
(2015) 03 RAJ CK 0040
In the Rajasthan High Court
Case No : Civil Second Appeal No. 197/2010

L.Rs. of Ram Niwas and Others

APPELLANT

Vs

Tara Chand

RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2015) 03 RAJ CK 0040

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : Ravi Bhansali, for the Appellant; R.R. Nagori and Alkesh Agarwal, Advocates for the Respondent

Judgement

Vineet Kothari, J.—The appellant-plaintiff-landlord has filed the present second appeal being aggrieved by the reversal of eviction decree by the first appellate court while allowing the defendant's appeal No. 5/2009 -Tara Chand v. Ram Niwas on 19/1/2010. The learned trial court had decreed the eviction suit filed by the plaintiff inter alia on the ground of bonafide necessity of the landlord and his family members giving the following findings in favour of the plaintiff:--

2. The appellate court, however, reversed the eviction decree, even though the finding of facts noted by the first appellate court were in the following manner:--

3. Having gone through the judgments of courts below and upon hearing the learned counsels for the parties, the following substantial question of law is framed by this Court:

"Whether the first appellate court was justified in reversing the eviction decree given by the trial court on the ground of personal bonafide need of the landlord and his family members, even though the finding of facts recorded by the appellate court, prima facie, indicates such need to have been bonafidely established by the plaintiff and whether the reasoning given by the first appellate court is perverse or not?" 4. Learned counsel for the appellant, Mr. Ravi Bhansali

vehemently submitted that the first appellate court has wholly erred in reversing the eviction decree on the ground that the landlord Ram Niwas had since expired during the pendency of the appeal on 23/1/2001 and since son Kailash Chand, for whose need the eviction was sought of the suit shop in question, in which defendant was carrying on the business of gold smith, was doing some other job, therefore, the bonafide need was not established. He relied upon the various case laws of Hon"ble Supreme Court and of this Court in which it has been consistently held that the landlord is the best judge of his personal and business requirements and neither the tenant nor the courts can substitute their own opinion in this regard and dictate terms to the landlord, which will be referred hereinafter.

5. Per contra, Mr. R.R. Nagori, learned Senior Counsel with Mr. Alkesh Agarwal relying the following case laws urged that in view of the alternative shop becoming available for satisfying the business need of the son, the learned first appellate court was justified in holding that there was no bonafide need of the suit shop in question for his son Kailash Chand. Learned counsel Mr. R.R. Nagori also submitted that since the landlord himself had expired, therefore, the need for the suit shop also extinguished.

6. Case laws relied upon by the learned counsel for the defendants are as under:--

- "(i) Ram Prasad Rajak Vs. Nand Kumar and BOrs. and Another, ;
- (ii) Ms. Labanya Neogi Through Lrs. Power of Attorney Holder Shri Dr. Subhasis Neogi Vs. M/s W.B. Engineering Company, ;
- (iii) T. Sivasubramaniam and Ors. v. Kasinath Pujari and Ors. - (1997) 7 SCC 275;
- (iv) Deena Nath Vs. Pooran Lal--> ;
- (v) Rajendra Singh v. Suresh Chandra - 1985 (1) RCJ 84;
- (vi) Sadiq Ali Vs. Sagarmal, ;
- (vii) Sunita Rani and Others Vs. Sri Chand and Others, ."

7. Having heard the learned counsels, this Court is of the opinion that the present second appeal deserves to be allowed. The law is well settled by the judgment of Hon"ble Supreme Court that the ground of eviction on the personal bonafide need of the landlord and his family members is to be seen on the date of filing of the suit and established and the landlord is the best judge to determine his own business and personal needs in this regard and neither the tenant nor the courts below have the authority to substitute their own wisdom and opinion in this regard. Further, upon the death of the landlord Ram Niwas, the need of the suit shop cannot be said to have extinguished as it existed on the date of filing the suit and because the need was simultaneously claimed for his son Kailash Chand, who is doing some other job in the meanwhile does not extinguish the bonafide need in the present case.

8. In *Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Others*, , the Hon''ble Supreme Court held that where the eviction is sought for bonafide requirement of landlord, the relevant date on which the said need has to be adjudged is the date of filing the suit and subsequent events taking place during the period of litigation like engaging in other activity or business for which premises in question is required do not upset such bonafide need unless such subsequent events are of such a nature and dimension as to completely eclipse such need and make it lose significance altogether and the process of litigation cannot be made the basis for denying the landlord relief when litigation at last reaches the final stage.

9. In *Prativa Devi Vs. T.V. Krishnan*, , the three Judges Bench of the Hon''ble Supreme Court while holding that the landlord is the best judge of his residential requirement observed as under:--

"The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court was rather solicitous about the age of the appellant and thought that because of her age she needed to be looked after. That was a lookout of the appellant and not of the High Court. The gratuitous advice given by the High Court was uncalled for. There is nothing to show that she had any kind of right whatever to stay in the house of the family friend. On the other hand, she was there merely by sufferance. There is no law which deprives the landlord of the beneficial enjoyment of his property. The High Court was in error in laying down that the test is availability of alternative accommodation and not the legal right to such occupation in adjudging the bonafides of the claim of the landlord under Section 14(1)(e) of the Act. In considering the availability of alternative accommodation, the Court has to consider not merely whether such accommodation is available but also whether the landlord has a legal right to such accommodation. The appellant had established her bonafide personal requirement of the demised premises under Section 14(1)(e) of the Act and her claim could not be disallowed merely on the ground that she was staying as a guest with a family friend by force of circumstances." 10. More over, as held by Hon''ble Supreme Court itself in a recent decision of two Judges bench in *Satyawati Sharma (Dead) by LRs. Vs. Union of India (UOI) and Another*, , which has been later on reaffirmed by three Judges bench decision of Hon''ble Apex Court in *The State of Maharashtra and Another Vs. Super Max International Pvt. Ltd. and Others*, in which the Hon''ble Apex Court has clearly noticed that even the trend of Apex Court has shifted from pro-tenant from 1950s to 1990s to pro-landlord from 1990s onwards. The relevant extracts from the judgments in case of *Satyawati Sharma (supra)* and *Super Max International Pvt. Ltd.* are quoted below for ready reference:

"12. There has been a definite shift in the court's approach while interpreting the rent control legislations. An analysis of the judgments of 1950s to early 1990s

would indicate that in majority of cases the courts heavily leaned in favour of an interpretation which would benefit the tenant. In these cases the Court consistently held that the paramount object of every rent control legislation is to provide safeguard for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute scarcity thereof. However, a different trend is clearly discernible in the later judgments." The relevant para 71 of the judgment of Apex Court in Super Max International (P) Ltd. (supra) is quoted below for ready reference:

"71. We reaffirm the views expressed in Satyawati Sharma and emphasize the need for a more balanced and objective approach to the relationship between the landlord and tenant. This is not to say that the Court should lean in favour of the landlord but merely that there is no longer any room for the assumption that all tenants, as a class, are in dire circumstances and in desperate need of the Court's protection under all circumstances. (The case of the present appellant who is in occupation of an area of 9000 sq. ft. in a building, situate at Fort, Mumbai on a rental of Rs. 5236.58/-, plus water charges at the rate of Rs. 515.35/- per month more than amply highlights the point)" 11. This Court in the case of LR's of Prakash v. Poornima (SBCSA No. 132/2009, decided on 11.05.2011) also emphasized that landlord was the best judge of his needs in the following terms: -

"5. Learned counsel for the respondent-plaintiffs, Mr. S.N. Pungalia strongly opposed these submissions and urged that no substantial question of law arises in the present second appeal and the finding of facts returned by the courts below are based on cogent and relevant evidence and the second appeal deserves to be dismissed as the bonafide need of the landlord was fully established before the learned trial court and as per the catena of judgments of Hon'ble Supreme Court, it is not for the tenant to dictate the landlord as to how and in what manner he should satisfy his bonafide need for his business place and from the facts found by the courts below it was clear that the very source of livelihood of plaintiffs was the STD PCO Booth, which is presently run under the staircase and they need bigger premises for carrying out this business". 12. In the case of Denzil Najrath v. L.Rs. of Balwant Singh and Ors. reported in 2011 (3) DNJ (Raj.) 1217 this Court has held under:

"Having heard learned counsels for the parties and having gone through the impugned judgment and evidence recorded by the learned trial court, this Court is satisfied that the findings of the fact about the bonafide need of the landlord recorded by the learned trial court are not perverse in any manner. They are based on cogent reasons and evidence and no interference in the impugned judgment is required to be made in the present first appeal of the defendant-tenant. The owner-plaintiff, Swarn Singh has clearly stated in paras 7 and 8 of his affidavit that the available house with the plaintiff's family was very small of three rooms and for a family of two married brothers and three married sisters

and parents of them, the said accommodation was very short of the requirement and, therefore, they needed the suit house for their own residential purposes. Nothing in the cross-examination was even asked from the said deponent about the relationship and number of family members and, therefore, the averments made in the affidavit was sufficient proof unshaken in the cross-examination of the said deponent, namely, Swarn Singh. It is well settled that findings about the bonafide need of the landlord are findings of fact and unless they can be said to be perverse or without any foundation, the same cannot be interfered with by the appellate court; and even though this is first appeal as the trial Court was that of learned Additional District Judge, Sri Karanpur and requirement of substantial question of law may not be there as such as is required for second appeal under Section 100 C.P.C., still this Court is satisfied that decree under appeal deserves no interference and the present appeal filed by the defendant-tenant has no merit." 13. In view of the aforesaid legal position, this Court is of the considered opinion that the present second appeal of the plaintiff deserves to be allowed and there is no overriding view discussing the latest trend of the Hon"ble Supreme Court in the judgments cited by the learned counsel for the defendant, which compels this Court to take a different view of the matter.

14. Accordingly, the present second appeal of the plaintiff landlord is allowed and the substantial question of law framed above is answered in favour of the plaintiff. The eviction decree given by the learned trial court on 10/2/2003 in civil original suit No. 61/95 is upheld and the judgment and decree of learned first appellate court dated 19/1/2010 is set aside.

15. The defendant-tenant shall hand over the peaceful and vacant possession of the suit premises to the plaintiff-appellant within a period of one year from today i.e. on or before 31st March 2016 and shall pay mesne profit @ Rs. 3,000/- per month from April, 2015 before 15th of next month either to appellant-landlord directly or in his Bank account, details of which may be supplied by the appellant-plaintiff, till vacant possession is handed over and in case there is any default in payment of mesne profit, the period of one year for eviction shall stand reduced and the decree of eviction would become executable forthwith. The respondent defendant-tenant shall also clear all the arrears of rent and mesne profit and pay the same to the plaintiff within two months from today, otherwise the same will bear interest @ 9% per annum. The respondent-tenant or person in possession shall also further not sub-let, assign or part with the possession of the suit premises or any part thereof in favour of any one else and would not create any third party interest in the same during the aforesaid period and the same would be treated as void. The respondent-defendant-tenant shall furnish a written undertaking incorporating the aforesaid conditions in the trial court within one month and one copy thereof along with affidavit, in this Court. It is made clear that if the peaceful and vacant possession of the suit shop is not handed over to the appellant-plaintiff within a period of one year from today or mesne profits are not paid as directed above, besides the expeditious execution of the decree in normal course, the appellant-plaintiff shall also be entitled to invoke the

contempt jurisdiction of this Court. Copy of this order be sent to the parties concerned and the courts below forthwith.