
(2010) 07 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Second Appeal No. 148 of 1993

Radhey Shyam Bansal

APPELLANT

Vs

Govind Lal Sharma (since deceased) and Others

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Rajasthan Rent Control Act, 2001 — Section 14, 14(2)

Citation : (2011) 2 RCR(Rent) 146 : (2010) 4 RLW 3246

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Judgement

Mahesh Bhagwati, J.—Challenge in this appeal is to the judgment and decree dated 17th March, 1993 passed by Additional District Judge, No. 1, Ajmer, who reversed the judgment and decree dated 15th September, 1987 passed in Civil Suit No. 83./80 by Munsif Magistrate, Nasirabad and allowed the appeal of plaintiff-respondent decreeing the suit in his favour and against the appellant-defendant.

2. Skipping unnecessary details, the facts of the suit, in nub, are stated thus:

The plaintiff-respondent claiming to be the owner of the suit premises, sought eviction of the appellant-defendant therefrom, on the ground of his personal bona fide need. The suit premises comprises of two rooms etc. The rent of the suit premises is Rs. 25/- per month. The averment of the respondent-plaintiff is that he has been living in a rented house along with his wife, one daughter; studying in B.A. First Year, two sons; studying in x and VIII standard and his brother Om Prakash, who got recently married. The plaintiff also alleged that one room on first floor in the suit premises was in his possession but the appellant-defendant broke the lock and encroached upon that room. He further alleged that the appellant-defendant has not been paying the rent also, thus, committing default in payment of rent.

3. The appellant defendant denied all the allegations and stated them to be

untrue. He submitted that he had been in possession of the suit premises for the last 4-5 years and had been regularly paying its rent. He never committed any default in payment of rent. So far as the story of encroachment is concerned, the appellant defendant called it to be concocted one, which was baseless. With regard to the bona fide necessity of the suit premises for living, the defendant-appellant submitted that his brother Om Prakash was in the employment of Rajasthan State Road Transport Corporation at Ajmer and he was living at Ajmer only. The appellant himself had a large family and in case, he was evicted from the suit premises, he would suffer comparatively more hardships than that of the plaintiff.

4. On the basis of pleadings of the parties, the learned trial Court framed six issues for determination. The respondent-plaintiff examined himself and PW.2 Suresh Mal in order to further its version, whereas the appellant-defendant examined none else except himself. On the completion of trial, the learned Munsif Magistrate, Nasirabad dismissed the suit of eviction. Aggrieved with the judgment of trial Court, the respondent-plaintiff preferred an appeal, which came to be adjudicated by Additional District Judge, No. 1, Ajmer on 17th March, 1993, whereby the learned Appellate Court reversed the finding of the learned trial court and decreed the suit of eviction in favour of plaintiff-respondent. Albeit, the appellant-defendant was declared to be defaulter in payment of rent but being first defaulter and the arrears of rent were paid on the first day of hearing by him, the ground of default in payment of rent could not be the basis of eviction. Feeling aggrieved with the judgment of first Appellate Court, the appellant-defendant has assailed the impugned judgment on the following grounds:

- i. That the learned trial Court has given a clear and cogent finding that the plaintiffs brother Om Prakash has been residing at Ajmer at his own house, where he has been an employee in Roadways.
- ii. That the plaintiff has not produced Om Prakash in the witness box, as such the house is not required for the use and occupation of Om Prakash.
- iii. That the learned trial Court further has given finding that the house consisting of two rooms and one shop, which was earlier on rent with Chhoti Maalan, has been lying vacant for the last 4-5 years and DW-1 defendant has not been cross-examined in respect of the premises lying vacant, thus, evinced the fact that the plaintiff-respondent was not in bona fide need of disputed suit premises.
- iv. That the learned Appellate Court has reversed the finding of the learned trial Court without assigning any satisfactory and cogent reason. The Appellate Court even has not considered the fact of vacant premises of Chhoti Maalan.
- v. The learned Appellate Court has not considered the fact that the plaintiff-respondent has been living comfortably in the rented house and he has not been utilizing his own premises, which was lying vacant, thus has erred in reversing the finding of the trial Court and has wrongly held that the plaintiff was in bona

bona fide personal need of the suit premises.

(vi) That the fact of comparative hardship has not properly dealt with.

5. Heard learned Counsel for the parties and carefully perused the judgments rendered by the courts below.

6. It is an admitted fact that at the time of filing the suit, the plaintiff-respondent was himself living along with the members of his family in a rented house. It is also an admitted fact that the plaintiff-respondent was living in the rented house along with his wife, one daughter, two sons and one brother Om Prakash, who got recently married. The learned trial Court, while deciding the issue of bona fide personal need, is found to have concentrated on the fact of living of Om Prakash with his brother, plaintiff Govind Lal. He critically examined the evidence and observed that Om Prakash was not produced in the witness box; plaintiff did not prove, as to whether Om Prakash was everyday coming to Nasirabad back from Ajmer, as he was posted in Roadways; that whether he used to raise the house rent from the department etc. The learned trial Court totally ignored the fact of wife, daughter and two sons living with the plaintiff. The children were everyday growing and they undeniably and undisputably needed more accommodation. The plaintiff-respondent is said to have one more house at Nasirabad, which was vacated by Chhoti Maalan and had been lying vacant for the last 4-5 years, at the time of filing the suit. Albeit, the appellant-defendant made a mention of this fact in his statement before the learned trial Court but the defendant himself did not put any question with regard to this vacant house to the plaintiff-respondent PW.1 Govind Lal. What has emerged from the evidence available on record is that the appellant-defendant failed to prove that there was any other house of the plaintiff at Nasirabad, which had been lying vacant for the last 4-5 years, as it is such a fact, which was asserted by the appellant-defendant and the onus to prove this fact was on him only.

7. Secondly, the non-examination of Om Prakash before the learned trial Court does not at all adversely influence the ground of bona fide necessity of the plaintiff, for the simple reason that it was the plaintiff who was in bona fide need of the suit premises, for the use and occupation for himself and for his family.

8. In the instant case, the brother of the landlord was living with him but the landlord was living with his wife and three children also. The family of the landlord did not comprise of merely landlord and his brother only, but it comprised of landlord himself, his wife, daughter and two sons. Apart them, Om Prakash was also living with him. Thus, the fact of non-examination of Om Prakash or his place of work being at Ajmer in Roadways Department or his living in a house situated at Ajmer or his coming and going from Nasirabad to Ajmer everyday or staying at Ajmer only do not influence the ground of bona fide personal necessity of the landlord adversely at all.

9. Learned Counsel for the appellant took me through the judgment of the learned trial Court, impugned judgment of the learned Appellate Court and the

evidence adduced by both the parties including other relevant material and canvassed that the finding arrived at by the learned trial court with regard to the bona fide necessity of suit premises of the plaintiff-respondent was more tangible and cogent, which has been erringly reversed by the learned Appellate Court sans assigning any satisfactory reason. The arguments advanced by the learned Counsel for the appellant is found to be devoid of force and not liable to be sustained. Learned Appellate Court is found to have critically examined and appreciated the evidence of the witnesses and material, in its right perspective. The judgment of the learned Appellate Court is further found to be just and proper, whereas, the judgment of the learned trial Court seems to be perverse and caprice, based on surmises and conjunctures.

10. Learned Appellate Court inferred that the plaintiff-respondent was in reasonable and bona fide need of the suit premises for the use and occupation for himself and for his family. The finding with regard to reasonable and bona fide necessity of suit premises arrived at by the learned Appellate Court is cogent and based on sound judicious reasoning, with which I fully concur.

11. The appellant, in his memo of appeal, formulated alia the following substantial questions of law, for its determination:

Whether decision of the learned Appellate Court is vitiated on account of non-consideration of competitive hard-ship on the ground that the provisions of Section 14(2) were not applicable at Nasirabad at the relevant time?

12. Learned Appellate Court has categorically stated in Para-16 of the impugned judgment that the suit was filed by the plaintiff in the year 1980 and Section 14 of the Rajasthan Rent Control Act came into force at Nasirabad thereafter. Learned Appellate Court did not deem it proper to adjudicate this issue in the light of the judgment pronounced in case of *Devi Lal v. Prem Chand* reported in 1987 RLR 785. I agree with the finding of the learned Appellate Court and endorse the view that the question of comparative hardship was not required to be adjudicated, as the provisions of Section 14 of Rent Control Act were not in force at town Nasirabad.

13. In the ultimate analysis, what has emerged in the facts and circumstances of the case is that the plaintiff-respondent himself has admittedly been living in a rented house and he has succeeded to prove his reasonable and bona fide necessity of the suit premises for his use and occupation for himself and for his family. Learned Counsel for the appellant endeavoured to highlight the contradictions emerging on record with regard to difference of opinion and incompatibility between wife of landlord and wife of his brother Om Prakash and further, insisted upon that the plaintiff has suppressed the truth before the court but these minor contradictions to my view are easily reconcilable and they do not make the whole pleadings of the plaintiff untrue.

14. The appellant has also brought on record the subsequent events occurring in the instant case. He has stated that the plaintiff-respondent Govind Lal has

expired on 31st December, 1999 and his son Dilip Kumar is owning him own house and has been running an Auto Parts Shop at Nasirabad. He has also been owning another house at Nasirabad, which he acquired from Housing Board. The widow of Govind Lal, Smt. Rameshwari Bai has been living with his son Dilip Kumar. His another son Shital Kumar is a Teacher at Ajmer and owing his own house. Govind Lal's daughter Sudha Sharma is married and has been living with her husband at Ajmer. Om Prakash has also been living at Ajmer since long and serving in the Mechanical Department of Roadways. The appellant has prayed this Court to consider these subsequent events while deciding the instant appeal. The plaintiff-respondent has admitted that the plaintiff Govind Lal expired on 31st December, 1999 but besides him, the suit premises was the need of other members of the family also.

15. In reply, he has denied the fact of Smt. Rameshwari Bai living with his son Dilip Kumar. In contra, it has been stated that she has been living in the rented premises belonging to Parmarth Vaishya Osdhalya, Nasirabad and the rent of these premises is Rs. 125/- per month. Dilip Kumar has been carrying on his business of Auto Parts Shop at Nasirabad. He is married and his family comprises of his wife and two sons, aged 9 and 4 years. They all live with his mother on account of there being a large family, he has purchased a small house but that is also not enough to accommodate all of them. The plaintiff-respondent inter alia in additional plea has also stated that the appellant-defendant himself has purchased a house on 11th June, 2008 in the name of his wife Smt. Vimla Bansal from Mohan Das and Ramdas sons of Shri Natharmal, residents of Babu Mohalla, Nasirabad for a sale consideration of Rs. 4 lakhs. He has annexed the certified copy of the sale-deed as also the rent receipt in support of his reply.

16. Having reflected over these subsequent events highlighted by the appellant-defendant and the reply of the plaintiff-respondent and carefully scanned the entire material on record, I am of the opinion that at the time to filing the suit, the plaintiff had a reasonable and bona fide necessity over the suit premises for the use and occupation for himself and for his family and he has succeeded in establishing his case. Weighing the subsequent events highlighted by the appellant and the reply of the respondent-plaintiff, it is found that these subsequent events do not render much assistance to him.

17. In the ultimate analysis, it is relevant to record that in the case of the suit premises required for the personal use by landlord or for his family, only thing necessary for a landlord to establish is that he needs it bona fide and reasonably. In the instant case, the ground of bona fide necessity of the plaintiff-respondent with regard to the suit premises is found to be fully proved. The impugned judgment of the learned Appellate Court in this regard is perfectly just and proper, with which I am in full unison and the same warrants no intervention.

18. For the reasons aforestated, there being no merit in the second appeal, it fails and the second appeal filed by the appellant-defendant Radhey Shyam Bansal stands dismissed. The impugned judgment dated 17th March, 1993

passed by the learned Additional District Judge, No. 1, Ajmer in Original Civil Appeal No. 84/1987 is confirmed.

19. However, considering the facts and circumstances of the case, the appellant is directed to vacate the suit premises by 31st October, 2010 subject to filing usual undertaking before this Court within a period of three weeks from today.

20. No order as to costs.