

(2001) 09 RAJ CK 0104
In the Rajasthan High Court
Case No : Civil Second Appeal No. 52 of 1983

LRs of Late Jaswant Mal and Others

APPELLANT

Vs

Kailash Narayan

RESPONDENT

Date of Decision : 26-09-2001

Acts Referred:

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 — Section 13(1)

Citation : (2002) 4 RLW 2315 : (2003) 1 RLW 352 : (2003) 1 WLN 695

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : B.M. Bhojak, for the Appellant; Vijay Laxmi, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—This is a second appeal filed by the LRs of Jaswant Mal, who was original defendant-tenant, against the respondent-plaintiff arising, out of the judgment and decree dated 21.2.1983 passed by the learned Addl. District Judge No. 2, Jodhpur in Civil Appeal No. 38/82 by which judgment and decree dated 21.1.1978 passed by the learned Additional Munsiff No. 2, Jodhpur in Civil Original Suit No. 78/75 were confirmed and the suit of the original plaintiff for eviction of the original defendant-tenant from the suit premises on the ground of Section 13(1)(c) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as "the Act of 1950") (material alteration) was decreed.

2. The facts giving rise to this second appeal, in short, are as follows:-

One Shambhunath, who was the original plaintiff in the present suit, filed a suit in the Court of Munsiff City, Jodhpur on 22.10.1975 against the original defendant-tenant jaswant Mal for eviction of the original defendant-tenant from the suit premises on the ground of arrears of rent and on the ground that the original defendant-tenant had materially and substantially altered the suit premises stating inter-alia that there is a building known as Amarnath Building

situated outside the Jalori Gate, Jodhpur and in that Building, Many shops and quarters have been constructed and one house in that Building was rented out by the father of the original-plaintiff to the Original defendant-Jaswantmal on the monthly rent of Rs.22/-, the details of the rented premises are mentioned in para 1 of the plaint, it was further stated in the plaint that family settlement was arrived at between the family members of the father of the original-plaintiff and after the settlement, the disputed house came in the share of the original plaintiff Shambhunath with effect from 1.4.1972 and the original-defendant was informed accordingly and since then, original-defendant was paying monthly rent to the original plaintiff-Shambhunath.

It may be stated here that since in this second appeal, the question of arrears of rent is not in dispute, therefore, facts pertaining to that are not being mentioned here.

The main case of the original plaintiff, as set out in the plaint, is that in front of the house given on rent to the original-defendant jaswant Mal and some other houses belonging to the original-plaintiff, there is a vacant land and that vacant land was being used for coming and out going and when the family settlement took place in 1972, there was passage of 15 feet in front of the house given on rent to the original-defendant, but the original defendant in that vacant land, which was in front of his rented house, without the permission of the original plaintiff-landlord, after putting stones and doing some masoning work, got constructed a chappar and by that construction, the original- defendant had illegally occupied the land belonging to the original plaintiff and thus, original-plaintiff is entitled to decree of eviction of the original-defendant from the suit premises.

The suit of the original plaintiff was contested by the original defendant by filing a written statement on 2.4.1976. In the said written statement, it was alleged by the original-defendant that he has not made any illegal encroachment by putting stones and by making construction of chhapra over the vacant land and that land was with him from the very beginning and simultaneously the alleged constructions were made earlier to the tenancy and this portion was in his tenancy and not only this, the father of the original plaintiff filed a suit on 20.1.1972 against the original diffident for eviction of this ground and the copy of the plaint is Ex.A/1 and that suit was withdrawn by the father of the original plaintiff and the order of withdrawal is dated 12.9.1972 Ex.A/2 and, therefore, now the suit filed by the original- plaintiff is barred by the principles of res judicata. Hence, it was prayed that suit filed by the original plaintiff be dismissed.

On the pleadings of the parties, the learned Addl. Munsiff No. 2, Jodhpur framed the following issues on 1.7.1976.

1- vk;k izfroknh fdjk;k dh vknk;xh esa fMQkYVj nks"kh ugha gSA

2- vk;k okn ds in ua- 3 c esa fyf[kr dkj.kksa o otqgkrksa ls izfroknh dk fcy cs[n]kyh ds gSA

3- vk;k ;g okn cvlsysa jsl&T;wfMdsVk ds cksMZ gSA

4- vk;k izfroknh dh fdjk;snkjh ekfQd dkuwu lekIr dj nh xbZA

5- vk;k izfroknh dEiulaVjh dksLV ikus dk vf/kdkj gSA

6- nknjlhA

In the Court of Addl. Munsiff No. 2, Jodhpur, two witness were produced and PW1 Shambhunath was the original-plaintiff and DW 1 Jaswant Mal was the original defendant-tenant.

After recording evidence of both the parties, the learned Addl. Munsiff No. 2, Jodhpur vide his judgment and decree dated 21.1.1978 decree the suit of the original-plaintiff for eviction of the original-defendant from the suit premises. The learned Addl. Munsiff No. 2, Jodhpur decided the issues No. 2 and 4 in favour of the the original plaintiff and agains". the original defendant in the following manner:-

(1) That the case of the original defendant that the Bada was already constructed prior to his tenancy was not accepted by the learned Addl. Munsiff. It was also not accepted by the learned Addl. Munsiff that it was got constructed by the original defendant with the prior permission of the father of the original plaintiff.

(2) That whatever was done by the original defendant, it was nothing, but unauthorised construction and it was on the portion which was adjacent to the rented premises and by doing so, original defendant materially altered the rented premises.

Aggrieved from the said judgment and decree dated 21.1.1978 passed by the learned Addl. Munsiff No. 2, Jodhpur, the original defendant Jaswant Mal preferred an appeal before the learned District Judge, Jodhpur and the same was transferred to the learned Addl. District Judge No. 2, Jodhpur.

It may be stated here that during the pendency of that appeal before the learned Addl. District Judge No. 2, Jodhpur, the original plaintiff Shambhunath sold the disputed property to one Kailash Narain and thus, Kailash Narain stepped into the shoes of original plaintiff and thus, became the plaintiff respondent in the first appeal.

The learned Addl. District Judge No. 2, Jodhpur through his judgment and decree dated 21.2.1983 dismissed the appeal filed by the original defendant and confirmed the judgment and decree dated 21.1.1978 passed by the learned Addl. Munsiff No. 2, Jodhpur holding inter-alia:-

(1) That though the father of the original plaintiff filed a suit on 20.1.1972 in respect of illegal construction made by the original defendant and subsequently, that suit was withdrawn on 12.9.1972, but since that suit was simply withdrawn and was decided not on merits, therefore, no question of principles of res

judicata arises in the present case and the argument of the original defendant that the present suit of the original plaintiff was barred by the principles of res judicata was rejected by the learned first appellate court.

(2) That it is very well proved by the evidence that the bada, which was got constructed by the original defendant, was on the land which was just in front of the rented house and that portion would also cover the premises, which were given on rent to the original defendant.

Aggrieved from the judgment and decree dated 21.2.1983 passed by the learned Addl. District Judge No. 2, Jodhpur, this second appeal has been filed by the original defendant in this Court on 2.4.1983.

3. It may be stated here that during the pendency of this second appeal, the original defendant Jaswant Mal died and his LRs were brought on record.

4. While admitting this second appeal on 19.4.1983, this Court framed the following two substantial questions of law:-

"(1) Whether, when the rent had been determined and paid to the party, the ground of default survives?

(2) Whether any encroachment on or construction over a piece of land adjacent to the premises let out would amount to material alteration."

5. So far as the first substantial question is concerned, the same has not been pressed by the learned counsel appearing for the appellants-defendants on the ground that since rent was paid in the Court after determination, therefore, this point has become redundant.

6. On second substantial question, the main contention of the learned counsel appearing for the appellants-defendants is that since the alleged encroachment, as is evident from the findings of both the courts below, relates to a piece of land adjacent to the rented house, therefore, this piece of land is not a part of the premises let out to the original defendant and, therefore, if some constructions have been made over that land by the original defendant, it cannot be said that the original defendant materially altered the rented premises and in these circumstances, the original plaintiff is not entitled to seek eviction on the ground of Section 13(1) (c) of the Act of 1950, as eviction can be sought on the ground of Section 13(1)(c) of the Act of 1950 if the construction, which has materially altered the nature of the building, is made on the rented premises.

7. On the other hand, the learned counsel appearing for the plaintiff-respondent argued that if the tenant puts up structure on adjoining space though it was not part of the rented premises, but since it was being used by the tenant for beneficial enjoyment, the act of the defendants-appellants would be covered by Section 13(1)(c) of the Act of 1950 and thus, the decree of eviction of the defendants-appellants from the suit premises on that ground was rightly passed by both the courts below.

8. I have heard the learned counsel appearing for the appellants-defendants and the learned counsel appearing for the respondent-plaintiff and gone through the record of the case.

9. In the present case, there is no dispute on the point that just ahead the rented premises, the original defendant Jaswant Mal made a pacca construction by putting chhapra and that construction was made without the prior permission of the original plaintiff-landlord.

10. There is also no dispute on the point that over that land adjoining to the rented premises, the original defendant and his LRs have no personal claim and that land does not belong to them and in what manner and position they are using, they are using because they are tenant and, therefore, whatever construction they have raised, that has been raised not as owner, but as tenant and since that land does not belong to them, they have no right to make construction over it. Had they would not have been tenant, they would have not been in a position to make construction and whatever was done by them, that was done in capacity as tenant and not as owners.

11. The question that arises for consideration in the above facts and circumstances is whether construction made by the original defendant-tenant over the piece of land adjacent to the rented premises would amount to material alteration and such act of the original defendant would be covered by Section 13(1)(c) of the Act of 1950 or not and this itself is the second substantial question of law, which is to be answered by this Court in this second appeal.

12. Before proceeding further, it would be worthwhile to reproduce herein below Sec. 13(1)(c) of the Act of 1950:-

"13. Eviction of tenants-(1) Notwithstanding anything contained in any law or contract, no Court shall pass any decree, or make any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefore to the full extent allowable by this Act; unless it is satisfied.-

(c) that the tenant has without the permission of the landlord made or permitted to be made any such construction as, in the opinion of the Court has materially altered the premises or is likely to diminish the value thereof."

13. The words used in Section 13(1)(c) of the Act of 1950 merely refers to such construction as in the opinion of the Court has materially altered the premises and do not make any distinction between the permanent and temporary nature. Thus, even the temporary structure may amount to material alteration.

14. Thus, a temporary structure falls within the meaning of material alteration.

15. It may be stated here that what construction has been made, it might be a finding of fact, but whether it amounts to material alteration or not is undoubtedly a question of law.

16. The expression "material alteration" in its ordinary meaning would mean important alterations, such as those which materially or substantially change the front or the structure of the premises.

17. To answer this complexed problem, first it is to be seen what the word "premises" means.

18. The word "premises" has been defined in Section 3(v) of the Act of 1950, which reads as under: -

3. Definitions.-

(v) premises means.-

(a) any land not being used for agricultural purposes; and

(b) any building or part of a building other than a farm building, let or intended to be let for use as a residence or for commercial use or for any other purpose including,-

(i) the gardens, grounds, godowns, garages and out-houses, if any, appurtenant to such building or part.

(ii) any furniture supplied by the landlord for use in such building or part.

(iii) any fittings, affixed to, and amenities provided in, such building or part for the more beneficial enjoyment thereof; and

(iv) any land appurtenant to and let with any such building or part, but does not include a room or other accommodation in a hotel, dharamshala, inn, sarai, lodging house, boarding house or hotel."

19. In my considered opinion, amenities provided in any building are also part of the premises and for that," there are provisions in Section 12 of the Act of 1950. The amenities have been defined in Explanation-I to Section 12 of the Act of 1950, but the definition in the explanation is not exhaustive.

20. Not only this, premises appurtenant to the rented premises should be treated as part of the premises themselves let out to the tenant and any structures or additions made to the adjoining space to the rented premises will have to be treated to have been made as part of the premises appurtenant to the tenanted premises or as part of apace which was necessary for beneficial enjoyment of rented premises.

21. Thus, I agree with the views of the learned Addl. District Judge No. 2, Jodhpur that the piece of land adjacent to the rented premises would form part of the rented premises as it was being used by the original defendant and now his LRs for beneficial enjoyment of rented premises and the construction made over that piece of land by the original defendant without the prior permission of the landlord would certainly amount to materially altered the rented premises and would be covered by the provisions of Section 13(1)(c) of the Act of 1950.

Hence, the findings of both the courts below by which decree for eviction of defendants- appellants was passed on the ground of Section 13(1)(c) of the Act of 1950 are liable to be confirmed.

22. The learned counsel for the appellant-defendants had placed reliance on the decision of this Court in Banarasi Das v. Rameshwar Das (i). In my considered opinion, the facts of the present case are different in nature from the facts and law laid down in that case as in that case construction was made in the shop while in the present case, illegal construction has been made over the land which is adjacent to the rented premises and which was being used by the tenant for his benefit and enjoyment.

23. So far as the argument that for the land in question, a notice has been given by the Local Bodies to the plaintiff- respondent that the land does not belong to him is concerned, it may be stated here that it is a dispute between the plaintiff-respondent and the Local Bodies, but the defendants-appellants have got no concern with that. Thus, this argument would not be helpful to the appellants-defendants.

24. For the reasons stated above the substantial question are answered in the following manner:-

Substantial Question

Answer

"(1)

Whether, when the rent had been determined and paid to the party, the ground of default survives?

Not answered as this question was not pressed by learned counsel appearing for the appellants.

(2)

Whether any encroachment on or construction over a piece of land adjacent to the premises let out would amount to material alteration."

This question No.2 is answered in the affirmative.

25. Thus, the findings of the courts below are confirmed and this second appeal deserves to be dismissed.

Accordingly, this second appeal is dismissed, after confirming the impugned judgments and decrees passed by both the courts below, No order as to costs.