
(2013) 10 RAJ CK 0074

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 939 of 2013

L. Rs. of Batul Banno and Others

APPELLANT

Vs

Abdul Jabbar and Others

RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Citation : (2014) 1 CDR 76 : (2014) 1 WLN 395

Hon'ble Judges : Pratap Krishna Lohra, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : D.K. Parihar and Mr. J. Gehlot, for the Appellant; R.K. Thanvi and Mr. Narendra Thanvi, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J.—Appalled by the impugned verdict of the learned Single Judge dt. 23.07.2013, the appellants have preferred this intra-Court appeal. By the impugned order, the learned Single Judge has dismissed the writ petition of the appellants, thereby affirming judgments of the Appellate Rent Tribunal, Jodhpur (for short, "Appellate Tribunal") as well as learned Rent Tribunal, Jodhpur (for short, "learned Tribunal"), and consequential issuance of certificate for eviction from the premises against the appellants by both the Tribunals below. The facts, apposite for the purpose of this appeal, are that respondent No. 1 & 2 laid a petition for eviction as well as for revision of rent under Sec. 9 & 6 of the Rajasthan Rent Control Act 2001 (for short, "Act of 2001") against the appellants precisely on three grounds, viz., default in payment of rent, reasonable and bona fide necessity and denial of title. In the petition for eviction, it was, inter-alia, averred by the respondents that premises in question was purchased by them by a registered sale-deed dt. 28.08.1969 from their predecessor in title viz., Mohanlal, Indra Raj, and Radhey Shyam, sons of Kishan Narayan, and at the time of purchase of premises Nisar Ahmed Chadhwa S/o. Zahur Ahmed was a tenant in the said premises. After death of Nisar Ahmed, the appellants as legal representatives are in occupation of the premises and have

become tenant by inheritance. In the petition for eviction, the respondents have also referred to a suit for pre-emption filed at the behest of Smt. Khatiza W/o. Naseer Ahmed against the respondents, which was instituted in the year 1977 and was ultimately decreed by the trial Court vide its judgment and decree dt. 24.05.1979. Being disdained by the said verdict of the learned trial Court, the respondents preferred an appeal before the learned District Judge, Jodhpur, which was subsequently transferred to Addl. District Judge No. 2, Jodhpur. The appellate Court, by its judgment and decree dt. 15.03.1991 upset the judgment and decree of the learned trial Court and dismissed the suit of appellant Khatiza. The judgment of the first appellate Court was further assailed by Smt. Khatiza before this Court by preferring a second appeal bearing S.B. Civil Second Appeal No. 41 of 1992 and the said appeal is pending. For substantiating the grounds of eviction, the respondents have pleaded in the petition for eviction that after purchasing the premises from their predecessor in title, despite information and demand of rent the appellants have neither paid, nor tendered the due rent of the premises. The requisite information about sale of the premises was also divulged to the appellants by the seller of the property and factum of sale of the premises is also within the knowledge of the appellants on the anvil of the fact that suit for pre-emption was instituted by Smt. Khatiza by arraying respondents as parties after a lapse of eight years from the date of purchase of the premises by the respondents. The respondents have specifically averred in the petition for eviction that since purchase of the premises by the respondents, the appellants have not paid the due rent, and the requisite rent has also not been deposited in the bank account of the respondents despite furnishing them requisite information about the particulars of bank accounts of the respondents. For substantiating the ground of reasonable and bona fide necessity, the respondents have pleaded in their petition that they are involved in business of printing and dyeing of clothes and in want of requisite accommodation they are unable to carry out their said business. With these averments, the respondents have stated in the petition that for running their business they are in need of the premises and a decree for eviction is required to be passed against the appellants on the ground of their reasonable and bona fide necessity. With a view to authenticate the third ground of eviction, i.e. denial of title, the respondents have specifically pleaded in the petition for eviction that while responding to their notice on 13.02.2004 the appellants have denied their title.

2. For claiming the relief of revision in the rent, the respondents in the petition have averred that exact date of commencement of tenancy is not known to them, but taking into account rigor of Section 6 of the Act of 2001, they are entitled for rent at the rate of Rs. 340/- per month from the appellants.

3. The petition for eviction and revision of rent was contested by the appellants. In the return, the appellants have raised a preliminary objection that petition is not maintainable because the respondents are not their landlord and in fact they are the owners of the premises. As per the assertion of the appellants, the original owner of the property was Smt. Khatiza W/o. Nisar Ahmed and after

death of Smt. Khatiza, her son Jabar Ahmed became its owner and on his death appellants are in occupation of the premises as its owners. In the second preliminary objection, the appellants have laid emphasis on civil suit filed by Smt. Khatiza for pre-emption against the respondents, which according to them was decreed on 28.05.1979 and subsequently reversed in appeal by judgment and decree dt. 15.03.1991 and the said judgment and decree is subject matter of second appeal pending before this Court.

4. While submitting parawise reply to the petition, the appellants have denied all the averments with the positive assertions that they are true owners of the premises. In the reply, the appellants have specifically denied that Nisar Ahmed and his son Jabbar Ahmed were tenants of the premises and as per the version of the appellants they were the owners of the premises and being legal representatives of Jabbar Ahmed, the appellants are owners of the property. The grounds for eviction as well as revision of rent urged in the petition were countered precisely on the same defence that the appellants are the owners of the property and as such the twin prayers made in the petition cannot be granted.

5. After submission of reply, learned Tribunal framed issues for determination and parties led their evidence. On behalf of respondents, affidavits of Abdul Jabbar and Sahar Nawaj were tendered, and on behalf of appellant, Batul Banno tendered her evidence.

6. The learned Tribunal, heard the rival arguments and vide its judgment dt. 03.08.2006 decided all the issues in favour of respondents and passed judgment in their favour and issued a certificate for eviction. While advertng to relief of revision in rent, the rent of the premises as on 31.03.2003 was determined at the rate of Rs. 194/- per month.

7. Disgruntled by the judgment of the learned Tribunal, the appellants preferred an appeal before the learned Appellate Tribunal under Sec. 19 of the Act of 2001. The Appellate Tribunal, while fully concurring with the findings and conclusions of the Tribunal, dismissed the appeal by its judgment dt. 05.01.2012. The verdict of the appellate Tribunal was thereafter assailed by the appellants before the learned Single Judge and that attempt also proved abortive by the impugned order. Before the learned Single Judge only one contention was raised on behalf of the appellants that after setting aside of the decree of pre-emption by the appellate Court, it is not possible to presume the appellants as tenants of the respondents, and on the contrary, by virtue of setting aside of the decree at the most their status can be construed as occupiers of the premises. Dealing with the sole contention of the appellants, the learned Single Judge has repelled the same and affirmed the concurrent finding of fact recorded by both the Tribunals below.

8. Learned counsel for the appellants Mr. D.K. Parihar has strenuously urged that while dealing with the contention of the appellants, the learned Single Judge has not examined the matter in its entirety, and therefore, the impugned order is

liable to be interfered with in this intra-Court appeal. Mr. Parihar, learned counsel for the appellants, has argued that by virtue of passing of a decree for pre-emption in favour of Smt. Khatijza, who is grandmother of the appellants, the appellants have become ipso facto owners of the disputed premises. He further submits that even after reversal of the decree for pre-emption, possession of the premises was not taken over from the appellants and they continued to remain in possession, and therefore, in the changed scenario their status is akin to that of a occupier and not that of a tenant. Learned counsel for the appellants has also argued that Section 59 of the Indian Evidence Act postulates exclusion of oral evidence by a documentary evidence, which was a very vital issue on which the learned Single Judge has not addressed in the impugned order.

9. Per contra, Mr. R.K. Thanvi, learned Senior Counsel, has urged that so far as relationship of landlord and tenant between the rival parties is concerned, the same has already been set at rest by both the learned Tribunals below and there is a concurrent finding of fact to this effect which remained unassailed before the learned Single Judge, and therefore, in want of any challenge to the said finding, no indulgence can be granted to the appellants. While referring to the argument advanced by the appellants before the learned Single Judge, Mr. Thanvi has argued that only one contention was raised on behalf of the appellants before the learned Single Judge and that hovers around the suit for pre-emption and decree of pre-emption and the subsequent setting aside of the decree by the Appellate Court, and the same has been appropriately dealt with by the learned Single Judge in the impugned order, which is not liable to be upset in this intra-Court appeal. Mr. Thanvi, learned Senior Counsel, has vehemently argued that this Court has also dismissed the second appeal preferred by the appellants and mere pendency of SLP cannot alter the position to appellants' advantage, more particularly when the appellants have abandoned the challenge to finding of fact recorded by both the Tribunals below establishing relationship of landlord and tenant between the rival parties. Learned Senior Counsel has vehemently argued that both the learned Tribunals have recorded a concurrent finding of fact in favour of respondents and the said finding has been affirmed by the learned Single Judge while exercising supervisory jurisdiction under Art. 227 of the Constitution of India, now scope of judicial review in this intra-Court appeal is very much limited and in the given circumstances this new theory of the appellants about their status as occupier in the premises cannot be made subject matter of judicial scrutiny in the present appeal.

10. We have heard the learned counsel for the parties and perused the impugned order and other materials on record.

11. The sole contention canvassed on behalf of the appellants encompasses the decree for pre-emption and its subsequent reversal by the appellate Court. On examining the impugned order passed by the learned Single Judge, on the touchstone of this innovative and ambitious argument of the appellants, we feel convinced that it has been aptly dealt with by the learned Single Judge. The

pivotal issue, which cropped up in the petition laid by the respondents under Sec. 9 and 6 of the Act of 2001 rested on the existence of the relationship of landlord and tenant between the contesting litigants and the same has been adjudicated by both the learned Tribunals below with an affirmative finding about the existence of the said relationship. From a bare perusal of the impugned order of the learned Single Judge, it is amply clear that at the behest of appellants no endeavour was made to question the concurrent finding of fact to this effect and instead, the appellants have propounded a new theory and proposition to thwart the proceedings for eviction and issuance of certificate to this effect. We are quite conscious about the limited scope of judicial review in this intra-Court appeal, and therefore, cannot delve deep to reappraise the evidence and other materials on record. The learned Single Judge, while exercising its supervisory jurisdiction, has examined the matter threadbare and has also taken utmost care to appreciate an absolutely new plea raised at the behest of appellants concerning the status of the appellants in the premises as occupier and has repelled the same with cogent reasons. As the matter has been examined by both the learned Tribunals below and the same has been affirmed by the learned Single Judge in exercise of supervisory jurisdiction enshrined under Art 227 of the Constitution of India, we are not persuaded to examine this aspect of the matter de novo in exercise of powers of judicial scrutiny in this intra-Court appeal. The proposition urged by the appellants i.e. altogether a new connotation to their status in the premises as occupier, taking shelter of the decree for preemption remains baseless. As on the date the decree for pre-emption passed by the trial Court has been reversed by the appellate Court, the effect of the decree has obviously subsided and therefore the appellants cannot be allowed to take shelter of the same. The ambitious contention of the appellants, that after passing of the decree for pre-emption Smt. Khatiza had become owner of the premises, and as the appellants are stepping in her shoes, till subsistence of the said decree their status was also akin to that of owner of the premises, is on the face of it contrary to the basic tenets of law and therefore not tenable. The word "pre-emption" is derived from "prae emptio" and is defined as the act of buying before another; the act or right of purchasing before others. It is trite that right of pre-emption is a very weak right and can be defeated by any legitimate means. Thus, in totality, the concept of occupier in the premises innovated by the appellants on reversal of decree for preemption is per-se alien to basic tenets of law of preemption. Factum of possession by itself cannot alter the appellants' status vis-?-vis disputed premises as an occupier instead of tenant on account of mere pendency of litigation for pre-emption so as to leave any room of doubt on this aspect of the matter requiring judicial intervention at this stage.

12. In this view of the matter, our irresistible conclusion is that phraseology coined by the appellants, viz. occupier in the disputed premises, is without any substance and cannot be accepted. The appellants having not chosen to assail the concurrent finding of fact recorded by both the learned Tribunals below on the issue of relationship of landlord and tenant before the learned Single Judge,

and the solitary issue raised by the appellants on the anvil of alleged right of pre-emption being negated by the learned Single Judge, we feel dissuaded to interfere with the impugned order in this intra-Court appeal. The net result of the above discussion is that we find no merit in this appeal and the same is accordingly dismissed.