
(2009) 06 RAJ CK 0019
In the Rajasthan High Court

Jagdish Narain through LRs.

APPELLANT

Vs

Rawal Rajeshwar Singh through LRs.

RESPONDENT

Date of Decision : 29-06-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2010) 1 RLW 491

Hon'ble Judges : Jitendra Ray Goyal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jitendra Ray Goyal, J.—This is defendants' second appeal u/s 100 of the CPC against the judgment and decree dated 11/1/1990 passed by Additional District Judge No. 6, Jaipur City, Jaipur in Civil Appeal No. 48/1989 (84/1981) whereby the appeal filed by the defendant-appellant was dismissed and the judgment and decree dated 31/1/1981 passed by Additional Munsif No. 3, Jaipur City, Jaipur by which the suit of plaintiff for eviction and arrears of rent was decreed has been affirmed.

2. Brief facts of the case are that plaintiff Rawal Rajeshwar filed a suit for eviction of the suit premises and arrears of rent against the defendant Harinarayan Sharma (since deceased) (who died during the pendency of the suit and the present appellants were substituted at his place) on the grounds of default, reasonable and bonafide necessity and sub-letting. According to the plaintiff, suit premises consisting of three small rooms (Kotharies) and one Bhukhari (particulars of which have been given in para No. 1 of the plaint) were let-out to the defendant Hari Narayan on monthly rent of Rs. 5.33. The defendant paid the rent upto April, 1972 and thereafter no rent was paid, therefore, the defendant has committed default in payment of rent for a period of more than six months. It was also stated that the plaintiff had donated the suit premises along with other properties to Mahant Rameshwar Das and the rented premises were required, for the residence of Mahant Rameshwar Das and other requirement of

the temple. It was further the case of the plaintiff that defendant had sub-let one Kothari situated at outside the temple to one Rampal Sharma and parted with possession thereof. Therefore, prayer was made for the decree of eviction of the suit premises and arrears of rent.

3. The defendant Harinarayan in his written statement denied the allegations and stated that he is not the tenant but in possession of the disputed property since last 30-35 years as owner and did not pay any rent to the plaintiff. It was also described as false that plaintiff has donated the disputed property to Mahant Rameshwar Das and further pleaded that plaintiff's suit is not maintainable if he has donated the property. It was further pleaded that suit premises are situated in the agricultural land which is in the name of Ram Chandra, therefore, Ram Chandra is a necessary party and such suit can only be heard by revenue court and civil court has no jurisdiction to hear the suit.

4. On the basis of the pleadings of the parties, following issues were framed:

1- vk;k okn i= dh /kkjk 1 es of.kZr izhfelst ds ikl 5??33 iSlS ekgokj esa fdjk;sa ij gSA

2- vk;k izfroknh us ekg vizSy 1972 ls oknh dks dksbZ fdjk;k vnk ugh fd;kA

3- vk;k izfroknh us oknh dks fdjk;s dh vnk;xh esa 6 ekg ls vf/kd dk fMQkWYV fd;k gSA

4- vk;k okn dh /kkjk 4 ds vuqlkj oknh fooknxzLr ifjlj dh egUr jkes"oj nkl dks fjpgk;"k o efUnj ds dk;Z ds fy, okLrfod ,oa ln~Hkkoh vko;"drk gSA

5- vk;k izfroknh us fooknxzLr ifjlj ?izhfelst? esa ls ,d dksBjh dks lcysV dj fn;k gSA

6- vk;k izfroknh fooknxzLr ifjlj esa vlkZ 30&35 lky crkSj ekfyd dkfct gSA

7- vk;k nkok esa fdjk;snkjh dh rkjh[k ntZ ugh dh xbZ gS blfy, nkok pyus ;ksX; ugha gSA

8- vk;k efUnj o edukr~ eqrnkfo;k d`f`k Hkwfe [kljk ua- 221 o 222 esa fLFkr gS blfy, vnkyr gttk dks bl nkos dks lquus dk vf/kdkj ugha gSA

9- vk;k fooknxzLr edku oknh }kjk jkes"oj nkl dks c["kh"k dj fn;s tkdj dCtk nsus ds dkj.k oknh dks okn izLrqr djus dk vf/kdkj ugh jgrk A

10- nknjlh A

5. The plaintiff in support of his case examined PW1 Jai Narain (power of attorney holder), PW2 Anoop Singh, PW3 Pep Singh, PW4 Ramswaroop Narayan, PW5 Anand Singh and produced receipts and other documents. The defendant in his evidence produced DW1 Jagdish Sharma, DW2 Laxmi Narayan, DW3 Ramswaroop Sharma, DW4 Girvar Singh, DW5 Hari Narayan, DW6 Laxmi Narayan, DW7 Bhonri Lai, DW8 Mool Chand and DW9 Jagdish Prasad.

6. The trial court after recording the evidence and hearing the rival submissions

decreed the suit of eviction on the ground of default and subletting and also held that the plaintiff is entitled to recover the rent of nine months from 1/5/1972 to 31/1/1973 at the rate of Rs. 5.33. In turn, appeal filed by the defendant was also dismissed by the Additional District Judge No. 6, Jaipur City, Jaipur and the judgment and decree passed by the trial court was affirmed. Hence, this second appeal.

7. This Court admitted the appeal on 18/12/1990 and framed following substantial questions of law for consideration:

(i) Whether the plaintiff had no right to file the suit after he had donated the suit premises to Mahant Shri Rameshwar Das as pleaded by him in para No. 3 of the plaint?

(ii) Whether the plaintiff is bound by his own admissions made in para o.3 of the plaint to the effect that he donated the suit premises along with other premises to Mahant Shri Rameshwar Das and the learned two courts below erred in misinterpreting the said averments by their own explanation without any material on the record? If so, the findings on Issue No. 8 arrived at by the learned courts below are liable to be set aside and the judgment and decree passed by them for eviction of suit premises in favour of the plaintiff are also liable to be quashed and set aside?

(iii) Whether the findings of the learned two courts below with regard to subletting of one "Kothari" to one Shri Rampal Sharma are erroneous in law being arbitrary and contrary to the material on record? Hence, the decree of eviction passed on this ground is not sustainable?

8. During the pendency of the appeal, the appellant-defendant Jagdish Narain died, therefore the present appellants were taken on record at his place.

9. I have heard the learned Counsel for the parties and gone through the material available on the record.

10. Learned counsel for the appellants vehemently argued that plaintiff was not competent to file the suit for eviction of the disputed property as he has admitted in para No. 3 of his plaint that suit property has been gifted by him to one Mahant Rameshwar Das to facilitate the "Seva-Pooja" of the temple, as such in fact such gift is religious endowment which has been dedicated for the religious purpose, therefore, in such religious gift the provisions of Transfer of Property Act would not apply and shall be governed by Hindu law and according to which dedication of property for religious purpose can be validly made orally and no writing is necessary to create such endowment. In support of this contention, reliance was placed upon the judgments in Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others, Shri Ram Kishan Mission and Another Vs. Dogar Singh and Others, Lalta Prasad Vs. Brahmanand and Others, Chatarbhuji and another v. Chatarjit and Anr. reported in ILR (33) All. 253, Idol of Shri Narsinghji Maharaj and Ors. v. Prabhati Vaish, reported in RLR 1986 561 : 1986

RLW 704 , Moorti Shri Adeshwar Bhagwan Jain Swetamber Mandir Vs. Shimbhunath Singh, and Menakuru Dasaratharami Reddi and Anr. v. Duddukuri Subba Rao and Ors. reported in AIR 1957 S.C. 797.

11. In Tilkayat Shri Govindlalji Maharaj's case (supra), Tilkayatji solemnly transferred the two idols to the principal temple and gave up his ownership over the idols and a formal proposal made in that behalf was accepted by the committee but no gift or trust deed had been duly executed by Tilkayatji in that behalf, in this fact situation it was held by Hon''ble the Apex Court that a dedication of private property to charity need not be made by a writing, it can be made orally or even can be inferred from conduct.

12. In Shri Ram Kishan Mission, Bailoor Math Howrah and another's case (supra), similar view has been taken that to constitute a valid dedication by a Hindu for religious or charitable purposes, no document in writing or registered is necessary. In this case, the property was dedicated for use as Dharmashala to be named after the name of donator's deceased husband and she also executed a registered instrument in respect of the said property reserving her certain rights of management.

13. In Lalta Prasad's case (supra), the land has been dedicated for Goshala and building of Goshala was erected and trustee was appointed, it was held that building became trust property and the donor cannot subsequently alienate or hypothecate the building as his own. It was further held that establishing and managing dharmshala is endowment religious/charitable in nature and the legal heirs of the donor cannot claim their ownership over such property by stating that the property was not given for religious/charitable purposes.

14. In Chatarbhuji and another's case (supra), Jamindari property was given by deed of gift to an idol which was not at the time of execution in existence and possession of the property was made over to a certain person as Pujari, it was held that deed was valid and created a trust in favour of the idol.

15. In Idol of Shri Narsinghji Maharaj and Ors." case (supra), it was held by this Court that dedication of property to God by a Hindu does not require any document and property can be validly dedicated without any registered instrument.

16. In Moorti Shri Adeshwar Bhagwan's case (supra), it was held that gift deed in favour of deity is admissible in evidence even if not registered.

17. In Menakuru Dasaratharami Reddi and another's case (supra), it has been held that dedication to charity need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of conduct of the parties and user of the property which show the extinction of the private secular character of the property and its complete dedication to charity. It was further held that it would be difficult to accept the theory of complete dedication, if a minor portion of the income is expected or required to be used for the purpose of

charity and a substantial surplus is left in the hands of the manager or worshipper for his own private purposes.

18. It was next contended by the counsel for the appellants that plaintiff Rawal Rajeshwar Singh did not come in the witness box in support of his pleadings and there is no evidence contrary to admission of plaintiff made in para No. 3 of the plaint, therefore it can be presumed that plaintiff Rawal Rajeshwar Singh had gifted the disputed property to Mahant Rameshwar Das. In support of this contention, reliance has been placed upon the judgment in Nathoo Lal Vs. Durga Prasad, wherein it has been held that the fact which is admitted by a party to be true must be presumed to be true unless the contrary is shown. In 1. Banarsi Das 2. Kundanmal v. I. Kanshi Ram and Ors. 2. Banarsi Das Vs. Seth Kanshi Ram and Others, it has been held that an admission in so far as facts are concerned would bind the maker of the admission but not in so far as it relates to a question of law.

19. Per contra, learned Counsel for the respondents argued that proof of title is not germane in a suit for eviction and only privity of contract between landlord and tenant is required to be proved coupled with the grounds of eviction provided under the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (in short the Act of 1950) and in the case in hand it has been sufficiently proved by the plaintiff-respondent as also held by the trial court and confirmed by the first appellate court that appellant-defendant was his tenant, therefore it is not required entering into the question of ownership of the suit property since the suit is not for establishment of title. Reliance has been placed upon the judgments in Nisha Rani Mookherjee v. Puran Chand Jain, reported in (2004) 10 Scc 637, Dr. Ranbir Singh v. Asharfi Lal, reported in RLW 1995 (2) (SC) 139 and Nagendra v. Jahoor Khan and Anr. reported in RLW 1995 (2) (Raj.) 331.

20. It was then submitted that even according to para No. 3 of the plaint it cannot be inferred that property was endowed or dedicated in favour of deity or it was given in religious charity. It was also contended that apart from the registration of the deed, the acceptance of the donee is necessary for a valid gift of an immovable property in favour of an individual. It was further submitted that it is no one's case that suit property was gifted to Mahant Rameshwar Das by registered gift deed, rather the defendant in his written statement emphatically denied that disputed property was given in gift by plaintiff to Mahant Rameshwar Das and did not choose to lead the evidence on this issue, therefore, mere narration in para 3 of the plaint that suit property has been gifted to Mahant Rameshwar Das does not constitute a valid gift in the eye of law.

21. I have given my anxious and serious consideration to the aforesaid rival submissions. To appreciate the rival contentions, it would be appropriate to have a look over the relevant facts.

22. According to the plaintiff, the suit premises was let out to defendant Hari Narayan (since deceased) who paid the rent upto April, 1972, thereafter he

stopped making the payment, therefore present suit has been filed on the ground of default, sub-letting and personal necessity. In para 3 of the plaint he also described that suit property along with other properties has been gifted to Mahant Rameshwar Das. Para No. 3 of the plaint reads as under:

;g fd oknh us izfroknh ds firk Jh gfj ukjk;.k dh fdjk;nkjh ds mijksDr edkukr e; nhxj edkukr okds mijksDr lks kokyk efUnj egar Jh jkes"ojnkl psyk egar Jh jkenkl th fuoklh lkeksn gky oklh efUnj Jh lhrkjke th ckx l ksokyk t;iqj ds gokys dj fn, gS vkSj mudks nku dj fn, gS rkfd og ogk fuokl djds efUnj dh lsok iwtk jke Hkksx oxSjg dk leqfpr izcU/k dj lds o oknh dks fooknxzLr edkukr egar jkes"oj nkl th dh fjpgk;"k o efUnj ds dk;Z ds fy, okLrfodk ,oa ln~Hkkoh vko;"drk gSA

23. The original defendantappellant Hari Narayan denied the relationship of tenant and landlord with the plaintiff and specifically pleaded that he is the owner of the suit property and occupying since last 30-35 years in that capacity. He also described as false that plaintiff had gifted the said property to Mahant Rameshwar Das. He also took an alternate plea that in case said property has been gifted then suit of the plaintiff is not maintainable. The trial court after detailed discussion of the evidence led by both the parties arrived at a conclusion that defendant Hari Narayan was tenant and there was a privity of contract of tenancy in between the plaintiff Rawal Rajeshwar Singh and the defendant Hari Narayan Sharma in regard to the property in question. It was further held by the trial court that the defendant committed default for a period of more than six months and also found that he sub-let the part of the property to one Rampal.

24. So far suit for eviction based on relationship of landlord and tenant is concerned, it is settled position of law that in such matters the court has only to decide whether the defendant is the tenant of the plaintiff or not and the question of title of the property is not essential for decision of the eviction suit. Hon"ble the Apex Court in Dr. Ranbir Singh's case (supra) held as under:

It is well settled that the question of title of the property is not germane for decision of the eviction suit. In a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties.

25. In Nisha Rani's case (supra), the Hon"ble Apex Court held that where it has been proved that plaintiff landlady was receiving the rent, the question of ownership should not have been gone into and the order of eviction had been rightly passed by the trial court. In Nagendra's case (supra), this Court had

occasioned to consider similar situation and held that element of ownership of the premises is not one of the characteristic of a landlord but it is receipt of the rent or right to receive the rent which is dominating factor within the meaning of Section 3(iii) of the Act of 1950. It was further held that expression "Landlord" used u/s 3(iii) of the aforesaid Act of 1950 does not include "owner" within its ambit as the ownership to the premises cannot be subject matter of tenancy. The question of ownership or title normally cannot be gone into in a suit or proceeding initiated under the Act of 1950.

26. In the instant case, as has been discussed, it has been found by the trial court that defendant Hari Narayan was the tenant of plaintiff Rawal Rajeshwar Singh and he paid the rent upto April, 1972 and this finding has been affirmed by the first appellate court, therefore question of ownership of the disputed property is not germane for this suit of rent and eviction under the Act of 1950 specially where there is no evidence from the either side that disputed property was validly given in gift by plaintiff Rawal Rajeshwar Singh except a short description in para 3 of the plaint. It is significant to mention here that Mahant Rameshwar Das is not the party in this suit nor he claimed the disputed property as owner. It is also neither the case of the defendant that valid gift was ever made by the plaintiff Rawal Rajeshwar Singh to Mahant Rameshwar Das nor he pleaded and prayed taking the recourse of the provisions of Order 35 of the CPC that real owner may be ascertained so he may pay the rent to the authorized person, rather he claimed his own ownership and denied the relationship with the plaintiff as tenant and landlord. From the para No. 3 of the plaint, only it can be gathered that there is a mention of gift of suit property in favour of Mahant Rameshwar Das for his residence to facilitate the "Seva-Pooja" of the temple but in my considered view in no way it can be inferred that it was a dedication or endowment to the deity or gift has been made for the religious, charitable purposes. It is also pertinent to mention here that gift of immovable property to an individual requires compulsory registration and also acceptance of donee as provided under sections 122 & 123 of the Transfer of Property Act and here it is no one's case that gift has been made by the plaintiff in favour of Mahant Rameshwar Das by a registered gift deed and donee accepted the said gift. Otherwise also, as has been discussed here-in-before, this is a not a suit for determination of the right of the parties and ownership but based upon the privity of the contract of tenancy and filed under the Act of 1950 and it has been found proved by both the courts below that defendant was the tenant of the plaintiff Rawal Rajeshwar Singh and he paid the rent of the disputed premises upto April, 1972. Therefore, in view of the above proved facts, it can be safely held that plaintiff was competent to file the suit for eviction and rent against the defendant.

27. Learned counsel for the appellants next contended that plaintiff did not appear to support the ground of eviction and both the learned courts below reached at a wrong conclusion of sub-tenancy on misreading of evidence of PW1 Jai Narayan and PW4 Ramswarpoop Narayan. It was further submitted that for

establishing the fact of sub-tenancy, it has to be proved that the tenant has assigned, sub-let, parted away with possession of the property without the permission and parting of possession must include the exclusion of the original tenant from the property and this fact has not been proved by the plaintiff in his evidence. Reliance has been placed upon the judgment in *M/s. Delhi Stationers and Printers Vs. Rajendra Kumar*, wherein it was held that mere occupation by alleged tenant is not sufficient to infer either sub-tenancy or parting with possession of rented premises by the tenant without the permission of the landlord. It was further held that sub-letting means transfer of an exclusive right to enjoy the property in favour of the third party and the said right must be in lieu of payment of some compensation or rent. Reliance has also been placed upon the judgment in *Amir Ahmed v. Yusuf*, reported in 1985(1) 550, wherein it was held that merely allowing another person by tenant to use premises or its part cannot be considered as parting with possession to entail the liability of eviction u/s 13(1)(e) of the Act of 1950. It was also submitted that legal pleas can be raised at any time even during the course of arguments. Reliance has been placed upon the judgment in *J.C. Chatterjee and Ors. v. Shri Sri Kishan Tandon and Anr.* reported in AIR 1972 SC 2726, wherein it has been held that question of law can be raised even in second appeal.

28. On the other hand, learned Counsel for the respondents supported the findings on the point of sub-letting and contended that after due appreciation of the evidence the learned trial court rightly held that defendant sub-let one room (kothari) to one Rampal without the permission of the plaintiff and there is no perversity in the said finding and the concurrent finding of the fact of both the learned courts below cannot be challenged in second appeal. Reliance has been placed upon the judgment in *Govind Das Vs. Kanhiya Lal and Another*, wherein it has been held that where both the lower courts reached plausible findings on basis of evidence adduced, the High Court in second appeal was not justified in interfering the findings to be perverse. He also relied upon the judgment in *Veerayee Ammal Vs. Seenii Ammal*, wherein it has been held that the concurrent finding of fact could not be disturbed in second appeal because another view is possible on appreciation of evidence.

29. I have given my thoughtful consideration to the rival submissions. It is not disputed that burden of proof of sub-letting is on the landlord but in my considered view once the landlord establishes parting of possession by the tenant to third party, onus would shift on the tenant as has also been held by Hon''ble the Apex Court in the case of *Joginder Singh Sodhi Vs. Amar Kaur*, wherein the landlord established parting of possession, onus was on the tenant to explain as to how the appellant, son of the tenant who was not staying with his father and was doing his independent business, came to occupy the shop rented to the tenant.

30. Here, in the instant case, it is true that plaintiff Rawal Rajeshwar Singh did not appear in evidence to prove his case but on his behalf five witnesses namely

PW1 Jai Narayan, PW2 Anoop Singh, PW3 Pep Singh, PW4 Ramswaroop and PW5 Anand Singh were examined who were his employees and they proved that they collected the rent from the defendant and his representatives regularly upto April, 1972 and further PW1 Jai Narayan and PW4 Ramswaroop proved that one room (kothari No. 11) has been given on sub-tenancy by the defendant to one Rampal. It is true that according to PW1 Jai Narain, his knowledge in regard of sub-tenancy of one Kothari is based upon the information given by PW4 Ramswaroop to him but Ramswaroop PW4 categorically stated and proved that Rampal was inducted as sub-tenant by defendant Harinarayan. Further more, defendant did not adduce any evidence in this regard, rather he even did not make any specific denial of sub-tenancy in his written statement and only stated that he is the owner of the property, therefore, question of sub-tenancy does not arise. Keeping in view all the evidence and material available on the record, both the courts below decided the issue of sub-tenancy in favour of the plaintiff and against the defendant which cannot be said to have been decided by misreading of the evidence.

31. As a result of the aforementioned discussion, this second appeal has no force and deserves to be dismissed with costs.

32. Consequently, this second appeal is dismissed with costs.