

Shyam Lal Vs. Ram Dev

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Court : Rajasthan Jodhpur

Decided On : Sep-22-2015

Appellant : Shyam Lal

Respondent : Ram Dev

Advocate for Def. : Mr. Sajjan Singh

Judgement :

S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 1/17 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR ::

JUDGMENT

:: S.B. Civil Second Appeal No.102/1998 Shyamlal S/o Premchand, by caste Sharma Vs. Ramdeo Kolyawat S/o Bastiram, by caste Modi Date of Judgment ::: Tuesday, 22/09/2015. PRESENT HON'BLE Dr. JUSTICE VINEET KOTHARI REPORTABLE Mr. R.K. Thanvi, Sr. Advocate with Mr. Narendra Thanvi, for the appellant/defendant. Mr. Salil Trivedi]. Mr. Sajjan Singh]:- for the respondent/plaintiff. -- BY THE COURT (ORAL):

1. The appellant/defendant/tenant has filed the present second appeal aggrieved by the reversal of dismissal of eviction suit by the first appellate court by judgment and eviction decree dated 29.01.1998 of learned Additional District Judge No.2,

Bikaner, inter-alia, on the ground of change of user and material alteration in the suit property, a shop situated at K.E.M. Road, Bikaner.

2. The learned trial court had dismissed the eviction suit returning both the findings in favour of defendant/tenant and S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 2/17 against the landlord/plaintiff on Issues No.3 and 4 in the following manner: - :

3. ..-1 " (- (- (0 - ..-1 2 (0 ..-1 ((- - (- (.-1 ((- 0 (((((- @ ((@ - (((- (- change of user S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 3/17 1988 "@ 1034 - 0 B @ - :

5. ..-1 B (- (- B B - B ..-2 (- - B - B - - B (K ..-2 @ - - B , B - @ B 0 @ " 3. The learned appellate court, however, reversed those findings in the following manner: - ... - (B 0 (@ 1 - B P - " , 0(- (" S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 4/17 . " ? . , T - ((T(U ((- , - " (B V W - K 0 - - 0 - (, - P (... 1988 1034 - @ - " B , (- - .5- U - T(- B U - (B - ((B S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 5/17 P - (((- B - - B - ((, @ ((- @ T @ 0(- (@ @ 0@ @ @ - - " 4. Aggrieved by the aforesaid judgment and eviction decree, the defendant/tenant approached this Court by way of present second appeal, which was admitted by a coordinate bench of this court on 27.03.1998 framing the following substantial questions of law for consideration by this Court, and the eviction of the tenant was stayed by this Court, which stay order is continuing throughout: - (i) Whether the finding of the appellate court under Issue No.3 against the appellant about the change of the use of the suit shop from the purpose it was let out to him is bad in law and contrary to the provisions contained in S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 6/17 Sec. 13 (1) (d) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950?. (ii) Whether the findings of the appellate court under Issue No.5 regarding material alteration is perverse and against law and the provisions contained in Sec. 13 (1) (c) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950?.

5. Mr. R.K. Thanvi, Sr. Advocate assisted by Mr. Narendra Thanvi, learned counsel appearing on behalf of appellant/defendant relying upon the judgment of this Court in the case of Smt. Supyar Bai Vs. Smt. Gordhan Bai through her LR's reported in 1992 (1) WLC (Raj.) 590 submitted that both the substantial questions of law deserve to be answered in favour of defendant/tenant, inasmuch as the learned trial court was perfectly justified on the basis of evidence led by the parties that neither the ground of change of user is made out by the plaintiff/landlord nor the ground of material alterations was established by the plaintiff, however, the appellate court has wrongly held both the grounds as established. He submitted that it is true that in the rent-agreement originally entered into between the parties, the nature of business was stated to be of stationery and sale of tea, but later on due to circumstances, the defendant/tenant commenced business of selling clothes in the said suit shop; and later on even added one STD/PCO in a portion of said suit shop to make his livelihood. For carrying on S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 7/17 the business of clothes, he even put up some racks of stone slabs for facilitating such business, which does not come within the definition of material alteration. so as to result in any diminution of the value of the suit property and, therefore, the eviction decree could not be granted by the lower appellate court.

6. He also submitted that Clause 13 (l) (c) and (d) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (for brevity, hereinafter referred to as 'Act of 1950'), which are applicable in the present case, does not permit eviction of the tenant merely by change of business unless such change or the inconsistency. result in a serious prejudice to the landlord and so adversely and substantially affects his interest in the suit property, which could result in the eviction of the tenant. He also relied upon the judgment of Hon'ble Supreme Court in the case of Mohan Lal Vs. Jai Bhagwan reported in AIR 1988 SC1034 which judgment was also relied upon by the learned counsel for the respondent/plaintiff, and urged that mere change of business, unless it caused prejudice to the landlord, cannot result in the eviction decree under the provisions of the Act of 1950.

7. On the other hand, Mr. Salil Trivedi and Mr. Sajjan Singh, learned counsel for the respondent/plaintiff emphatically urged that in view of admitted position of the

rent agreement S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 8/17 that the tenancy was created for doing a particular business of sale of stationery and tea, and any change of business without permission and consent of the landlord would result in eviction decree. He urged that third part of Clause 13 (I) (d), which are mutually exclusive clauses and the present case falls in the (ii) Clause of Clause (d) and the inconsistency of starting the new business, is admitted by the defendant/tenant in the present case and, therefore, the eviction decree given by the first appellate court does not require any interference by this Court. He also submitted that putting up of stone slabs without the consent and prior permission of the landlord/plaintiff, falls within the mischief of Clause 13 (I) (c) and thus both the grounds for eviction decree deserve to be sustained, while answering the substantial questions of law in favour of landlord/plaintiff/ respondent.

8. I have heard the learned counsel for the parties at length and perused the orders passed by two courts below and the judgments cited at Bar.

9. In the considered opinion of this Court, the present second appeal of the appellant/defendant/tenant deserves to be allowed. The reasons are as follows.

10. Firstly, taking up the ground of material alterations., it may be noted that Clause (c) of Section 13 (I) of the Act of 1950, if in the opinion of the Court, any construction S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 9/17 in the suit premises has materially altered the premises, or which is likely diminish the value thereof, if such construction is made without permission of the landlord, then it may amount to a ground for eviction under Clause 13 (I) (c) of the Act of 1950. In the present case, what the defendant/tenant has done, admittedly, is that upon the change of nature of business from selling of stationery and tea to that of selling of clothes and to facilitate his business, he even put up some stone slabs around the walls of the suit shop to put the bundles of the cloths for stocking them etc. to carry out that business. Though the words 'materially altered the premises' are not be read on conjunction with the word likely to diminution value thereof., since these two clauses are separated by word Or., and not joined by words and., in clause (c), still

the plaintiff in the present case, has failed to establish, in the opinion of this Court, that putting up of stone slabs to facilitate the cloth business of the defendant/tenant had so materially altered the nature of the suit premises itself which if done without the permission and consent of the landlord, would prejudice to him. There is no such pleading on the part of the plaintiff/landlord that such material alteration has diminished the value of the suit premises at all. The words 'materially altered' have to be construed in the background of suit premises, nature of business and the place where the suit premises are situated. S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 10/17 11. In the present case, both the grounds of eviction sought to be established and which have found favour with the first appellate court as against the trial court, are inter-twined and inter-linked. The change of business from the business of stationery and tea to clothes, in the opinion of this Court, does not cause any prejudice to the plaintiff/landlord. The grounds specified in Section 13 is an exception to the general law enacted in the Rent Control Act of 1950, which provides for the protection of the tenant who cannot be thrown out of the premises, unless specific and enumerated grounds are established and the court arrived at a satisfaction that such grounds are duly provided with the evidence, have to be properly established by the plaintiff/landlord. Mere departure to a new line of business or change therein may not have any effect on the landlord at all, so long as the defendant/tenant continues to pay the stipulated rent to the landlord. But, of course, if such change of business causes any prejudice or affects the interest of the landlord, adversely or substantially, he can plead before the Court that such change of business without his consent, was not permissible and, therefore, it will furnish the ground of eviction under Clause (d) of Section 13 (I) of the Act of 1950.

12. The Hon'ble Supreme Court in the case of Mohan Lal Vs. Jai Bhagwan (supra) clearly held in para 9 that S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 11/17 meaning of expression should be found in the felt necessities of time. The Hon'ble Supreme Court followed the observations of Lord Diplock in Duport Steels Ltd. vs. Sirs, (1980-1 All ER529at 541). The relevant Para/s 8 and 9 of the aforesaid Supreme Court judgment are quoted herein below for ready reference: -

8. Our attention was drawn to the observations of Lord Diplock in *Duport Steels Ltd. and others v. Sirs*, (1980-1 All E.R. 529 at 541). That was a decision in respect of the Trade Disputes Act 1906. Lord Diplock said: My Lords, at a time when more and more cases involving the application of legislation which gives effect to policies that are the subject of bitter public and parliamentary controversy, it cannot be too strongly emphasised that the British Constitution, though largely unwritten, is firmly based on the separation of powers: Parliament makes the laws, the judiciary interpret them. When Parliament legislates to remedy what the majority of its members at the time perceive to be a defect or a lacuna in the existing law (whether it be the written law enacted by existing statutes or the unwritten common law as it has been expounded by the judges in decided cases), the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, S.B. Civil Second Appeal No.102/1998 *Shyamlal Vs. Ramdeo Kolayat* Judgment, Tuesday, 22/09/2015. 12/17 and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our constitution it is Parliament's opinion on these matters that is paramount.. 9. While respectfully agreeing with the said observations of Lord Diplock, that the Parliament legislates to remedy and the judiciary interpret them, it has to be born in mind that the meaning of the expression must be found in the felt necessities of time. In the background of the purpose of rent legislation and inasmuch as in the instant case the change of the user would not cause any mischief or detriment or impairment of the shop in question and in one sense could be called an allied business in the expanding concept of departmental stores, in our opinion, in this case there was no change of user which attracts the mischief of S. 13 (2) (ii) (b) of the Act. The High Court, therefore, was in error.

. S.B. Civil Second Appeal No.102/1998 *Shyamlal Vs. Ramdeo Kolayat* Judgment, Tuesday, 22/09/2015. 13/17 13. A coordinate bench of this Court in the case of

Smt. Supyar Bai Vs. Smt. Gordhan Bai through her LR's (supra) almost in same spirit, in Para 33 held as under: -

33. It is clear from the pleadings and the evidence of the landlord and the findings recorded by the Courts below that there is neither any pleading nor any evidence that any foundation has been dug up for raising the wall. There is no pleading regarding change in the form or structure of the tenanted premises. The roof of the construction has been held by the Courts to be of wooden planks which have been placed on the top of the wall. Even from the perusal of the Exhibits 5 and 6 (photographs provided by the landlord) it is absolutely clear that there exist a wall on all the sides of the roof. The height of the wall has been raised about 3' width of the total structure, has been claimed to be only 4 to 5'. Such a construction cannot in any manner be termed as a pucca room and both the Courts below have committed a serious error in recording and finding that the tenant has constructed the room on the roof of the tenanted premises. Likewise, in the absence of any pleadings or evidence about the change in the form, front or structure of the tenanted premises, both the Courts below have committed a serious error of law in holding that the impugned construction has materially altered the premises. S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 14/17 Clearly the structure is of temporary nature and easily removable without causing any damage to the tenanted premises. In my considered opinion, the Courts below have failed to correctly appreciate the legal position and, therefore, their judgments are liable to be set aside on this score..

14. It is true that different views also are possible and can be taken depending upon the facts and circumstances of each case, but in the present case, this Court is satisfied that nature of alteration carried out by the defendant/tenant, namely, of putting up of some racks, which could have been stone, wooden or glass slabs also, does not materially alter the suit premises itself, much-less resulting in any diminution in the value thereof. The ground under Clause 13 (I) (c), therefore, is not satisfied in the present case and the substantial question of law No.2 framed above, therefore, deserves to be answered in favour of defendant/tenant and it is, accordingly, answered.

15. Coming to Clause (d) of Section 13 (I) of the Act of 1950, about the change of user by change of business line, much emphasis was laid by the learned counsel for the respondent/plaintiff, Mr. Salil Trivedi, on reading the three clauses or parts of Clause (d) in disjuncted manner, as they are separated by word 'Or'. However, on a wholesome and harmonious reading of this Clause, it is not possible to agree S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 15/17 with the said contention of the learned counsel for the respondent/plaintiff. The third clause of Clause (d) referred to the creation of nuisance, inconsistency with the purpose and likely to adversely and substantially prejudice and affect the interest of the landlord by such change of user, have to be read ejusdem generis, and the three clauses of Clause (d) of Section 13 (i) cannot be read in isolation or in watertight compartments, as contended.

16. Therefore, the inconsistency of the purpose for which the tenant was admitted in the suit premises, by the change of business lines has to be such and has to be established by the plaintiff/landlord, which caused any prejudice to the landlord or adversely affected his interest in any manner, either by diminution in the value of the suit property or caused such nuisance to the peace of the landlord. For example, if the business of stationery and tea would have been converted into a shop of iron smith or by putting up a lathe machine there, whose noise disturbed the peace of the area or peace of the landlord living nearby or in the same premises, such a change of business could certainly be claimed to be prejudicially affecting the landlord resulting in the ground for eviction under Clause 13 (I) (d), but no such facts are available in the present case. The contention of the learned counsel for the respondent/plaintiff that if the change of business line is done S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 16/17 without consent of the landlord, it should be treated as ground for eviction, is misconceived and, is therefore, liable to be rejected. Clause (d) of Section 13 (I) does not envisages and does not stipulate any such prior permission or consent of the landlord.

17. The requirement of prior consent and permission is only contained in Clause (e) where the ground of sub-letting or parting with possession of the suit premises is stipulated as the ground of eviction. If it is so done without the prior permission

of the landlord, it becomes the ground for eviction, otherwise the ground of Clauses (c) and (d) which are invoked in the present case have to be established with relevant and cogent evidence by the plaintiff/landlord. 18 In the considered opinion of this Court, the ground of eviction in Clause (d) of Section 13 (l) of the Act of 1950 are also not established in the present case. The learned first appellate court without giving any cogent reasons took a different view of the matter, then the one taken by the learned trial court in the present case. If the change of business line could be permitted as held by the Hon'ble Apex Court in the case of Mohan Lal Vs. Jai Bhagwan (supra) the minor alterations in the suit premises like putting up of some stone slabs to facilitate the cloth business also will not fall within the mischief of Clause (d) of Section 13 (l) (d) and, therefore, the S.B. Civil Second Appeal No.102/1998 Shyamlal Vs. Ramdeo Kolayat Judgment, Tuesday, 22/09/2015. 17/17 view of the learned appellate court cannot be sustained and thus the substantial question of law No.1 also deserves to be answered in favour of appellant/defendant/tenant and against the plaintiff/respondent.

19. Thus, both the substantial questions of law are answered in favour of appellant/defendant and it is held that change of business from stationery and tea to that of cloth business/STD-PCO, did not fall within the mischief of Clause 13 (i) (d) of the Act in the present case and putting up of stone slabs for carrying on or facilitating the cloth business of the tenant also did not fall within the mischief of Clause (c) of Section 13 (l) of the Act. The learned trial court was justified in refusing the eviction decree on these grounds and the learned appellate court has fallen into an error in reversing that judgment.

19. Accordingly and in view of above discussion, the present second appeal of the appellant/defendant/tenant is allowed. The eviction decree of the learned appellate court is set aside and the judgment of the trial court is restored. The eviction suit is dismissed. No costs. A copy of this order be sent to the concerned parties and the courts below forthwith. (Dr. VINEET KOTHARI), J.