
(1994) 02 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 3 of 1994

Moti Chand Sukh Lal Kothari

APPELLANT

Vs

Kamla Devi Khandelwal

RESPONDENT

Date of Decision : 21-02-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (1994) 2 WLN 33

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—This appeal is against the order dated December 16, 1993 by which the appellants-plaintiffs application under Order 39 Rule 1 and 2 CPC for restraining the defendant-respondent No. 1 Smt. Kamla Devi from executing the decree passed in favour of the defendant No. 1 Smt. Kamla Devi and against defendant No. 2 Sukh Lal Kothari on November 26, 1987 for eviction from the suit shop.

2. Brief facts necessary for the present purpose may be noticed: The suit shop is situated at Udaipur which belongs to defendant No. 1 Smt. Kamla Devi. The shop was taken on rent by Sukh Lal defendant No. 2 on May 1, 1969. Thereafter on May 15, 1978, the landlord filed a suit for eviction against Sukh Lal inter alia on the ground that the suit shop is required reasonably and bonafide for occupation by the landlord's son. After filing the written statements in the former suit, the parties arrived at the settlement and in terms of settlement, decree was passed on November 26, 1987 and six years time was granted to the judgment-debtor Sukh Lal for vacating the suit premises which period expired on November 26, 1993.

3. On December 9, 1993, the present plaintiffs-appellants M/s Moti Chand Sukh Lal Kothari, a registered partnership firm, Moti Lal Kothari son of Sukh Lal Kothari

and Smt. Priya Kothari W/o Shri Ashok Kumar Kothari, filed a suit for declaration that it was not Sukh Lal Kothari but the partnership Firm M/s Moti Chand Sukh Lal Kothari was the tenant of Smt. Kamla Devi. A compromise decree passed by the Court in the previous suit is not binding on them and they cannot be evicted in execution of the said decree. An application under Order 39 Rule 1 and 2 CPC was also moved but the said application has been rejected by the trial Court.

4. The further facts which have been noticed by the trial Court from the pleadings of the parties are that Firm M/s. Moti Chand Sukh Lal Kothari came into existence for the first time on July 8, 1973, which was registered on April 10, 1974. The partnership constituted of Sukh Lal Kothari the judgment-debtor, Madan Lal Kothari and Smt. Priya Kothari son and daughter in law respectively the judgment-debtor Sukh Lal Kothari. Thus the suit shop was never let out to the Firm by Smt. Kamla Devi, but it was in the tenancy of judgment-debtor who has started using the suit shop for the business of Firm of which he was also a partner.

5. The claim of the plaintiffs to independent tenancy claimed in their favour is founded on the averments that the Firm is paying the rent to the landlord.

6. In the aforesaid facts and circumstances of the case, in my opinion, the trial Court has committed no error in rejecting the application under Order 39 Rule 1 and 2 CPC.

7. From the undisputed facts it is clear that original tenancy stood in favour of Sukh Lal Kothari and that tenancy never came to an end. The mere fact that during the currency of tenancy, defendant Sukh Lal started doing his business, by taking some other persons as partners, as such partnership Firm does not alter the character and status of Sukh Lal Kothari as tenant and nor does it vest the registered Firm with the status of tenant of Smt. Kamla Devi, there being no privity of contract between the landlord and the Firm. Obviously the Firm was in possession of the suit shop for and on behalf of Sukh Lal Kothari alone, who was having the interest in the suit shop as tenant of Smt. Kamla Devi and was also a partner of the Firm.

8. Thus there being no prima facie case in favour of the plaintiff, the trial court has rightly rejected the application under Order 39 Rule 1 and 2 CPC. In that view of the matter, I find no force in this appeal and the same is hereby dismissed.

9. Mr. Shishodia, learned Counsel for the appellants submits that appellants may be given sometime to surrender the possession of suit shop to the decree-holder respondent No. 1 Smt. Kamla Devi.

10. In the facts and circumstances of the case, the appellants are given time upto April 30, 1994 to vacate the suit shop until then the execution proceedings shall not be carried out. However, it will be subject to the plaintiffs-appellants furnishing an undertaking before the trial Court within three weeks from today

that possession of the suit shop shall be surrendered to the decree-holder Smt. Kamla Devi on or before April 30, 1994 and they shall not part with the possession of the suit shop in any manner in favour of any one else. Rent due, if any, shall be paid to the respondent No. 1 Smt. Kamla Devi within fifteen days.