
(1994) 03 RAJ CK 0086

In the Rajasthan High Court

Case No : Civil Revision Petition No. 506 of 1991

Smt. Pushpa Devi

APPELLANT

Vs

Ravindra Kumar and Others

RESPONDENT

Date of Decision : 03-03-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (1994) 1 WLN 567

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—This revision petition is directed against the Order dated August 28, 1991 passed by the Additional District Judge, Bikaner dismissing the petitioner's appeal against the Order dated October 16, 1990 passed by the Munsif Magistrate, Bikaner by which the application of the petitioner-plaintiff for temporary injunction for staying the execution of decree passed in favour of non-petitioners Ravindra Kumar and Shantilal against Kishan Lal in Suit No. 41/87 be stayed.

2. In previous suit instituted by Ravindra Kumar and Shantilal against Kishan Lal for evicting Kishan Lal from suit shop No. 4 situated at K.E.M. Road, Bikaner. Kishan Lal had denied the existence of tenancy between the plaintiff and himself which was evidenced by a rent note executed by Kishan Lal in 1970 and subsequently also in 1979. Kishan Lal and Hukam Chand who is the brother of Kishan Lal and husband of petitioner, both appeared in the witness box as defendant's witnesses. Kishan Lal stated that in the suit shop business is run by "Mamla Stores" but he does not know who runs it. Hukam Chand in his statement has stated that suit shop was not taken on rent by Kishan Lal. He stated that in the said shop business is run in the name of "Kumar Tailors" which is owned by his wife, present plaintiff, which shop has taken on rent from the plaintiffs. He also stated that though he has paid rent but he or his wife never

received receipts for the same. In the said suit, the court found that the execution of rent note was duly executed by Kishan Lal in favour of the plaintiffs and on that basis existence of tenancy between Kishan Lal and plaintiffs was found to be duly established. The statement of Hukam Chand husband of present plaintiff was recorded in the year 1988. After decree was passed, the present plaintiff filed a suit alleging that she is a tenant in shop No. 4 in respect of which decree has been passed in favour of Kishan Lal. It was alleged that because of enmity between Kishan Lal and herself, Kishan Lal colluded for getting the suit premises vacated from the present plaintiff. The cause of enmity was stated to be that the plaintiff refused to enter into settlement with Ravindra Kumar, Shanti Lal and Kishan Lal. She, therefore, filed a suit for declaration that the decree dated November 9, 1989 passed in the previous suit is not binding on her and prayed for the permanent injunction with the decree holder in the earlier suit be restrained from executing the decree and securing possession of the suit shop.

3. The plaintiff has also moved an application under Order 39, Rule 1 and 2, CPC for grant of temporary injunction in the suit.

4. Both the courts below have found that plaintiff has failed to prove a prima facie case in her favour. In arriving at this conclusion both the courts have placed reliance on the statement of plaintiffs husband Hukam Chand given in the earlier suit and the existence of the rent note.

5. Learned Counsel for the petitioner in this revision petition alleges that both the courts below have committed material irregularity and illegality in exercise of their jurisdiction in rejecting the plaintiffs application for temporary injunction because the courts below have not taken into consideration the relevant material placed on record in the form of rent receipts and documents disclosing that plaintiff is the owners of "Mamta Stores" since 1971.

6. Heard learned Counsel for the parties and perused the record of the case.

7. I am of the opinion that both the courts below have not committed any illegality or irregularity in arriving at their finding on the issue of prima facie case.

8. It is noticed that in the application for the temporary injunction, the plaintiff states that the shop adjacent to the shop in dispute was in the tenancy of Kishan Lal which was surrendered in the year 1977 to the decree-holder respondents Ravindra Kumar and Shanti Lal, as a result of settlement. It is pertinent to notice that for the first time, this case is now set up by the plaintiff that the defendant No. 3 Kishan Lal was a tenant in the adjacent shop and not in the shop in dispute. A case which was not set up by either her husband or Kishan Lal in the previous suit. The allegation of enmity between the plaintiff and Kishan Lal prima facie does not appear to be well founded because Hukam Chand, the husband of the plaintiff has throughout supported the case of Kishan Lal in the previous litigation. It is not the case of the plaintiff that Hukam Chand was also enmity to her interest. Hukam Chand in his statement has clearly stated that he or his wife viz. the present plaintiff did not receive any rent receipt from either of the non-

petitioners i.e. Ravindra Kumar and Shanti Lal. In the face of this categorical statement, the production of alleged rent receipts now has to be viewed cautiously. The confusion which is sought to be created by the names of "Mamta Stores" and "Kumar Tailors" also lend support to the conclusion arrived at by the courts below. Moreover the facts that the petitioner is the owner of the "Mamta Stores" docs not alter the situation that the suit shop in respect of which a rent note was executed by Kishan Lal none other than the brother of the plaintiffs husband in 1970 brought, into the existence of tenancy between Ravindra Kumar, Shanti Lal and Kishan Lal. Soon after 1971, it is alleged that Smt. Pushpa Devi started business in the name of "Mamta Stores" in the suit shop. In these circumstances, it cannot be ruled out that she as a member of the family has been inducted in the suit shop by Kishan Lal. There is nothing to suggest on record that the tenancy which came into existence in the year 1970 ever came to an end by any act of the two parties. If the said tenancy continues to exist and the plaintiff continues to do her business in the said shop being relative of the plaintiff, the two situations are not incompatible, Merely because on total appreciation of evidence, this Court can come to a different conclusion furnishes no ground for interference in revision. I, therefore, find no force in this revision petition.

9. The revision petition is rejected. There will be no order as to costs.