
(2004) 07 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Second Appeal No. 61 of 1987

Bhagirath Mal and Another

APPELLANT

Vs

Smt. Yuvrani Sahiba through Lrs.

RESPONDENT

Date of Decision : 21-07-2004

Acts Referred:

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 — Section 13(1)

Citation : (2005) 1 RLW 113 : (2004) 4 WLC 112

Hon'ble Judges : A.C. Goyal, J

Bench : Single Bench

Advocate : B.L. Mandhana, for the Appellant; K.J. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Goyal, J.—This second appeal by the defendants has arisen out of the following facts :-

2. The plaintiff-respondent instituted a civil suit No. 188/1979 on 13.7.1979 for arrears of rent and eviction with the averments that both the defendants (respectively father and son) are the tenants of the plaintiff respectively in shops Nos. 2 & 3 on monthly rent of Rs. 50/-. Both of them carry on restaurant in the suit shops. Eviction was sought on the ground of material alterations made by the defendants without consent of the plaintiff.

3. In their joint written statement having admitted tenancy, the details of alterations alleged in the plaint have been denied.

4. On the basis of the pleadings, as many as five issues were framed. Evidence was recorded and vide judgment dated 13.9.1983 learned Additional Munsif, Sikar came to this conclusion that the plaintiff though failed to prove opening of any door in the common wall between two shops, proved remaining material alterations, hence decreed the suit for eviction.

5. Both the plaintiff as well as the defendants preferred the first appeal and the

cross objections respectively. Learned Additional District Judge, Sikar vide impugned judgment dated 25.3.1987 while allowing the cross objections dismissed the appeal and thus affirmed the judgment and decree of eviction. Hence, this second appeal.

6. On 13.7.1987 following substantial questions of law were framed :-

(i) Whether u/s 13 (c) it is necessary to decide that the premises has materially been altered in a way which is likely to be diminish the value thereof?

(ii) Whether Clause 13 (c) applies in the case of material alteration increasing the value of the property or not?

(iii) Whether in the facts and circumstances of the case the alterations made can be said to be the material alteration or not taking into consideration the rent of the appellants?

7. I have heard learned counsel for the parties. Section 13 (1) (c) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (in short the Act) provides that when the tenant has without the permission of the landlord made or permitted to be made any such construction as in the opinion of the court has materially altered the premises or is likely to diminish the value thereof, he would be liable to eviction. A perusal of these provisions shows that two grounds have been provided for eviction i.e. (i) material alterations in the premises and (ii) any such alteration which is likely to diminish the value of the premises. In view of these provisions it is not necessary to prove that the material alterations should diminish the value of the property. Even if by any alteration the value of the property is increased, the ground of eviction would not go away if such alteration is material in the opinion of the court and such alteration was made by the tenant without the permission of the landlord. Learned counsel for the appellants also did not seriously argue the questions No. 1 and 2 as mentioned hereinabove. Therefore, the questions Nos. 1 & 2 are decided accordingly that it is not necessary u/s 13 (1) (c) of the Act to prove that the material alterations should be such which are likely to diminish or increase the value of the premises.

8. Now comes the third question. As per paras 3 & 4 of the plaint, the following alterations were made in both the shops :-

(i) that the defendant No. 1 opened a door of 6ft. x 3 1/2 ft. by breaking the common wall in between the two shops;

(ii) that both the defendants converted Varandah into a room in front of both the shops and a tin-shed was fixed in front of the Varandah;

(iii) that the defendant No. 1 opened a new door of 6ft. x 3 1/2 ft. in southern side wall of the shop;

(iv) that both the defendants by breaking the southern wall of both the shops fixed two exhaust fans.

9. It was also pleaded that these additions and alterations amount to material alterations and all this work was done without the permission of the plaintiff.

10. In written statement it was pleaded that a temporary shutter was fixed to Varandah and it was done in the year 1975 with the permission of the plaintiff. It was also admitted that a tin-shed in front of the shops and Varandah was set up for safety from heat and rain and this work was also done with the permission of the plaintiff. It was further pleaded that the defendants purchased a piece of land situated in southern side of both the shops and at that time the plaintiff agreed that the defendants may open a door towards that land. The facts of fitting exhaust fans in both the shops were admitted with a plea that this work does not amount to material alteration. The facts of setting up of a door in the common wall of both the shops were denied.

11. According to learned counsel for the appellants, the instant case of eviction is not covered by Section 13 (1) (c) of the Act as it is not a case of any new construction, rather the plaintiff could have come with a case of substantial damage to the premises as a ground of eviction as provided u/s 13 (1) (b) of the Act. It was also submitted that as per the plaint, some alterations were made by the defendant No. 1 only while some alterations were made by both the defendants and thus the findings of the courts below which are common against both the tenants are perverse. It was next submitted that these alterations do not amount to material alterations at all and some alterations were made with the permission of the plaintiff- landlord. Reliance is placed upon Waryam Singh v. Baldev Singh (2002 (8) SCALE 270), wherein the Hon'ble Supreme Court while dealing with the relevant provisions of eviction as contained in East Punjab Urban Rent Restriction Act, 1949 held that it should be proved that the tenant committed such acts as are likely to impair materially the value or utility of the building of rented land. Thus, this judgment is not applicable to the facts of the instant case. Reliance was also placed upon Om Prakash v. Amar Singh and Anr. (1987 (1) SCR 969), wherein this legal principle was laid down that the findings regarding constructions would be Finding of fact but the question whether the constructions materially altered the accommodation is a mixed question of fact and law which should be determined on the application of the correct principles.

12. On the other hand learned counsel for the respondents submitted that except the opening of the door between the wall of two shops, both the courts below have arrived at concurrent findings regarding other alterations and both the courts below have held that these alterations are material alterations and there is no reason to interfere with such concurrent findings. Reliance is placed upon Sheel Chand Vs. Prakash Chand, and Madamanchi Ramappa and Anr. v. Muthalur Bojjappa (1963 2 SC R 673). In both these judgments it was held that the High Court can not interfere with the concurrent findings of fact which are based upon proper appreciation of evidence and the material on record.

13. I have considered the rival submissions. Except the finding of fact with regard to opening a new door of 6ft. height and 3 1/2 ft. width in the common

wall between both the shops, other alterations were found to be made by the tenants without the permission of the landlord by both the courts below and I find no reason to interfere with the same. While allowing the cross objections of the plaintiff, the first appeal court held that the defendants opened this door in the common wall between two shops. Upon a careful perusal of the material available on the record, I find no impropriety or perversity in the decision of the first appeal court on this aspect.

14. As far as the question whether these alterations amount to material alterations or not is concerned, both the courts below held that in their opinion these alterations have materially altered the premises. Opening of two doors of 6th in height and 3 1/2 ft. in width and conversion of Varandah in a room and affixing the tin-shed in front of that clearly amount to material alterations. These constructions have substantially changed the front and structure of the premises and thus the question No. 3 is accordingly answered against the appellants.

15. Learned counsel for the appellants made one more submission that the shop No. 2 was let-out to the defendant No. 1 in May, 1964 while shop No. 3 was let-out to the defendant No. 2 in October, 1972 and there are separate allegations with regard to material alterations and thus one suit was not maintainable. This plea was negatived by the courts below and rightly so as there is ample evidence on the record that both the defendants are carrying on restaurant business in both the shops and some of the material alterations have been shown by both of them. Therefore, one suit against both was rightly held to be maintainable.

16. Consequently, this appeal is hereby dismissed with costs. Records of the courts below be sent back without delay.