
(2014) 02 RAJ CK 0035
In the Rajasthan High Court
Case No : Civil Second Appeal No. 486/2002

Kanhaiya Singh Santok Singh

APPELLANT

Vs

Kartar Singh

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 5, 100

Citation : (2014) 02 RAJ CK 0035

Hon'ble Judges : Nisha Gupta, J

Bench : Single Bench

Advocate : R.K. Agarwal, Sr. Advocate and Sachin Kumar, Advocates for the Appellant; M.M. Ranjan, Sr. Advocate and Jitendra Kumar, Advocates for the Respondent

Judgement

Nisha Gupta, J.—This second appeal under Section 100 CPC has been filed against the judgment and decree dated 5.10.2002 passed by Additional District Judge, Kishangarh (Ajmer) in Civil Regular Appeal No. 47/1997 whereby the appellate court has reversed the decree of the trial court dated 30.7.97 passed by Additional Civil Judge (J.D.), Kishangarh and decreed the plaintiff's suit for eviction.

2. During appeal Santok Singh, the original tenant has died and vide order dated 10.1.2008, the appeal stands abated and dismissed, against which the appellants approached to the Apex Court and the Apex Court vide judgment dated 4.3.2009 in Civil Appeal No. 1525/2009 has ordered that the High Court should direct the learned trial Court to take evidence as regards to the fact whether present appellants who are sons of Santok Singh were ordinarily carrying on business in the premises at the time of death and trial Court should decide the issue as per provisions of O.22 R. 5 CPC. In compliance of the order, the court below has conducted the enquiry. Land Lord respondent has examined himself as PW/1, PW/2 Devraj, PW/3 Manvendra Singh, and PW/4 Shyamsunder Vaishnav whereas tenant appellants have examined D.W./1 Surendra Kumar, D.W./2 Jawant Singh

and Manmohan Singh D.W./3 and after the enquiry, the court below was of the opinion that son of Santok Singh; Jaswant Singh and Man Mohan Singh were not the tenant as per the definition of Section 3 sub-clause (vii) of the Rajasthan (Rent Control and Eviction) Act, 1950 as they were not carrying on the business with his deceased father at the time of his death, objections has been filed by the appellants.

3. Heard the learned counsel for the parties and perused the impugned order passed by court below after inquiry under O.22 R. 5 CPC as well as original record of the same.

4. D.W./2 Jawant Singh and Manmohan Singh D.W./3 has stated that in the life time of his father, they were ordinarily doing the business with him but to utter surprise to this Court, in spite of this contention that from 1981, they were doing the business with his father, no documentary evidence has been produced by which it could be shown that they are participating in the business; no bill book, no returns, no vouchers of purchase or sell of goods have been placed on record and apart from this, it also came on record that family is having one petrol pump at Jaipur Road and another at Industrial Area. The court below was conscious of the fact that it is not the domain of the enquiry that whether the sons of the tenant are having any other business or not but fact that they are having other independent business negatives the fact that they are ordinarily carrying the business with the deceased father.

5. Much has been said that Kartar Singh, landlord is not speaking the truth, he was not having talking terms with Santok Singh in spite of this, he has stated that he used to talk with Santok Singh and Santok Singh used to give him rent whereas fact is not in dispute that Santok Singh has not paid the rent even for a month to the land lord and he was depositing the rent with the Court and witnesses of the land lord are also designed one they have stated that they have purchased the parts from the shop and they saw that Jaswant Singh and Man Mohan are not doing business with their father. Contention of the appellant is that Surendra Kumar is an independent witness which cannot be disbelieved. Surendra Kumar has given oral evidence that he bought some goods from the shop and at that time and on other occasions, he saw that Jaswant Singh and Man Mohan are also involved in the business and they ordinarily doing the business with their father.

6. The court below has considered the rival contentions and evidence recorded during trial and after a detailed discussion, rightly it has been held that Man Mohan and Jaswant Singh are not ordinarily carrying on business with his father at the time of his death.

7. The counsel for the respondent has also drawn attention of the Court towards the fact that on 17.8.2006 before this Court deceased Santok Singh on affidavit has stated that his sons Manmohan Singh and Jaswant Singh are looking after petrol pumps. The contention of the appellants is that this fact has not been

brought to the notice of the court below and hence cannot be relied upon but when a specific fact has been asserted by the deceased himself, the Court cannot shut its eyes on the same.

8. In view of the above, the court below has rightly held that present appellant Man Mohan and Jaswant Singh were not ordinarily carrying on business with his father upto his death and present appellants does not fall under the definition of tenant and when Sanotok Singh has died, this appeal abates.

Consequently, the appeal fails and is dismissed.