

Ram Saroop and anr. Vs. Janki Dass Jai Kumar and anr.

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Court : Delhi

Decided On : Nov-05-1975

Reported in : AIR1976Delhi219; ILR1976Delhi153

Judge : T.V.R. Tatachari and; M.R.A. Ansari, JJ.

Acts : [Transfer of Property Act, 1882](#) - Sections 103(O) and 108(O)

Appeal No. : Regular Second Appeal No. 145 of 1969

Appellant : Ram Saroop and anr.

Respondent : Janki Dass Jai Kumar and anr.

Advocate for Pet/Ap. : S.L. Bhatia,; P.K. Seth,; S.S. Shukla and;

Judgement :

T.V.R. Tatachari

(1) This Regular Second Appeal has come up before us on a reference by a learned single Judge of this Court, Prakash Narain J. The two appellants herein, Ram Saroop and Bhim sen, were the plaintiffs in Suit No. 825 of 1966 on the file of Shri Shamsheer Singh Kanwar, Subordinate Judge 1st Class, Delhi. They were the owners of Shop No. 256, Anaj Mandi, Shahdara. The respondents herein, Messrs Janki Dass Jai Kumar and the Delhi Municipal Corporation, were the two defendants in the suit. The case of the appellants-plaintiffs was that Messrs Janki

Dass Jai Kumar had been in possession of the aforesaid shop as a tenant and had been carrying on the business of food grains for the last fifteen years, that the said tenant, with a view to set up a factory in the shop, had applied for power connection and was trying to put up machinery in the shop without the permission of the owners, that the shop was an old construction and if a factory was run in the premises by putting up an electric motor and machinery, it would cause substantial damage to the shop, that the tenant had no right to change the nature of its user without the permission of the owners, and that it was, therefore, necessary that the tenant should be restrained from installing an electric motor and machinery in the shop. They, therefore, filed the aforesaid suit praying for an injunction restraining the tenant from installing an electric motor and machinery in the shop.

(2) Messrs Janki Dass Jai Kumar filed a written statement stating that it had been carrying on the business of food grains in the premises. that it had been let out to it for commercial purposes and no permission from the owners was therefore, required, and that the setting up of a factory and the installation of an electric motor and machinery would not cause damage to the premises. It also contended that the civil court had no jurisdiction to entertain the Suit. The Delhi Municipal Corporation filed a written statement stating that power connection had been sanctioned by the Delhi Administration, and pointing out that no relief had been claimed against it in the Suit.

(3) The appellants-plaintiffs filed their replication reiterating the pleas in the plaint. On those pleadings the trial court framed the following issues :

' 1. Whether the civil court has no jurisdiction to try this suit

2. Whether defendant No. 1 is within his legal rights to instal the machinery to run mills as alleged ?

3. If issue No. 2 is proved whether the running of the mills will cause damage ?

4. Relief.'

(4) By his judgment, dated July 25, 1968, Shri Shamsheer Singh Kanwar, Subordinate Judge, 1st Class, Delhi, held Issue No. 1 in favor of the plaintiffs and

against the defendants. On Issue No. 2, the learned Subordinate Judge held that according to the plaintiffs themselves,- the premises had been let out for commercial purposes and, therefore, no permission of the owners was required for installing machinery and running a mill in the premises as it was also a commercial purpose, and that Messrs Janki Dass Jai Kumar had obtained a license according to the rules of the Municipal Corporation and was, therefore, entitled to instal machinery in the premises to run the factory. As regards Issue No. 3, the learned Subordinate Judge considered the evidence adduced by both the parties on that issue and held that no damage would be caused by the installation of an electric motor and machinery in the premises in question. In the result, he dismissed the Suit with costs.

(5) Against that Judgment and decree, Messrs Ram Saroop and Bhim Sen preferred Regular First Appeal No. 269 of 1968 which was heard by Shri H. C. Goel, Senior Subordinate Judge, Delhi. By his judgment, dated August 19, 1969, the learned Senior Subordinate Judge pointed out that Messrs Janki Dass Jai Kumar pleaded in paragraph 4 of its written statement that the shop had been let out to it for commercial purposes, and it was, therefore, the duty of the plaintiffs to lead evidence to show that the premises was let out only for 156 running a business of food grains in the shop and could not be used any other commercial purpose, and that the plaintiffs had not adduced any evidence in that regard but only relied upon the fact that the tenant had been carrying on the business of food grains in the premises in question since the inception of its tenancy. He held that the mere fact that the tenant had been carrying on the business of food grains in the shop since the inception of its tenancy did not amount to or show that the premises was let out to the tenant for any particular purpose and much less that it was let out only for runing the business of food grains, that the case would come under the mischief of Section 108(0) of the Transfer of Property Act only if it is proved that the premises was let out to the tenant for a specific purpose, and it is only then that the obligation placed under action 108(0) not to use that premises for any purpose other than .that for which it was leased would come into play, and that in the present case the only thing that appeared on the record was that the premises was let out to the tenant for commercial purposes. The learned Senior Subordinate Judge then considered the question as to whether the running of a

flour mill was a commercial purpose or an industrial purpose as it appears to have been contended before him on behalf of the owners that the setting up of a flour mill was an industrial purpose and not a commercial purpose, citing the decisions in Behari Lal v. Chandrawati, A. I. R. 1966 All 54111) and I.D. Malik v. Duli Chand and others, 1966 D. L. T. 175(2). The learned Senior Subordinate Judge distinguished the decision of the Allahabad High Court, but relied upon the decision of this Court and held that a commercial purpose includes an industrial purpose, and that in the present case, the tenant. Messrs Janki Dass Jai K'imar. could use the premises for running a flour mill, and the same I'd not give any cause of action to the owners for restraining the tenant from doing so. As regards the question of damage that may be caused to the premises by the installation of the electric motor and machinery, the learned Senior Subordinate Judge agreed with the view taken by the trial Court that no damage would be caused to the premises. In the result, the learned Senior Subordinate Judge dismissed the appeal.

(6) It is against the said judgment and decree of the lower appellate court that the present Regular Second Appeal has been filed in this Court by the owners. Ram Saroop and Bhim Sen. The Second Appeal come up before Prakash Narain J. The learned Judge observed that it appeared to him that 'commercial purpose' may not be the same 'thing as 'industrial purpose', that he was not able to agree with the view expressed by a learned single Judge of this Court. Despande J., in 1. D. Malik's case that 'industrial purpose' would 157 be included in the term 'commercial purpose', and that the term 'commercial purpose' needed a more authoritative pronouncement. In that view, Prakash Narain J. referred the Second Appeal to a larger Bench. That is how the Second Appeal has come up before us for disposal.

(7) Before we advert to the view expressed by Prakash Narain J. in his order of reference, it is necessary to refer to the relevant pleadings of the parties and issues in the suit out of which this Second Appeal has arisen. The appellants-plaintiffs merely stated in their plaint that the tenant had been carrying on the business of food grains for the last fifteen years, that it was trying to put up machinery in the shop without the permission of the owners, and that if a factory

was run in the premises it would cause substantial damage to the shop, and hence the tenant should be restrained from installing an electric motor and machinery in the shop. They did not plead that the shop was let out for any specific purpose or even that it was let out only for (he purpose of carrying on the business of food grains. The tenant pleaded in paragraph 4 of the written statement that the shop was let out for commercial purposes. He pleaded in paragraph 5 that there was no change in the use of the shop. Obviously, he treated the carrying on of the business of food grains and the running of a flour mill as commercial purposes. It was also stated that the area or the locality was a commercial area with mills, etc. Thus, the stand taken by the tenant was that the use of the shop for carrying on the business of food grains was a commercial purpose, and that the use of the shop for setting up a flour mill was also a commercial purpose, and there was, therefore, no change in the user. The owners filed a replication, but there was no denial of the facts in paragraphs 4 and 5 of the written statement.

(8) Section 108 of the Transfer of Property Act provides that in the absence of a contract or local usage to the contrary, the Lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules set out in the section. The rule in clause (O) of the section provides that the lessee must not use the property for a purpose other than that for which it was leased or damage buildings belonging to the Lessor, or commit any other act which is destructive or permanently injurious thereto. It has to be noted that the said provision consists of two parts, and violation of either of them would constitute a separate cause of action. The first part sets out the liability of the tenant not to use the property for a purpose other than that for which it was leased. Obviously, this part would be attracted only if the property was leased for a specific purpose. The second part sets out the liability of the tenant not to damage the property or commit any other act which is destructive or injurious thereto. As there was no plea in the plaint that the shop was let out for any specific purpose, the cause of action for the suit filed by the plaintiffs cannot be said to be any user by the defendant for a purpose other than that for which it was leased within the meaning of the first part of clause (O) of Section 108. The cause of action for the suit according to the averments in the plaint was the attempt of the tenant to set up a factory viz. a flour mill, which, according to the

plaintiffs, would cause damage to the shop within the meaning of the second part of clause (0). The issue framed in the suit, viz., Issue No. 3, relates to the said cause of action. As already stated, both the lower courts concurrently found that the setting up of a flour mill would not cause damage to the shop. Mr. Bhatia, learned counsel for the appellant fairly stated before us that he cannot challenge this concurrent finding of fact in this Second Appeal.

(9) Issue No. 2 framed in the suit was as to whether defendant No.1, i.e., the tenant, was within his legal right to instal the machinery to run mills as alleged. It is under this issue that the question as to whether the setting up of a flour mill is a commercial purpose or is an industrial purpose was urged. We may state here that the parties did not clearly specify in their pleadings that the mill proposed to be set up by the defendant-tenant was a flour mill. The judgment of the trial court appears to have proceeded on this basis that it was a Kohlu or oil mill. But, in the grounds of appeal, the judgment of the lower appellate court, the grounds of second appeal and the order of reference by Prakash Narain J., it was referred to as a flour mill. In their arguments before us also, the learned counsel for both the parties proceeded on the basis that it was a flour mill that was proposed to be set up by the tenant. Further, the parties proceeded in the lower courts as well as before us on the basis that the business of food grains is a 'commercial purpose', and the controversy between them is only as regards the nature of the setting up of a flour mill. The trial court held that it was a 'commercial purpose'. The lower appellate court also held that it was a 'commercial purpose' and not an 'industrial purpose'. The question for consideration is as to whether the view taken by the lower courts was correct.

(10) Mr. Bhatia referred us to the meanings of the term 'commercial' and 'industrial' given in Webster's Third New International Dictionary. According to the said dictionary, the term 'commercial' means 'of, in, or relating to commerce'. The term 'commerce' means 'the exchange or buying and selling of commodities especially on a large scale and involving transportation from place to place'. According to Chamber's Twentieth Century Dictionary, 'Commerce' means 'interchange of merchandise on a large scale between nations or individuals; extended trade or traffic'. The term 'industrial' according to Webster's Dictionary means 'of or

belonging to industry, especially manufacturing'. 'Industry' means 'a department or branch of a craft, art, business or manufacture; a division of productive or profit-making labor, especially one that employs a large personal and capital, especially in manufacturing'. According to Chambers' Dictionary, 'industry' means 'manufacture, trade'. The learned single Judge observed that 'commercial purpose' may not be the same thing as 'industrial purpose', that 'commercial' means 'pertaining to commerce; mercantile', that 'commerce' means 'interchange of merchandise on a large scale between nations and individuals; extended trade or traffic; to trade', that 'industrial' means 'relating to or concerning an industry', and that 'industry' means 'trade or manufacture'. The learned Judge apparently took the above meanings from Chambers' Dictionary, though it was not so mentioned. According to those meanings, 'commerce' involves essentially an exchange or buying and selling of commodities, while 'industry' involves essentially the manufacture of commodities. There is thus a difference in the connotation of the two terms. It is true that the element of trade is contained in the two terms. But, their essential features, namely, exchange or buying and selling in the former and manufacture in the other, are different. They are thus not the same or synonymous as observed by Prakash Narain J. Whether a given activity or enterprise is 'commercial' or 'industrial' will depend upon the nature of that activity or enterprise. 'In the present case, the activity or the enterprise in question is the setting up of a flour mill. As is well-known, the setting up of a flour mill involves manufacture of flour, and in that sense can be regarded as industrial in nature.' At the same time, it can be looked at from another angle. Ordinarily, the manufacture of the flour, particularly by a businessman, is for exchange or selling of the same unless, of course, the manufacture is entirely for the purpose of his own personal consumption. In the present case, it is nobody's case that the tenant was intending to set up a flour mill to manufacture flour for his own consumption. It was obviously for the purpose of selling the same. 'A business man who installs a flour 'mill in his shop either grinds his own grain into flour and sells the same to others in wholesale or in retail, or grinds grain brought by others for a price. In both the cases, he deals with others in respect of the flour for a price, and in that sense his activity can be regarded as commercial in nature. In other words, the activity of setting up of a flour mill is 'commercial' in one sense and 'industrial' in another

sense, i.e. it is partly 'commercial' and partly 'industrial' . In the present case, as already stated, the premises was not leased for any specific purpose, but was leased for commercial purposes and the tenant has been carrying on the business of food grains which according to both the parties is commercial in nature. The new activity is, as explained above, partly 'commercial' and partly 'industrial'. 'Therefore, it cannot be said that the proposed user of the shop for a flour mill is just the same as the purpose .for which it was leased, viz. 'commercial purpose'. It would be, at least to some extent, a purpose other than that for which it was leased. However, as already, since the original letting was not for any specific purpose, the mere change in the user of the shop does not amount to user by the tenant for a purpose other than that for which it was leased within the meaning of first part of clause (O) of section 108 of the Transfer of Property Act.' The only question then is whether the proposed new user would damage the shop within the meaning of the second part of clause (O), and we have already pointed out that both the lower courts have concurrently found that it would not cause any damage. We have, therefore, to hold that the dismissal of the suit by the lower courts was correct, not for the reason given by them that flour mill is entirely commercial in nature; but for the reason that the owners-plaintiffs and no cause of action under either of the two parts of clause (O) of section 108 of the Transfer of Property Act.

(11) In I. D. Malik's case (supra), the landlord, I. D. Malik, filed a suit in a civil court against his tenant for an injunction restraining the latter from using the leased premises for the purposes of a flour mill. It was common ground that the leased premises had been occupied by the tenant from the inception of the tenancy for the purpose of a karyana (grocery) shop. The landlord's case was that the tenant's proposal to use the premises for a flour mill . was incomplete disregard of the statutory and contractual obligations not to turn the shop from commercial to industrial purpose. On the other hand, the tenant pleaded that the premises was not taken by him for karyana business or for any other specific purpose, that it was taken for commercial purposes, that he could, therefore, carry on any business or trade, and that the proposal to start a flour mill in the premises was not contrary to any condition in the lease. After considering the findings of the trial court and the lower appellate court, V. S. Deshpande J. held that the landlord failed to prove that

the premises was let out only for running the grocery shop, and that it was clear from the pleadings of both the parties that the premises was let out for commercial purposes. Dealing then with the contention of the landlord that there is a distinction between a 'commercial purpose' and an 'industrial purpose', and with the contention of the tenant that the 'commercial purpose' includes the running of a flour mill, the learned Judge observed that the contention of the tenant was more in accord with the provisions of the Delhi Rent Control Act, 1958. He pointed out that the purposes of 3 tenancy have been divided into three clauses by Section 2(i) of the said Act, namely, (1) residence, (2) commercial and (3) any other purpose, that clauses (1) and (2) denote every profit-making use of the premises, while clause (3) includes non-residential and non-commercial uses, i.e. non-profit-making uses in view of the observations of the Supreme Court in *Dr. Gopal Das Verma v. Dr. S. K. Bhardwaj*, : [1962]2SCR678 that there is no warrant for construing commercial use (clause 2) in a narrow sense to exclude industrial use as it would result in the third category including industry along with non-profit-making purposes, that the number of categories being few, the ambit of each category has to be construed as widely as possible so that each category would have as large a scope as possible, and the third residuary category, is not made to include some purpose which would be comprised in the first two categories on a liberal construction, and that the commercial purpose of the tenancy in the case before him was, therefore, broad enough to include flour mill. In that view, the learned Judge held that even under section 108(0) of the Transfer of Property Act, the landlord in the case before him was not able to show any change of the user by the tenant which would be contrary to the purpose for which the premises was let out to him.

(12) It has to be noted that the learned Judge considered the question as to whether 'commercial purpose' is the same as 'industrial purpose' on the basis of the provisions in the Delhi Rent Control Act. With respect, we are unable to appreciate how the provisions in the Rent Control Act could be used for deciding the aforesaid question, as the proceeding in the case before the learned Judge was one in a civil court and not one before the Controller under the Rent Control Act. So far as a suit for an injunction against the tenant in a civil court is concerned, the basis for a cause of action for the landlord could be only under the

two parts of clause (0) of Section 108 of the Transfer of Property Act.

'THE Delhi Rent Control Act and the Transfer of property Act are not in pari materia. It is a well settled principle that the scheme and the provisions of one statute are not to be interpreted by reference to the scheme and the provisions in another statute unless the two statutes are in pari-materia. therefore, in applying the provisions in clause (0) of Section 108 of the Transfer of Property Act, the categorisation in the Delhi Rent Control Act is not to be taken as a guidance.'

(13) It has, however, to be noted that the learned Judge ultimately held that the tenancy in the case before him was for commercial purposes and not for any specific purpose or for grocery shop only, that the commercial purpose of tenancy in the case before him was broad enough to include flour mill, and that the suit for injunction against the tenant was, therefore, liable to be dismissed. We are in respectful agreement only with the conclusion that the suit for injunction was liable to be dismissed, not because of or on the analogy of the provisions in the Rent Control Act, or because the commercial purpose of grocery shop includes flour mill, but for the reasons we have already given. As pointed out by us earlier, there is a distinction between 'commercial purpose' and 'industrial purpose'. The former involves an element of exchange or buying and selling, while the latter involves an element of manufacture. Whether a particular activity is commercial in nature or industrial in nature has to be decided by considering the nature of the particular activity in question in each case. In the case before us, it is common ground between the parties that the business of food grains or grocery shop is a commercial purpose. As explained by us earlier, a business of flour mill is partly 'industrial' in nature and partly 'commercial' in nature. therefore, if the premises was originally let out only for the commercial purpose of business in food grains, the proposal of the tenant to run a business of flour mill would be, at least to some extent, a purpose other than the purpose for which the premises was let within the meaning of the first part of clause (0) of Section 108 of the Transfer of Property Act. But, in the case before us, 'the concurrent finding of the courts below is that the landlord neither pleaded nor proved that the premises was let out only for the business of food grains. therefore, the first part of clause (0) of Section 108 was not attracted and the landlords or owners of the premises could not claim to have

a cause of action under the first part. As regards the second part of clause (O) of Section 108, we have pointed out that the lower courts concurreritly found that the installation of an electric motor and machinery for running the flour mill would not cause any damage within the meaning of the second part of clause (O) of Section 108. therefore, the landlords had no cause of action under that second A part also.' The operative parts of the judgments of the lower courts dismissing the suit were, therefore, correct.

(14) For the foregoing reasons, the second appeal fails and is dismissed with costs.

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