debtor in those proceedings.

[9]. For the reasons afore-mentioned, the appeal is allowed and the judgment and decree dated 28.02.1987 passed by the first Appellate Court is set aside, leaving it open to the appellant to seek eviction of Mal Singh in the execution proceedings pursuant to the eviction order passed under the Rent Act. No costs.

March 11, 2015.
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(SURYA KANT)
JUDGE