
(2011) 05 RAJ CK 0055

In the Rajasthan High Court

Case No : Civil Second Appeal No. 141 of 2011

Rajasthan Engineering Works and Another

APPELLANT

Vs

L. Rs. of Late Sh. Rajmal and Others

RESPONDENT

Date of Decision : 26-05-2011

Acts Referred:

Citation : AIR 2011 Raj 114 : (2011) 2 RCR(Rent) 618 : (2011) 3 RLW 2180

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—This second appeal has been filed by the Defendant -tenant aggrieved by the concurrent findings of eviction on the ground of bonafide necessity of landlord and subletting.

2. Without challenging these findings of facts, which resulted in eviction decree against the Defendant - tenant, the only point pressed before this Court for admission of the present second appeal is that the suit property; a shop situated at Bhilwara had been partitioned and therefore, the suit for eviction could not be maintained in respect of partitioned suit premises by one of the co-sharers only, namely, Arun Kumar for whose bonafide need, the suit for eviction was decreed.

3. The learned Counsel for the Defendants - Appellants through Sh. L.R. Mehta, Advocate relying upon the judgment of the Hon"ble Supreme Court in the case of Kalooram Govindram Vs. Commissioner of Incometax, Madhya Pradesh, Nagpur, urged that in view of admission in the plaint itself that the suit property had been partitioned, for share of other co-parceners, the present suit could not be maintained by Arun Kumar one of the L. Rs. of original Plaintiff Raj Mal S/O Indra Mal Bardia. The issue No. 1(Ka) in this regard framed as additional issue has been decided by both the courts below against the Defendant and the Courts below have held that issue of title in eviction suit is not relevant and even if there is partition of suit property, the shop in question, one of the co-sharers could

maintain the suit particularly when no other co-sharers have raised any objection in this regard and tenancy cannot be split up upon such partition and therefore, the eviction decree on the aforesaid ground of bonafide necessity and subletting was granted. The first appellate court also upheld the same vide para 49 of the impugned judgment of the first appellate Court dtd.24.3.2011 in which the appellate Court has held that no evidence was led by the Plaintiff about the said partition, which was admittedly oral and such partition made on 1.11.1980 was not by metes and bounds and therefore, upon the death of original landlord Sh. Raj Mal, his all L. Rs. were taken on record and thus, Arun Kumar alone was not pursuing the suit for eviction. Moreover no objection was raised on behalf of any of the co-sharers about eviction decree being granted for claimed bonafide necessity of one of the L. Rs., namely, Arun Kumar. Mr. L.R. Mehta, Sr. Advocate, therefore, urged that substantial question of law arises in the present second appeal.

4. On the other hand, Mr. Pankaj Sharma, learned Counsel appearing for the Respondents - Plaintiffs landlord relying upon the decision of Hon''ble Supreme Court in the case of Sk. Sattar Sk. Mohd. Choudhari Vs. Gundappa AMabadas Bukate, and Mohinder Prasad Jain Vs. Manohar Lal Jain, submitted that since partition had not taken place by metes and bounds and from the statement of Arun Kumar, it was clear that even if such partition had taken place, the shop in question for which eviction was sought, fell in the share of said Arun Kumar only and therefore, it could not be held that the suit could not be maintained by him. Moreover he submitted that even one of the co-sharers could maintain the suit for eviction, as the question of title between landlords if it was joint Hindu family property was not the question relevant to be determined in the present eviction suit and the tenant could not claim split up of such tenancy and the eviction decree granted on the ground of personal bonafide necessity of landlord and subletting deserves to be upheld by this Court as no substantial question of law arises in the present appeal.

5. I have heard the learned Counsels for the parties and given my thoughtful consideration to the rival submissions and the judgments cited at the Bar including the statement of Arun Kumar.

6. In the case of M/s Kalooram Govindram v. Commissioner of Income Tax (supra), the Hon''ble Supreme Court dealing with the case of Income Tax Act, 1922 with regard to allowance of depreciation in the case of HUF Assessee in para 5 has held as under:

(5) The entire argument is based on a misapprehension of the scope of partition under Hindu Law. The concept involves "community of interest, unity of possession and common enjoyment". Each coparcener's right extends to the whole joint family property; though each one of them has interest in the whole family property, he has no definite share therein. Partitioning is the ascertainment of individual shares and it can be brought about by an unambiguous declaration of their intention to divide i.e., by a conscious alteration

of their status. Such a declaration brings about a division in status. At that stage, the members of an erstwhile joint family become tenants-in-common. The next step is the division by metes and bounds whereunder separate properties are allotted towards the said definite shares of the individuals. Whether the said process involves transfer or not within the meaning of the Transfer of Property Act, it certainly confers on a divided member an absolute title to a specified property, whereas before partition he had only some interest in the entire joint family property. Though in one sense his interest in the property of the larger joint family has become crystalized into a specific property, in substance, he acquires a title to a specific property.

7. The said judgment is of little assistance to the Defendants - Appellants before this Court because as observed by the learned Courts below, no such evidence of partition having taken place by metes and bounds was led before the learned trial Court and from the statement of Arun Kumar produced before this Court it is clear that the shop in question fell in his share upon oral partition in the year 1980 and therefore, for his bonafide necessity, the suit was decreed. The partition of Joint Hindu Family Property is a matter between the landlord's family and tenant cannot raise any objection in this regard. The suit for eviction can be maintained even by one of cosharer as held by the Hon"ble Supreme Court in the case of Mohinder Prasad Jain (supra). In the case of Mohinder Prasad Jain (supra), the Hon"ble Supreme Court in para 11 clearly held that the suit filed by co-owner is maintainable and it is not necessary for the co-owner to show before initiating court proceedings before the Rent Controller that he had taken option and consent of other co-owners and only in the event of co-owner objecting thereto, same may be looked into. However, no such objection has been raised in the present case. Para 11 of the said judgment of Mohinder Prasad Jain (supra) is quoted below for ready reference:

11. A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the Respondent had objected to eviction proceedings initiated by the Respondent herein. The submission of the learned Counsel for the Appellant to the effect that before initiating the proceedings, the Appellant was required to show that he had experience in running the business in Ayurvedic medicine, has to be stated to be rejected. There is no law which provides for such a pre-condition. It may be so where a licence is required for running a business, a statute may prescribe certain qualifications or preconditions without fulfilment whereof the landlord may not be able to start a business, but for running a wholesale business in Ayurvedic medicine, no qualification is prescribed. Experience in the business is not a pre-condition under any statute. Even no experience therefore may be necessary. If the Respondent has proved his bona fide requirement to evict the Appellant herein for his own purpose, this Court may not, unless an appropriate

case is made out, disturb the finding of fact arrived at by the Appellate Authority and affirmed by the High Court.

8. In the case of *Sk. Sattar Sk. Mohd. Choudhary* (supra), the Hon'ble Apex Court held that there is no right in tenant to prevent joint owners or co-lessors from partitioning the tenanted accommodation amongst others and he cannot object even if he was being dealt with by only one of them on behalf of the whole body of the lessors. From para 37 of the judgment, the relevant portion is quoted below:

A co-sharer cannot initiate action for eviction of the tenant from the portion of the tenanted accommodation nor can he sue for his part of the rent. The tenancy cannot be split up either in estate or in rent or any other obligation by unilateral act of one of the co-owners. If, however, all the co-owners or the co-lessors agree among themselves and split by partition the demised property by metes and bounds and come to have definite, positive and identifiable shares in that property, they become separate individual owners of each severed portion and can deal with that portion as also the tenant thereof as individual owner/lessor. The right of joint lessors contemplated by Section 109 comes to be possessed by each of them separately and independently. There is no right in the tenant to prevent the joint owners or co-lessors from partitioning the tenanted accommodation among themselves. Whether the premises, which is in occupation of a tenant, shall be retained jointly by all the lessors or they would partition it among themselves, is the exclusive right of the lessors to which no objection can be taken by the tenant, particularly where the tenant knew from the very beginning that the property was jointly owned by several persons and that, even if he was being dealt with by only one of them on behalf of the whole body of the lessors, he cannot object to the transfer of any portion of the property in favour of a third person by one of the owners or to the partition of the property. It will, however, be open to the tenant to show that the partition was not bona fide and was a sham transaction to overcome the rigours of Rent Control laws which protected eviction of the tenants except on specified grounds set out in the relevant statute.

9. From the aforesaid legal position and factual matrix, this Court does not find any substantial question of law to be arising in the present second appeal. Firstly, the partition by metes and bounds was not even proved by the Plaintiffs. Mere averments in the plaint is not sufficient. In the statement of Arun Kumar, it has clearly come that the shop in question fell into his share and establishing his bonafide need for said shop, the suit in question has been decreed. The findings of facts about the personal need have not been challenged by the Defendant in the present second appeal and rightly so. Right to maintain the suit by the legal representatives as co-owners also cannot be disputed by the tenant, as the question of title inter-se between the co-owners is not relevant in the eviction suit and therefore, upon death of original tenant Rajmal, the suit could be maintained by one or more of the legal representatives, all of whom were taken

on record and therefore, it cannot be said that the suit deserves to be thrown out as not maintainable. The position of law in this regard, having been clearly settled by the Hon'ble Supreme Court in the afore-quoted judgments, the question is no longer res integra, which deserves to be determined by this Court. More so, when the Courts below have held that in absence of any such evidence, the tenant could not claim split up of tenancy, therefore in the opinion of this Court, the eviction decree on the ground of bonafide necessity of landlord and subletting deserves to be upheld.

10. The present second appeal being devoid of merit is liable to be dismissed and the same is accordingly dismissed. The Appellants shall hand over peaceful and vacant possession of the suit premises to the decree holder within a period of two months from today. The Appellants will not cause any further obstruction or put anybody else in possession of the said suit shop till he hands over vacant and peaceful possession to the Respondent - decree holder. The Appellants shall also pay mesne profit @Rs. 2000/- per month from May, 2011. If the vacant and peaceful possession is not handed over to the decree holder within a period of two months, the Respondent - decree holder shall not only be entitled to execute the decree forthwith and the learned trial Court is directed to execute the said decree forthwith and secure vacant possession from anybody who is found in possession of the said suit premises and the Respondent - decree holder shall also be at liberty to approach this Court by way of contempt petition if such vacant and peaceful possession is not handed over to the Respondents or mesne profit is not paid to him within a period of two months. No order as to costs.