
(1975) 11 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Second Appeal No. 335 of 1967

Masjid Committee

APPELLANT

Vs

Jhamat Mal and Others

RESPONDENT

Date of Decision : 05-11-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1975) WLN 471

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.P. Tyagi, J.—This second appeal filed by the Masjid Committee, Ajmer is directed against the judgment and decree dated February 6, 1957 passed by the learned Additional Civil Judge, Ajmer in an appeal filed against the decree passed by the Munsif Ajmer in original suit No. 243 of 1961.

2. The plaintiff appellant brought this suit against one Jhamatmal and respondent Nos. 2 to 9 who were the mortgagees or the suit property which has been marked in the Municipal register as property No. 8/99 in Chisti Bazar, Ajmer. According to the plaintiff's case, this property was declared evacuee property by the Custodian and that thereafter, it was handed over to the Masjid Committee, Ajmer, and since then the property being owned by the Masjid Committee. Jhamatmal, according to the plaintiff, was the tenant and therefore a suit for eviction was brought against Jhamatmal but as Jhamatmal claimed that he was the tenant of respondent Nos. 2 to 9 who were the mortgagees of this property, the eight respondents Nos. 2 to 9 were also impleaded in the suit. It was further averred that since Jhamatmal was never recognised as a tenant by the Custodian, his occupation of the property which was formerly cumbed as AMC V/40 and now VIII/99, was illegal.

3. Jhamatmal filed a separate written statement and pleaded that he was in

occupation of the property as a tenant of Anantmal from the year 1953. Respondent No. 2 filing a separate written statement came out with a case that Amir Ahmed and Ahmed Khan. were the proprietors of this propriety and that they had mortgaged this property with possession in favour of Anantmal and Rampal by means of a registered mortgage deed dated 9-10-1924 and since then they were in possession of this property and it was rented out to Jhamatmal. According to these defendant-respondents, they were realising the rent of this property as mortgagees from the tenants including Jhamatmal. It was also vehemently contended that this property was never declared as an evacuee property by the Custodian in accordance with the provisions of the Administration of Evacuee properties Act, 1950.

4. Various issues were framed by the trial court on the basis of the pleadings of the parties but the main issue which clinches the crux of the dispute between the parties was issue No. 5.-

Whether the custodian of Evacuees Property gave possession of the suit property to the plaintiff. If so, what is its effect ?

Issue No. 3 also is a relevant issue which relates to the question whether the suit property was ever declared as an evacuee property, Both these issue were decided by the trial court in favour if the defendant respondents. On appeal, the finding of the trial court was upheld on these issues and the suit of the plaintiff was dismissed It is against this judgment of the appellant court that the present appeal has been filed by the plaintiff appellant.

5. The plaintiff, except one document showing that the number of this suit property was included in the list of properties maintained by the Custodian, could not bring anything on the record to prove that the suit property was declared evacuee property in accordance with the provisions of the Administration of Evacuee Property Act, 1950. Even the order of the Custodian declaring this property as en evacuee property was cot placed on the record. According to the plaintiff's case, this property was handed over to the Masjid Committee by the Custodian for being managed by the plaintiff and as such, the plaintiff claims proprietary right in the properly but this claim can be accepted only when this fact is established on the record that the suit property was actually declared evacuee property by the Custodian and then banded over to the plaintiff as the property belonging to the Masjid Committee. It is true that the trial court as well as the appellants court did not accept the plea of the defendant Nos. 2 to 7 that they were the mortgagees of this property because the defendants did cot produce the mortgage deed in original and simply relied on the certified copies of the registered mortgage deed but it was admitted by both the courts below that respondents No. 2 to 7 being legal representatives of Anantmal were in possession of this property. Technically it can be said that the respondents Nos. 2 to 7 cannot be declared as the mortgagees of this property unless registered mortgages deed alleged to have been executed in the year 1924 was properly provide in accordance with the provisions of the law but the failure on that part

of the respondents Nos. 2 to 7 to prove the mortgage cannot help the plaintiff unless, by independent evidence, it has been proved by the plaintiff that the property was declared evacuee property & that the Custodian was competent to hand over this property to the plaintiff for management. Jhamatmal has denied the tenancy created by either the plaintiff or by the Custodian. On the contrary, it has been urged by Jhamatmal that a tenancy was created in his favour by Kishanlal and Anantmal. Anantmal is now no more in this world and therefore his legal representatives have been brought on the record. Originally the tenancy was created by the so called mortgages Kishan Lal and Anantmal. The real question to be decided in this appeal is whether in the light of the concurrent finding of fact recorded by the two courts below can the Masjid Committee, Ajmer, be declared by this Court as the owner of the suit property? In the absence of any cogent evidence on the record about the property having been declared as evacuee property by the Custodian and then transferring it to the plaintiff, it is clear that the findings given by the two courts below cannot be challenged and this Court in the exercise of its jurisdiction u/s 100 of the Code of Civil Procedure, cannot disturb that finding.

6. In the light of these observations, I do not find any life in this appeal and therefore dismiss it. Learned Counsel for the parties agree that the costs be made easy. Therefore, I pass no order as to costs.