
(1991) 04 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Second Appeal No. 78 of 1979

Lala Ram

APPELLANT

Vs

Legal Representatives of Kesrimal Soni

RESPONDENT

Date of Decision : 10-04-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1991) 2 RLW 478 : (1992) 1 WLC 238 : (1991) 2 WLN 151

Hon'ble Judges : N.C. Kochhar, J

Bench : Single Bench

Judgement

N.C. Kochhar, J.—This appeal u/s 100 of the CPC is directed against the judgment and decree dated 28-4-1979 passed by the learned Additional District Judge, Sirohit in Civil Appeal No. 44/75 arising out of the judgment and decree dated 22-8-1977 passed by the learned Munsif, Sirohi in Civil Original Suit No. 112/73. The brief fact are as under:

2. Shri Kesrimal Soni (the plaintiff), who was the predecessor-in-interest of the present respondents, had filed a suit against the appellant-defendant Lalaram for his ejectment from the shop in dispute on the grounds of default in payment of rent, requirement for carrying on repair work and for bonafide personal necessity. The suit was contested by the defendant-appellant, who denied the grounds of eviction and also contested the suit on the ground that his tenancy had not been validly terminated and further that he was the tenant of Swami Narain Mandir and not of the plaintiff and that the above said Mandir was a necessary party. After framing the necessary issues and recording the evidence produced by the parties, the learned trial court came to the conclusion that the defendant-appellant was the tenant of the plaintiff and that the Mandir was not a necessary party and further that the defendant-appellant had deposited the arrears of rent as also the future rent and, as such, no decree on the ground of default in payment of rent could be passed against him. The learned trial court further came to the conclusion that the plaintiff had been able to prove the other

two grounds and, as such, was entitled to a decree for eviction in his favour and against the defendant-appellant. Consequently, the suit filed by the plaintiff was decreed against the defendant-appellant. Feeling aggrieved, the appellant-defendant challenged the above said decree of eviction by filing an appeal. During the pendency of the appeal, the plaintiff died and the present respondents were brought on record as his legal representatives. After hearing the learned Counsel for the parties, the learned first Appellate Court came to the conclusion that the learned trial court erred in holding that the plaintiff had proved that the shop was required for carrying on repairs and, as such, upset the finding of the learned trial court on that issue. It was contended before the learned first Appellate Court that the plaintiff had pleaded that the shop in dispute was required by him for his son Chhogalal who had been carrying on his business in the shop in the possession of the plaintiff himself, but the relations between him and Chhogalal having got strained, Chhogalal could not continue to carry on business in the same shop in which the plaintiff had been carrying on business and that bring the pendency of the appeal, the plaintiff having died, the said ground ceased to exist and, as such, the appeal should be accepted and the suit filed by the plaintiff should be dismissed. The learned first Appellate Court repelled this argument on the ground that he could not take into consideration the event subsequent to the decision of the suit by the learned trial court and further that the plaintiff had other sons also and the shop in dispute might be required by any one of them. In these circumstances, the appeal filed by the appellant-defendant was dismissed and the decree on the ground of personal requirement of the plaintiff passed by the learned trial court was upheld. Feeling aggrieved, the defendant-appellant was approached this court by filing this second appeal.

3. I have heard the learned Counsel for the parties and have also perused the record of the case.

4. Sub-section (1) of Section 13 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (the Act) creates a bar and no decree for eviction of the tenant can be passed except on the grounds mentioned therein. There are two classes of grounds; one giving cause of the action to the land-lord because of the fault of the tenant and the other giving right to the land-lord not because of any fault on the part of the tenant but because of certain other circumstances unconnected with the tenant. The ground of bonafide personal necessity is a ground of second type and unless the ground exists till the time of passing of the decree, the tenant cannot be evicted from the premises in dispute. The appeal being continuation of the suit, the decree passed by the learned trial court merges in the decree passed by the Appellate Court and if any event, subsequent to the filing of the suit or the decision of the suit by the learned trial court but before the decision of the appeal, dis-entitles the land-lord from claiming eviction, it has to be taken into consideration by the Appellate Court and no decree for eviction can be passed against the tenant in view of the above said bar contained in Sub-section (1) of Section 13 of the Act. To be fair to the

learned trial court, it may be recorded that while holding that the subsequent event cannot be taken into consideration, he placed reliance on a Single Bench decision of this court in case "Pavandas v. Lachhibai" reported as RLW 1962 629 . I would have referred the matter to a larger bench, but in view of the decisions of the Supreme Court in cases Pasupuleti Venkateswarlu Vs. The Motor and General Traders, and Vineet Kumar Vs. Mangal Sain Wadhera, it is not necessary to do so. The finding of the learned by other sons of Kesrimal (the deceased) and, as such, the appellant was liable to be evicted also cannot be sustained for the reason that there was a specific plea in the pleading that the shop in question was required for Chhogalal and there was no plea that it was required for any other son of the deceased-landlord. In view of Sub-section (1) of Section 13 of the Act no decree can be passed on the ground that the landlord might be requiring the tenanted premises but it can be passed only when it is held that the landlord requires the premises for his personal use or for the use of any person for whom the premises are held by him.

5. In view of my above discussion, I accept this second appeal, set-aside the judgments and decrees passed by the learned lower courts and dismiss the suit filed for eviction of the defendant-appellant. In the circumstances of the case, however, the parties are left to bear their own costs.