

(1988) 02 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Second Appeal No. 143 of 1979

Mohammed Hussain and Another

APPELLANT

Vs

Abdul Rahim by his Lrs Abdul Karim and Others

RESPONDENT

Date of Decision : 19-02-1988

Acts Referred:

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 — Section 3(vii)

Citation : (1988) 2 WLN 561

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agrawal, J.—This is the plaintiff's second appeal arising out of a suit for eviction.

2. The premises in dispute is a Kachcha house situate in Jaipur City. The said premises were let out to the defendant Abdul Rahim on 1st December, 1966 on a monthly vent of Rs. 6/- per month. The said premises were purchased by the plaintiff. Smt. Umrao, on 21st Sep., 1971. After purchasing the said premises, the plaintiff served a notice dated 25th April, 1972! requiring the defendant, to vacate the premises and on his failure to do so, the plaintiff filed the suit giving rise to this appeal on 15th July, 1972. The said suit was based on the ground that the defendant had failed to pay the rent for the premises for the period from 21st September, 1971 and further that the premises were required by the plaintiff for personal occupation, as she is living in a rental premises. The said suit was contested by the defendant. The Munsif and Judicial Magistrate first class Jaipur City (East), Jaipur, by his judgment and decree dated 3rd May, 1977, decreed the suit of the plaintiff. The Munsif found that the defendant was a tenant of Mumtazuddin Nizamuddin and Kallu from 1st Dec, 1965 one monthly rent of Rs. 6/-per month; that he had executed a rent note in their favour and that after the premises had been purchased by the plaintiff, he became the tenant of the plaintiff. As regards the default in payment of rent, the Munsif held

that since the defendant had deposited the amount of rent, he could not be evicted on that ground. The Munsif, how ever, found that the premises were required reasonably and bonafide by the plaintiff for her own occupation and further that the plaintiff had no other house for her residence where as the defendant could stay with his son and that as compared to the defendant, the plaintiff would suffer greater hardship if a decree for eviction was not passed in her favour. The defendant Abdul Rahim filed an appeal against the said judgment and decree of the Munsif and the said appeal was allowed by the Addl. District and Sessions Judge No. 6, Jaipur by his judgment and decree dated 5th February, 1979. The Addl. District Judge affirmed the finding recorded by the Munsif that the defendant was a tenant of Mumtazuddin, Nizamuddin and Kallu on a monthly rent of Rs. 6/- and that after the said premises had been purchased by the plaintiff, he became the tenant of the plaintiff. The Addl. District Judge disagreed with the findings recorded by the Munsif on issue No. 4 relating to personal necessity of the plaintiff and issue No. 7 relating to comparative hardship He held that the evidence adduced by the plaintiff to show that the landlord wanted to evict her from the premises in which she is staying at present, could not be looked into because no such plea has been raised by her in the plaint The Addl District Judge observed that the only averment that has been made by the plaintiff, in the plaint, is that she wanted to reside in the house purchased by her and that she does not want to reside in rented premises and has expressed the view that the mere desire of the plaintiff to live in her own house could not be regarded as a reasonable and bonafide personal necessity. With regard to comparative hardship also the Addl. District Judge held that the wife of the defendant has died and his meals come from the house of his son who lives nearby with his wife and that if the defendant is ordered to vacate the premises he would suffer greater hardship. In view of his findings on issues Nos. 4 and 7, the Addl. District Judge allowed the appeal of the defendant and dismissed the suit of the plaintiff. Feeling aggrieved by the aforesaid judgment and decree of the Addl. District Judge, the plaintiff Smt. Umrao filed the present appeal.

3. During the pendency of this appeal, the appellant Smt. Umrao died and her husband. Mohammed Hussain, and her son, Afzal Hussain have been brought on record as the appellants. The defendant Shri Abdul Rahim has also died during pendency of this appeal and his two sons and married daughter have been brought on record at his legal representatives.

4. Shri A.k. Bhandari, the learned Counsel for the appellants has assailed the findings recorded by the Additional District Judge and has urged that the Additional District Judge has erred in holding that the plaintiff did not need the premises reasonably and bonafide for her personal occupation. In this connection the submission of Shri Bhandari is that the Additional District Judge should not have ignored the evidence of Abdul Rahim PW 1, Kamruddin PW 3, Mohd. Hussain PW 4 and Abdul Hafiz PW 6 which shows that the landlord of the plaintiff wants the premises which were in the occupation of the plaintiff and wants to

evict her from the said premises. Shri Bhandari has also urged that from the evidence on record it is established that the plaintiff was paying a sum of Rs. 15/- as rent for the premises in her possession and that the rent paid by the defendant to the plaintiff is only Rs. 6/- per month which shows that the plaintiff was paying a higher amount of rent for the premises in her occupation and therefore, the need of the plaintiff to reside in her own house in bonafide and reasonable. In support of his aforesaid submission Shri Bhandari has placed reliance on the decisions of this Court in Babu Ram v. Narayan Das 1959 RLW 81 and Heera Lal v. Panna Lal 1974 WLN(UC) 365, as well as the decision of the Supreme Court in Om Prakash v. Bhagwan Das 1986 (2) UJ (SC) 237 and the decision of the Mysore High Court in Gopal Rao Shiddoji Shedge v. Kashappa Chandra Sekhar Telsang 1970 RCR 15. Shri Bhandari has also urged that the appellants would suffer greater hardship as compared to the respondents and in this connection he has submitted that the so-called necessity of the defendant about his meals being supplied from the house of his son living nearby no longer subsists because defendant has died and his sons are living separately.

5. Shri S.M. Juniwal the learned Counsel for the respondents, has supported the judgment of the Addl. District Judge and has urged that the Addl. District Judge has rightly held that the plaintiff had failed to establish her reasonable bona fide and personal necessity for the suit premises. The submission of Shri Juniwal is that since in the plaint, the plaintiff has not indicated her specific requirement, it was not permissible for the plaintiff to adduce the evidence to show that she has been asked by her landlord to vacate the premises in which she is residing.

6. At the outset it is necessary to consider as to whether the respondents, who are the heirs of deceased Abdul Rahim, are entitled to the protection of the Rajasthan Premises (Control of Rent & Eviction), Act 1950 (here in after referred to as "the Act"). For that purposes it is necessary to take note of the definition of expression tenant" as contained in Section 3(vii) of the Act which reads as under:

(vii) Tenants means:

(a) the person by whom or on whose account or behalf rent is, or, but for a contract express or implied would be payable for any premises to his landlord including the person who is continuing in its possession after termination of his tenancy otherwise than by a decree for eviction passed under the provisions of this Act; and

(b) in the event of death of the person as is referred to in sub-clause(a) his surviving spouse, son, daughter and other heir in accordance with the personal law applicable to him who had been, in the case of premises leased out for residential purpose, ordinarily residing and in the case of premises leased out for commercial or business purposes, ordinarily carrying on business with him in such premises as member of his family upto his death.

Clause (b) of said definition indicates that a surviving spouse, son, daughter and other heir in accordance with personal law is to be regarded as a tenant in

respect of premises let out for residential purpose if he had ordinarily been residing in the premises. The premises in the present case are residential premises. The respondents can be regarded as tenants for the purpose of the Act only if it can be shown that they or any one of them was ordinarily residing in the premises at the time of the death of Abdul Rahim. Out of the three respondents, Abdul Karim and Salim are the sons of deceased Abdul Rahim and Smt. Channa alias Saida is his married daughter. It is not disputed that Smt. Channa was not residing with the deceased Abdul Rahim at the time of his death. The only question is as to whether the two sons, Abdul Karim and Salim, were ordinarily residing with the deceased Abdul Rahim at the time of his death. The Addl. District Judge while dealing with the question of comparative hardship, has observed that the meals of Abdul Rahim were being supplied from the house of his son who is staying separately which means that the son of Abdul Rahim was living separately from the deceased. Shri Juniwal, has urged that only Abdul Karim the elder son of Abdul Rahim, was staying separately from Abdul Rahim and his son Salim, the younger son, was residing with Abdul Rahim in the suit premises. I, however, find that in paragraph 16 of the amended written statement dated 27th March, 1976, it has been stated by the defendant Abdul Rahim that the sons of the defendant stay in a separate rented house near the suit premises and the food, after being cooked at the house where the sons are living, is sent for the defendant because the wife of the deceased has died in 1965. In the said para expression and has been used indicating that the said word has been used in a plural sense to cover both the sons of the defendant. In view of the aforesaid pleading in the written statement, it must be held that both the sons of the defendant were staying separately" from the defendant and none of them, was ordinarily residing with him at the time of his death. Since none of the respondents was ordinarily residing with the defendant Abdul Rahim at the time of his death, they cannot be regarded as a tenant for the purpose of the Act u/s 3(vii) of the Act and they are, therefore, not entitled to claim the protection of the Act.

7. Even if it be assumed that only one of the, two sons of, Abdul Rahim was staying separately and the younger" son, Salim, was residing with the defendant at the time of his death and he can be regarded as a tenant under the Act, I am of the opinion that the appellants are entitled to succeed on the ground that the premises are required by them reasonably and bona-fide for their personal necessity and the hardship of the appellants would be. greater as compared to that of the respondents. In this connection it may be stated that in *Babu Ram v. Narayan Das* (supra) the plaintiff was living in a separate house and was paying Rs. 13/8/per month as rent and he had purchased the suit property for his occupation and that the defendant was paying only Rs. 3/8/ per month rent for the suit property. This Court held that if the plaintiff had purchased the house for his own use and if he wants to save Rs. 9/8/, it cannot be said that he does not require it reasonably and bonafide. In *Heera Lal v. Panna Lal* (supra) it was found that the plaintiff was admittedly occupying a shop on rent for his business and it

was held that the requirement of the plaintiff for his own shop could not be said to be unreasonable and mala fide. In *Om Prakash v. Bhagwan Das* (supra) the Supreme Court has observed that since the appellant was living in rented premises, there was no reason as to why he should be deprived of benefit of enjoyment of his own property. In *Gopal Rao Shidaji Shedge v. Kashappa Chandrasekhar Telsang* (supra), it has been held that if the owner of a house desires to reside therein, one need not look upon that desire as inspired by any dishonest motive but that on the contrary it is most natural human desire to reside in one's own house and that therefore in natural circumstances the court may proceed upon the assumption that such a desire is an honest or bona fide desire. No material has been placed on record in the present case which may suggest that the desire of the plaintiff to live in her own house was not an honest or a bona fide desire. In the circumstances, I am unable to agree with the view of the learned Addl. District Judge that the premises are not required by the plaintiff reasonably and bona fide for her personal occupation.

8. As regards comparative hardship, it may be stated that the only reason that has been given by the Addl. District Judge for holding that greater hardship would be caused to the defendant as compared to the plaintiff is that the wife of the defendant has died and he is living alone and his meals are being supplied from the house of his son who is living nearby. In view of the death of the defendant, Abdul Rahim, the said reason has disappeared and in the circumstances it cannot be said that as compared to the appellants greater hardship would be caused to the respondents in the event of decree for eviction being passed against them. For the reasons aforesaid the judgment and decree of the Addl. District Judge cannot be upheld and must be set aside.

9. The appeal is therefore, allowed and the judgment and decree of the Addl. District Judge No. 6, Jaipur, dated 5th February, 1979 is set aside and the judgment and decree passed by the munsif and Judicial Magistrate, Jaipur dated 3rd May 1977 in Civil Suit No. 2/72 is restored. The parties are left to bear their own costs. The respondent is given three months time to vacate the suit premises.