

(1976) 09 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Second Appeal No. 299 of 1973

C.P. Massey

APPELLANT

Vs

Hira Chand

RESPONDENT

Date of Decision : 07-09-1976

Acts Referred:

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

Citation : (1976) WLN 415

Hon'ble Judges : S.N. Modi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Modi, J.—This is a defendant-tenant's second appeal in a suit for eviction and arrears of rent against the judgment and decree passed by the Additional Civil Judge, Ajmer, dated March 13, 1973.

2. The plaintiff-respondent sought eviction of the defendant tenant-appellant on three grounds; (1) that the defendant has committed default in payment of rent; (2) that the defendant has not been residing in the suit premises for more than six months preceding the suit; and (3) that the defendant acquired suitable house in Ajmer district.

3. It appears that during the pendency of the suit, the defendant did not comply with the provisions of Section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as "the Act"), and therefore the Court on September 6, 1971. struck out the defence of the defendant the trial court decreed the suit on the ground that the defendant had committed default in payment of rent. In further held that the defendant did not reside in the suit premises for more than six months preceding the date of the suit. As regards the third point, the trial court came to the conclusion that the plaintiff has failed to prove that the defendant had acquired a suitable house in Ajmer district.

4. In appeal, the defendant raised the following three points-

- (1) That the appellant did not commit default in the payment of rent.
- (2) the appellant has neither built nor acquired suitable residential house in Ajmer district.
- (3) That the notice of eviction has not been served upon him.

Points Nos. 1 and 3 were decided against the defendant-appellant. Point No. 2 was not pressed by the learned Counsel for the respondent and therefore it was decided in favour of the defendant-appellant. On the above findings, the lower appellate court dismissed the appeal.

5. The defendant has now preferred this second appeal before this Court. During the pendency of the appeal, the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, was amended by the Amending Ordinance No. 26 of 1975 on September 29, 1975. In pursuance of this amendment, the defendant moved an application u/s 13A of the Amending Act for determination of the rent. This Court there-upon determined the rent due to the landlord on July 8, 1976 and directed the appellant to pay the determined amount to the landlord. The appellant paid the amount determined by the Court.

6. Section 13A(b) of the Act, as amended by the Amending Act of 1976, provides that on payment of the amount determined by the Court, the proceeding shall be disposed off as if the tenant had not committed any default. That being the law, the decree for eviction on the ground of default passed by the courts below cannot be sustained. The learned Counsel for the respondent urged that the plaintiff-respondent has succeeded in proving that the defendant did not reside in the suit premises for more than six months preceding the date of the suit. In other words, his contention is that the plaintiff's case falls under Clause (j) of Section 13(1) of the Act, and that on that ground the defendant is liable to be evicted. Clause (j) of Sub-section (1) of Section 13 of the Act runs as under:

13. Eviction of tenants - (1). Notwithstanding anything contained in any law or connect, no Court shall pass any decree, or make any order, in favour of 3 landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefore the full extent allowable by this Act, unless it is satisfied-

(a) to (i)... .. (j) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit;

(k)... ..

Under this clause, a tenant is liable to be evicted if the premises have not been used by the tenant without reasonable cause for a continuous period of six months immediately preceding the date of the suit.

7. The statement of the plaintiff shows that the defendant did not reside in the suit premises as he had gone to Gangapur where his wife was residing, the

statement, on the face of it, shows that there was reasonable cause for the defendant not to occupy the suit premises for a period of more than six months preceding the date of the suit. It may also be mentioned here that the plaintiff did not even mention the plea that the plaintiff did not use the suit premises without reasonable cause. The plaintiff therefore, cannot ask for a decree of eviction on the ground mentioned in Clause (j) of Sub-section (1) of Section 13 of the Act. The learned Counsel for the respondent also urged that the defendant, in his memorandum of appeal, did not attack the correctness of the finding of the trial court on this point. Even assuming that to be correct, this Court can of its own accord raise a point apparent on the face of the record though it has not been raised in the memorandum of appeal. As already pointed out above, since there is no pleading to the effect that the defendant did not use the premises without reasonable cause, no decree for eviction can be passed in favour of the plaintiff.

8. No other point has been pressed before me. In the result, the appeal is allowed, the decrees of the courts below are set aside, and the plaintiff's suit is dismissed. Since costs of all the three courts have been paid, it is not necessary to pass any order as to costs.

9. Learned Counsel for the respondent prays for leave to appeal to a Division Bench, which is refused.