
(2012) 10 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Second Appeal No. 59 of 1994

Moti Ram Driver

APPELLANT

Vs

Mahesh Jaju

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2013) 1 RCR(Rent) 539

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : S.G. Ojha, for the Appellant;

Judgement

Vineet Kothari, J.—The defendant-tenant, Moti Ram Driver s/o Jeeraj Bhat, resident of Nohar has filed the present second appeal against the respondent-plaintiff-landlord, Mahesh s/o Kishanlal Jaju u/s 100 CPC in this Court on 08.02.1994 aggrieved by the judgment and eviction decree passed against him by the learned appellate court below of learned Additional District Judge, Nohar in Appeal No. 15/91 - Mahesh s/o Kishanlal v. Moti Ram Driver s/o Jesraj Bhat reversing the judgment and decree dated 30.03.1991 by the learned trial court of Munsif and Judicial Magistrate, I Class, Nohar dismissing the eviction Civil Original Suit No. 88/81 - Mahesh s/o Kishanlal Jajoo v. Moti Ram Driver s/o Jesraj Bhat. While admitting the present second appeal, a coordinate Bench of this Court framed the following substantial question of law for consideration by this Court on 22.02.1994 :

Whether requirement pleaded by the plaintiff for the suit premises namely for making it available to the doctor employed at Jaju Charitable Trust for his residence can legally be construed as requirement for public purpose or philanthropic purpose by the landlord within the meaning of Section 13(1)(h) of the Rajasthan Premises (Control of Rent and Eviction), Act, 1950 ?

2. Despite service of notice, no body has appeared on behalf of the plaintiff-

landlord in the present second appeal and, therefore, the arguments of learned counsel for the appellant-defendant-tenant, Mr. S.G. Ojha were heard ex parte.

3. The learned appellate court below has given the eviction decree in respect of the suit premises-a small residential house situated in Nohar on the grounds of bonafide necessity of the landlord, which needed the suit premises for providing residential accommodation to the Doctor on duty, who was to serve in the Charitable Hospital, set up by the family Trust known as M/s. Jajoo Charitable Trust, Station Road, Nohar, where the medical aid was to be provided to the various patients.

4. The landlord set up the case that since Nohar is a small town and no suitable accommodation is available for providing accommodation to the Doctor to be employed by them for such Charitable Trust, they needed the suit house bonafide and reasonably for the purpose of their family trust and its charitable cause, which would fall u/s 13(1)(h) of the Act of 1950.

5. After taking the evidence on record, the trial court dismissed the suit No. 88/81 - Mahesh v. Motiram filed by the plaintiff-landlord on 30.03.1981, however, the Appellate Court reversing the said decree, allowed the appeal of the plaintiff-landlord No. 15/91 - Mahesh v. Moti Ram Driver on 10.01.1994 and granted the eviction decree.

6. Having heard learned counsel appearing for the defendant-tenant, Mr. S.G. Ojha, this Court finds that the bonafide need was properly established before the courts below by the plaintiff-landlord, namely, to provide the residential accommodation to the Doctor employed for lending services in the Charitable Hospital set up by the family members of the plaintiffs family known as M/s. Jajoo Charitable Trust and the same would squarely fall within the ambit and scope of Section 13(1)(h) of the Rajasthan Rent Control Act, 1950, which is reproduced below :

Section 13. Eviction of tenants :

(a)to(g)....

(h) that the premises are required reasonably and bonafide by the landlord :-

(i) for the use of occupation of himself, or his family; or

(ii) for the use or occupation of any person for whose benefit the premises are held; or

(iii) for a public purpose; or

(iv) for philanthropic use;

7. The setting up of the Charitable Hospital was undoubtedly a public purpose and a philanthropic activity to be carried on by the Charitable Trust set up by the plaintiff-landlord family and the bonafide need for providing the accommodation to the Doctor to be employed for the said purpose could not be said to be a whim

or desire on the part of the landlord and the same was established to be a bonafide and reasonable need by adducing the evidence. The learned trial court had wrongly dis-believed the same and on the assumed ground that alternative accommodation could be provided to such Doctor, the learned trial Judge refused to grant the eviction decree. The well settled law in this regard is that the landlord, who is the best judge for adjustment of his personal or business needs and the tenant cannot dictate terms in this regard. Reliance can be placed in this regard for this purpose.

8. 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 catenae 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.

9. In the case of Denzil Najrath v. LR's of Balwant Singh & 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 plaintiffs 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 u/s 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.

10. In the case of G.C. Kapoor Vs. Nand Kumar Bhasin and Others, , it has been held by the Hon"ble Supreme Court as under :-

9. It is settled position of law that bona fide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish.

11. In Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and Another, , the Hon"ble Supreme Court while considering the bonafide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to be prove it but there is no warrant for presuming that his need is not bonafide. It was also held that while deciding this question, court would look into the broad aspects and if the court feels any doubt about bonafide requirement, it is for the landlord to clear such doubt.

12. Consequently, this Court is of the considered opinion that the learned appellate court below was justified in reversing the judgment and decree of the learned trial court and was right in granting the eviction decree in favour of the landlord and against the defendant-tenant. The substantial question of law framed above, therefore, is liable to be answered in favour of the plaintiff-landlord and against the appellant-defendant-tenant. The same is accordingly so answered.

13. Consequently, the appeal of the defendant-tenant is liable to be dismissed. The same is accordingly dismissed with no order as to costs. The appellant-defendant-tenant shall hand over the peaceful and vacant possession of the suit premises to the respondent-plaintiff (landlord) within a period of six months from today and shall pay rent/mesne profit @ Rs. 1,000/- per month commencing from October, 2012 and will further continue to pay the mesne profits each month by 15th day of the next succeeding month or in advance to the appellants-plaintiffs till the vacant possession is handed over to the plaintiffs-appellants and in case there is any default in payment of mesne profit, the period of six months for eviction shall stand reduced and the decree of eviction would become executable forthwith. The appellant-defendant-tenant shall also clear all the arrears of the rent or mesne within three months from today, otherwise the amount shall bear interest @ 9% and executing Court may quantify such amount and recover the same as a money decree. The appellant-defendant-tenant shall also 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 appellant-defendant 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 premises is not handed over or rent or mesne profits are not paid to the respondent-plaintiff-landlord within a period of six months from today, besides expeditious execution of the decree in normal course, the respondent-plaintiff shall also be entitled to invoke the contempt jurisdiction of this Court. Copy of this judgment be sent to the courts below and parties concerned forthwith.