
(1998) 05 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil Revision No. 582 of 1995

Ratan Lal	Vs	APPELLANT
Kanhiya Lal		RESPONDENT

Date of Decision : 20-05-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1998) 3 RLW 1435

Hon'ble Judges : Pana Chand Jain, J

Bench : Single Bench

Advocate : Ravi Bhansali, for the Appellant; K.C. Samdariya, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Jain, J.—This is a revision petition u/s 115, C.P.C. filed by the defendant-petitioner feeling aggrieved by the order dated 1.5.1998 passed by the learned Civil Judge (Jr.Division), Bhilwara in Civil Original Suit No. 185/93 by which the application of the petitioner-defendant filed under Order VII, Rule 11, CPC has been dismissed.

2. The plaintiff-non-petitioner filed a suit against the defendant-petitioner with the allegations that he let out suit shop on 1.4.1985 to the defendant. The plaintiff-non-petitioner stated that he has got three sons. He has made a partition between his sons and the suit shop has come to the share of his son Padamchand. Padamchand has been residing at Ahmedabad but his family resides at Bhilwara. He also stated that he delivered possession of the suit shop to his son Padamchand. The plaintiff sought eviction of the petitioner-defendant on the ground of reasonable and bona fide necessity of his grand son Mahendra Kumar who is son of Padamchand.

3. The defendant moved an application under Order VII, Rule 11, C.P.C. and stated that since the plaintiff has divested himself of the right, title or interest in respect of the suit shop. He has got no right to file the present suit. Since

eviction of the defendant has been sought on the ground of reasonable and bona fide necessity of Mahendra Kumar s/o Padamchand, the suit ought to have been filed by Padamchand or Mahendra Kumar. The plaintiff cannot carry on the present suit. The suit filed by the plaintiff is therefore, not maintainable. The plaintiff-non-petitioner did not file any reply but stoutly contested the application filed by the petitioner. The learned trial Court vide its order dated 1.5.1995 rejected the application of the petitioner on the ground that the suit shop has been let out to the defendant-petitioner but no physical possession has been handed over by the plaintiff to his son. Hence the cause of action subsists in favour of the plaintiff.

4. I have heard learned Counsel for the petitioner and the learned Counsel for the non-petitioner.

5. Learned Counsel for the petitioner has assailed the above order on the ground that the learned trial Court failed to exercise jurisdiction vested in it. even from the admission made by the plaintiff in his plaint, the suit shop has been allotted by the plaintiff to his son Padamchand as a result of partition. The plaintiff further made a categorical averment that possession has also been handed over to Padamchand. Since the petitioner is in physical possession of the suit shop, delivery of physical possession not possible but law equally recognises delivery of symbolic possession. If reasonable and bona fide necessity is proved, it will ensure for the benefit of his son Padamchand or the grand son Mahendra Kumar. The plaintiff has got absolutely no right to carry on the above suit. Learned Counsel has cited *T. Arivandandam Vs. T.V. Satyapal and Another*, in which it has been held that if on a meaningful not formal reading of a plaint, it is found manifestly vexatious and meritless, in the sense of not disclosing a cause of action, the trial Court should exercise its power under Order VII, Rule 11, CPC. He has also referred *Sanjay Kaushish V. D.C.Kaushish*, AIR 1992 Del 118, which says that if the plaint does not disclose a cause of action, the Court can exercise the powers conferred by Order VII, Rule 11, CPC.

Learned Counsel for the non-petitioner has supported the impugned order on the ground that the defendant-petitioner is paying rent to the non-petitioner-plaintiff. He referred to para 8 of the written statement in, which the defendant has stated that he paid rent upto January 1993 to the plaintiff and got receipts from the latter. The defendant further alleged that thereafter also he paid rent for five months i.e., upto June. 1993 to the plaintiff. The defendant has not challenged the right of the plaintiff to recover rent and in fact the defendant had paid rent and the plaintiff accepted the same. Para 8 of the written statement is material for this fact. He referred to the definition of "landlord" as given in Section 3 of the Rajasthan Premises (Control of Rent and Eviction) Act. The definition as given in Section 3 of the Act is very exhaustive and brings within its ambit even a person who is receiving or entitled to receive rent of any premises whether on his own account or as an agent, trustee, guardian or receiver or any other person. In the instant case the plaintiff is claiming to be a landlord in respect of

the defendant on the strength that he is receiving rent from the defendant and the latter has been paying rent to the former as per averments made in para 8 of the written statement. Once it is held that the plaintiff is a landlord as per definition of Section 3(3) of the Act, the plaintiff will be entitled to continue the suit.

6. Learned counsel has cited Digambar Jain Mandir V. Vishnu Prasad and others, (1980 WLN 655), Mohd. Abdul Razak and others V. Sales Munnisa Sahaba, 197 RCR 593, and Stephen D'Silva Vs. Jaipur Chalchitra Pvt. Ltd.,

7. I have considered the respective contentions. First I may deal with the argument of the learned Counsel for the non-petitioner that notwithstanding the partition made by the plaintiff and allotting the suit shop to his son Padamchand, the plaintiff can carry on the suit because he is a "landlord" in respect of the suit premises. The definition of the "landlord" as given in Section 3(3) of the Act reads as follows:

"Landlord means any persons who for the time being is receiving or is entitled to receive the rent of any premises, whether on his own account or as an agent, trustee, guardian or receiver or any other person or who would so receive or be entitled to receive the rent if the premises were let to a tenant; it includes a tenant in relation to a sub-tenant."

8. There can be no dispute with regard to the contention of the learned Counsel for the non-petitioner that if the defendant has been paying rent to the plaintiff and the latter is receiving or entitled to receive the same from the former, the plaintiff will be termed as landlord within the meaning of Section 3(3) of the Act and in that capacity it can definitely be held that the plaintiff can carry on the suit against the defendant-petitioner. It can be stated that before the happening of the event of making partition by the plaintiff amongst his three sons, the plaintiff was the landlord and the defendant was the tenant. With the intervention of the above event, the suit shop has come to the share of Padamchand and he has become the owner thereof. On account of the above admission made by the plaintiff, he will stand divested of the right, title or interest of the suit shop and he will no more be a landlord of the defendant. However, as per para 8 of the written statement, the defendant has stated that the plaintiff issued receipt of the rent for the month of January, 1993. He further says that he paid rent for five months to the plaintiff.

9. The crucial question which will clinch the issues is whether after making the above partition, the defendant paid rent to the plaintiff and the latter received the same from the former. Frankly speaking there is absolutely no averment made by the plaintiff of this fact. The burden lay on the plaintiff to prove that he continues to be the landlord of the petitioner-defendant even after making partition of his property and allotting the suit shop to Padamchand. For proving this fact, the first essential condition was to make an averment of this material fact in the written statement. No such averment has been made. The payment

and acceptance of rent subsequent to the allotment of the suit shop to Padamchand has not been proved by the plaintiff. I am, therefore, unable to accede to the argument of the learned Counsel for the non-petitioner-plaintiff that the plaintiff is still the landlord in the sense that he has been recovering rent from the defendant and the latter is paying the same to the former. If this argument is not upheld, there is no other incidence to clothe the plaintiff with the right of landlord in respect of the suit shop of the defendant. The plaintiff has thus forfeited his right to continue the above suit after making partition of his property and allotting the suit shop to his son Padamchand. It was, therefore, a fit case in which the trial Court ought to have exercised its power under Order VII, Rule 11, CPC as has been held in the rulings cited by the learned Counsel for the petitioner. The case law cited by the non-petitioner does not help him. In Digambar Jain Mandir's case, the Court held that there was an absolute dedication in favour of the Mandir and under the gift-deed (Ex.3), the right to collect rent was also given to the Mandir. Hence it was held that the ownership of the premises is not a main characteristic of landlord but it is the receipt of the rent or a right to receive the rent by person is important. In Mohd.Abdul Razack's case, this Court held that one co-owner of the building is entitled to file a petition for evidence under the Act. This is not the point in controversy here.

10. For the above reasons, I accept the revision petition and allow the application filed by the petitioner under Order VII, Rule 11, CPC and hold that the plaint does not disclose a cause of action in favour of the plaintiff and the plaint is, therefore, hereby rejected. No orders as to cost.