

(2021) 02 RAJ CK 0058
In the Rajasthan High Court
Case No : Civil Review Petition No. 25 Of 2017

Harji Lal Alikha

APPELLANT

Vs

Sharda

RESPONDENT

Date of Decision : 15-02-2021

Acts Referred:

Transfer Of Property Act 1882 — Section 106
Code Of Civil Procedure, 1908 — Order 47 Rule 1

Citation : (2021) 02 RAJ CK 0058

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Anil Rathi, M.M. Dhera

Final Decision : Allowed

Judgement

Heard learned counsel for the parties.

This review petition has been filed by the petitioner-plaintiff- respondent under Order XLVII Rule 1 CPC qua the judgment dated 06.09.2017 passed

by a Coordinate Bench of this Court in S.B. Civil Second Appeal No.19/2013, whereby, the appeal filed by respondent - appellant-defendant - Smt.

Sharda Devi was allowed and the judgment and decree passed by the trial court as affirmed by the first appellate court was set-aside and the suit for

eviction was dismissed.

Suit for eviction and arrears of rent was filed by the petitioner/plaintiff before the Civil Judge, Senior Division, Mount Abu, inter-alia claiming that the

suit property was possessed by him, the same was let out to the respondent/ defendant at Rs.200/- per month and that rent was in arrears. It was also

claimed that tenancy was terminated by giving notice under Section 106 of the Transfer of Property Act 1882 and, therefore, the plaintiff was entitled

for possession.

The suit was resisted by the defendant by filing written statement claiming the property in question belonging to her father-in-law and that she was not

the tenant of the plaintiff and praying for dismissal of the suit.

Based on the averments of the parties, the trial court framed 8 issues. On behalf of the plaintiff, he himself appeared in the witness box. However,

on behalf of the defendant, no evidence was led.

After hearing the parties, the trial court decreed the suit. Issue No.5, which pertained to the defense of the defendant regarding the suit property being

owned by her, for lack of any evidence, was decided against her.

Feeling aggrieved, the first appeal was filed. The first appellate court upheld the decree passed by the trial court. Qua issue No.5, the finding of the

trial court was reiterated that as no evidence was led by the defendant, the issue was rightly decided against her.

In the second appeal, the appeal was admitted on following substantial questions of law:-

1. Whether the courts below were justified in decreeing the suit filed by the plaintiff without returning a finding whether the relationship of landlord and tenant exists between the parties?

2. Whether the courts below were justified in decreeing the suit by assuming the landlord and tenant relationship merely on account of notice under

Section 106 of the Transfer of Property Act issued by the plaintiff, to which no reply was given by the defendant?

3. Whether in the facts and circumstances of the case, it can be said that the defendant was afforded sufficient opportunity to defend her case.

A Co-ordinate Bench of this Court, after hearing the parties, referring to the judgment in the case of D.M. Deshpandey v. Janardhan: AIR 1999 SC

1464 and Kishore Kumar v. Daya: 2016 (3) WLN 521 (Raj.), came to the conclusion that as the plaintiff has not indicated any particulars pertaining to

the tenancy i.e. at which point of time the property was let out and at what rate etc., therefore, the landlord-tenant relationship was not established

between the parties.

However, the Court while dealing with the said aspect also inter-alia made following observations:-

Upon perusal of evidence of PW-1 Harji Lal, it is clear that he, in his cross-examination, had admitted that ""

,

1/4 "" It proves that suit premises is in possession of appellant-defendant since her marriage till today and suit premises is ancestral property as well as undivided property of joint family and it is also proved by cross-examination of PW-1 plaintiff that the appellant-defendant is also entitled for $\frac{1}{4}$ share of the suit premises.

The present review petition has been filed by the petitioner/plaintiff inter-alia with the submissions that the observations made by the court pertaining to the ownership of the property by indicating only a part of the statement, besides being an error apparent on face of record, was not even required in a suit for eviction based on tenancy and, therefore, the order passed by the Court to the limited extent of making the said observations deserves to be reviewed.

Learned counsel appearing for the respondent opposed the application. Submissions were made that once the issue was framed based on the written statement filed by the defendant and even if no evidence was led by the defendant, the second appellate court was justified in recording the finding in this regard based on the evidence available on record, however, it was conceded that the statement quoted is incomplete.

Further submissions were made that in a case where defendant raises objection about the ownership of the suit premises, the court is required to record a finding in this regard. Reliance was placed on judgments in Nagar Palika Jind v. Jagat Singh: AIR 1995 SC 1377 and Union of India v.

Vasavi: AIR 2014 SC 937.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record as well as the record of the two courts below.

As noticed hereinbefore, the court while recording the finding pertaining to the ownership of the suit property, relied on the statement of PW/1 and quoted a portion thereof.

The statement of PW/1 in cross examination as recorded reads as under:-

,

,

, , 1/4

(underlined by the Court) A perusal of the statement of PW/1 as recorded by the trial court as compared to what has been quoted by the Co-ordinate

Bench of this Court (only the underlined portion above was quoted) while deciding the second appeal clearly reflects that a major part of the

statement, which would have implication in relation to the finding as recorded got omitted. In view thereof, there is apparent error on face of the

record.

So far as justification for recording a finding by the Court with regard to the ownership of the property, in a suit for eviction is concerned, the law is

settled in this regard against such determination.

So far as the judgments relied on by learned counsel for the respondent are concerned, the judgment in the case of Vasavi (supra) has no application,

inasmuch as, the same pertains to a suit for declaration of title & possession. Similarly the case of Nagar Palika Jind (supra) is not based on landlord -

tenant relationship, the same pertain to Nagar Palika evicting the respondent as a trespasser.

As the said judgments have no application to the present case, the submissions made by learned counsel for the respondent in this regard have no

substance.

In view thereof, the review petition filed by the petitioner is allowed. The judgment dated 06.09.2017 passed by a Co-ordinate Bench of this Court is

recalled only to the limited extent, wherein, the finding has been recorded pertaining to the title/ownership of the suit property.

Insofar as the finding recorded pertaining to the landlord - tenancy relationship by the Court in judgment dated 06.09.2017 is concerned, the said

finding is not being reviewed.

The S.B. Civil Second Appeal No.19/2013 is restored to its original number for the limited purpose.

List the appeal for hearing on the said aspect after three weeks.