

Maggi Bai Vs. Sitaram

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Court : Rajasthan

Decided On : Mar-30-1977

Reported in : AIR1978Raj1; 1977()WLN159

Judge : M.L. Shrimal, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 2(2), 13(1), 14(2) and 26; Rajasthan Premises (Control of Rent and Eviction) (Amendment) Act, 1976

Appeal No. : Ex. Second Appeal No. 37 of 1975

Appellant : Maggi Bai

Respondent : Sitaram

Advocate for Def. : S.K. Mal Lodha, Adv.

Advocate for Pet/Ap. : M.R. Singhvi, Adv.

Disposition : Appeal allowed

Judgement :

M.L. Shrimal, J.

1. This second appeal in execution proceedings by Maggi Bai is directed against the judgment dated December 9. passed by the learned Additional District Judge

No. 1, Jodhpur, whereby he set aside the order dated November 12, 1975 passed by the learned Munsiff City, Jodhpur in Execution Case No. 83 of 1975. By the same order he remanded the case back to the learned Munsiff and directed him to enquire as to whether the landlord's case was covered by Section 14 (2) of the Rajasthan Premises (Control of Rent and Eviction) Act. 1950 (hereinafter referred to as 'the Act') as amended by the Act No. 14 of 1976. If covered thereunder, he was asked to proceed to execute the decree by delivering the possession to the landlord in accordance with the law but not otherwise. The facts giving rise to this appeal are that the appellant is the landlord of a shop situated in Ada Bazar, Jodhpur, rented out by her to Sita Ram--respondent. The appellant Maggi Bai filed a suit for eviction against the respondent on a number of grounds including the ground of personal necessity. The suit was decreed on the ground of personal necessity by the learned Munsiff, City Jodhpur on November 29, 1971 and a decree for ejectment was passed against the respondent in favour of the appellant. This decree was challenged by the respondent by preferring an appeal before the learned District Judge, Jodhpur, which came up for decision before the learned Additional Civil Judge, Jodhpur, who by his judgment and decree dated April 25, 1973 reversed the decree and judgment passed by the learned Munsiff and dismissed the suit.

2. The aggrieved landlord plaintiff has come up in appeal before this Court. A Single Bench of this Court by its judgment and decree dated April 28, 1975 allowed the appeal, set aside the judgment of the first appellate Court and decreed the suit of the plaintiff. Thereafter the appellant-landlord filed an execution petition in the Court of Munsiff City, Jodhpur on July 29, 1975 which was registered as Execution Case No. 83 of 1975. During the pendency of this execution petition, the tenant-respondent filed a Special Leave to Appeal before the Hon'ble Supreme Court of India under Article 136 of the Constitution against the judgment and decree dated April 28, 1975 delivered in S. B. Civil Second Appeal No. 496 of 1973. The petition for special leave to appeal was dismissed on September 24, 1975. Thereafter the respondent filed an objection petition on October 16, 1975 challenging the executability of the decree and the right of the landlord to evict the tenant. The learned Munsiff rejected the objection petition by his order dated November 12, 1975. Being aggrieved of this order, the respondent went up in

appeal before the learned District Judge, Jodhpur. The appeal filed by the respondent came up for decision before the learned Additional District Judge No. 1, Jodhpur, who by his order dated December 9, 1975 accepted the appeal, set aside the order dated November 12, 1975 and passed the order as mentioned above. Hence this appeal.

3. The learned counsel for the appellant, Mr. M. B. Singhvi, has vehemently challenged the correctness of the impugned order and contended that Section 26 of the Act has no applicability to the facts of this case. It applies only to the decrees passed before the date of commencement of Act No. 17 of 1950.

4. The second contention is that the provisions of Section 14 (1) and (2) of the Act are no doubt retrospective and they are applicable to the pending proceedings viz., the suits, appeals and revisions, but they do not apply to the execution proceedings. He further urged that the matter stood conclusively determined by a Single Bench decision of this Court in Prabhashanker v. Smt. Rukmini, 1976 Raj LW 3 : (AIR 1976 Raj 17), wherein the Hon'ble S. N. Modi J., while determining the scope of Section 14 of the Act observed as under (at p. 19 of AIR) :--

'I, therefore, hold that the provisions of Section 14 (2) as amended by the Amendment Ordinance of 1975 have retrospective effect and pending suits as also pending appeals based on the ground under Section 13 (1) (h) would be governed by Section 14 (2) of the Act as amended by the Amendment Ordinance of 1975. Since Section 14 (2) prohibits only passing of a decree for eviction, the provisions of Section 14 (2) as amended by the Amendment Ordinance of 1975 shall have no effect to execution proceedings pending in the executing Court wherein the decree has been passed against the tenant on the ground under Section 13 (1) (h) of the Act.'

The learned counsel contended that the learned Additional District Judge No. 1, Jodhpur Mr. Dassani is guilty of the act of insubordination and has shown utter disregard for the judgment of this Court delivered by Hon'ble S. N. Modi J., in Prabhashanker's case (supra) in making the following observations.-

'Section 26 of the Rajasthan Premises (Control of Rent and Eviction) Act has not been deleted and retains itself. It restricts the execution of decree for eviction against the tenant from any premises etc. passed before the date of commencement of the Act as known as this Act remains in force therein except on any of the grounds mentioned in Section 13 and under the circumstances specified in this Act (sic). The two aspects are disjunctive. The Hon'ble Rajasthan High Court was not asked to measure the effect of this provision in the case of an execution when amending Ordinance has set in. We cannot forestall or speculate what would have been the decision of the Hon'ble Rajasthan High Court, had it been faced with this provision of Law in an execution case.'

The legislature in its wisdom Mr. Singhvi contended, restricted the applicability of Section 14 (1) (2) of the Act No. 17 of 1950 as amended by Act No. 14 of 1976 to suits and appeals. The non obstante clause mentioned therein restricts the passing of the decree for eviction. Had it been the intention of the legislature that Section 14 (2) of the Act should also apply to the decrees passed prior to the coming into force of this section then it would have specifically provided so by introducing the words 'or order' in between the words 'no decree' and 'for eviction'. The intention of the legislature is primarily to be gathered from the language used. A construction which requires for its support an addition or substitution of words must be rejected.

5. The third contention is that the decree which is the subject-matter of execution was passed on the ground of reasonable and bona fide necessity of the landlord's family, which is one of the grounds mentioned in Section 13 of the Act. It was a contested case and the Court had passed a decree on being satisfied as to the existence of the statutory ground for passing the eviction decree. The appellate Court was not competent to go behind the decree and asking the executing Court to determine whether the conditions mentioned in Section 14 (2) of the Act No. 17 Of 1950 as amended by Act No. 14 of 1976 were satisfied or not. In passing the impugned order the learned Judge exercised the jurisdiction not vested in him. The effect of the order would be that the Executing Court would be required to scrutinise the decree again. The legislature did not intend that the decree passed in a contested case according to the provisions of law in force on the date when it

was passed by the highest Court of the country should be scrutinised again by the executing Court. He urged that the amending provisions of the Act must not be made applicable since they were not in force on the date when the decree under execution was passed.

6. Mr. Lodha, learned counsel for the respondent, has supported the judgment of the first appellate Court. He has contended that Section 13 of the Act deals with the general restrictions against the eviction of a tenant and as they were not found to be sufficient, special restrictions on eviction were introduced by amending Section 14 (2) of the Act. The Rajasthan Premises (Control of Rent and Eviction) Act, 1950 is a piece of welfare legislation and as such its operative provisions should receive beneficent construction from the Court. The scheme of the Act and the object of the amendment introduced by Act No. 14 of 1976 is to afford full protection to the tenant against eviction and the Court should be slow to reach the conclusion that the tenants against whom decrees have been passed under the Act prior to the enactment of Act No. 14 of 1976 and introduction of Section 14 (2) of the Act are excluded from benefit of the Amending Act.

7. There cannot be any dispute that a welfare legislation should have beneficent construction. However, it must always be borne in mind that the first and primary rule of construction is that the intention of the legislature must be found in words used by the legislature itself. If the words used are capable of one construction only then it would not be open to the Courts to adopt another hypothetical construction on the ground that such a hypothetical construction is more consistent with the alleged object and policy of the Act.

8. The words used in the material provisions of the Statute must be interpreted in the plain grammatical meaning. When such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words of a Statute are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction. It is only in such cases that it becomes relevant to consider the mischief and the defect which the Act purports to

remedy and correct.

9. Before dealing with the points raised by the learned counsel for the parties it will be useful to read the relevant provisions of law :

'13. Eviction of tenant-- (1) Notwithstanding anything contained in any law or contract, no Court shall pass any decree, or make any order, in favour of a landlord, whether in execution of a de-cree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefor to the full extent allowable by this Act, unless it is satisfied-

(a) to (g) xxxxx

(h) that the premises are required reasonably and bona fide by the landlord-

(i) for the use or occupation of himself or his family, or

(ii) for the use or occupation of any person for whose benefit the premises are held, or

(iii) for a public purpose, or

(iv) for philanthropic use;'

'14. Restriction on eviction-

(1) xxxxx

(2) No decree for eviction on the ground set forth in Clause (h) of Sub-section (1) of Section 13 shall be passed if the Court is satisfied that, having regard to all the circumstances of the case, including the question whether other reasonable accommodation is available to the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it. Where the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only.

(3) Notwithstanding anything contained in any law or contract no suit for eviction from the premises let out for commercial or business purposes shall be brought against a tenant on the ground set forth in Clause (h) of Sub-section (1) of Section 13 before the expiry of five years from the date the premises were let out to the tenant.'

XXXXX

'(26) Execution of decree for eviction-- No decree for the eviction of a tenant from any premises in areas to which this Act extends for the time being passed before the date of commencement of this Act shall in so far as it relates to the eviction of such tenant be executed against him, as long as this Act remains in force therein, except on any of the grounds mentioned in Section 13 and under the circumstances specified in this Act.'

10. As regards the first contention, I am unable to agree with the submission of the learned counsel for the respondent that the provisions of Section 26 of the Act are attracted to the decree under execution even though it was passed after complying with the existing provisions of the Act, and prior to the coming into force of Section 14, as amended by Act No. 14 of 1976. Section 26 is an exception to the general law, that the Execution Court cannot go behind the decree. An exception is required to be construed strictly and should not be allowed to affect the general rule, nor can it be so interpreted as to nullify or destroy the main provision. It must be confined within its own limits and strictly to the subject-matter embraced within it and it should not be extended to include the cases not reasonably within the purview of the language employed. The words passed before the date of commencement of the Act', appearing in Section 26 are of great significance. This section is applicable to the decrees passed under the earlier Acts prior to the extension of the provisions of the Act to that area by a notification under Section 2 (2) of the Act, and a decree passed after the commencement of the Act cannot be rescrutinised under Section 26 of the Act. Section 26 deals with the decree or orders already passed prior to the coming into force of the Act No. 17 of 1950. Section 27 of the Act deals with the suits and proceedings pending at the commencement of the Act in the areas to which the Act has been extended under Section 2. In this view of the matter, I stand fortified by a decision of this Court in

Jagjeewan Singh v. Sita Rarn, AIR 1954 Ra_i 43, wherein Hon'ble Wan-choo C. J., while discussing the scope of Section 26 of the Act observed as under,-- (at P. 44)

'I am therefore of opinion that it is the duty of the executing Court to satisfy itself under Section 26 that one or the other of the conditions mentioned in Section 13 is satisfied before it executes the decreepassed before the Act came into force.'

This case was followed in Roopram v. Mohanlal, ILR (1958) 8 Rai 994 wherein I. N. Modi J., observed as under :--

'It is clear that Section 26 as such has no application to the present case as the section only applies to decree passed before the commencement of the Rajasthan Act.'

While enacting Act No. 14 of 1976 no change was introduced in Section 26 of the Act. Had the legislature intended that the decrees passed prior to the extension of the provisions of the Amendment Act No. 14 of 1976 should be re-tested in the light of Section 14 (2) of the Act as amended by Act No. 14 of 1976, it would have made such a provision or would have made necessary changes in Section 26 of theAct. I, therefore, hold that the learned Additional District Judge No. 1. Jodhpur has committed an error of law in holding that Section 26 of the Act wag applicable to the facts of this case.

11. The argument of the learned counsel for the respondent (which seems to have prevailed with the Court below) is that Section 13 is very wide in its terms, and even where a decree may have been passed after the Commencement of this Act, the section provides that no Court shall make an order in favour of a landlord even in execution so long as he is ready and willing to pay the prescribed rent unless it is satisfied that any of the conditions laid down in Section 13 read with Section 14 (1) and (2) of the Act for eviction are fulfilled even though Section 14 (2) was not in force on the date on which the decree under execution was passed. I do not feel persuaded to accept this contention. If the interpretation put forward by the learned counsel for the respondent is accepted as correct, the result would be that even in contested cases all decrees passed prior to the coming into force of Section 14 (2)

of the Act as amended by Act No. 14 of 1976 would be unexecutable unless they succeeded in passing a further test in the Executing Court. The test is to be, that no hardship is caused to the tenant in executing the decree and that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available to the landlord or the tenant, greater hardship would be caused to the landlord by not executing the decree. Besides that it would be within the jurisdiction of the Executing Court to annul the execution proceedings even though the decree has been passed by the highest Court of this country. Such an interpretation of the law cannot be said to be correct. The appellant had acquired a valuable vested right in her favour by the decree dated 28-4-1975 affirmed by the Hon'ble Supreme Court of India on September 24, 1975. The clear and unambiguous language of a provision of law is necessary before it can be said that she had been deprived of her vested right to execute the decree. It cannot be said that there is no escape from the conclusion that Sub-section (1) of Section 13 was intended to give retrospective operation to all and every subsequent amendment of the Act. No doubt Section 14 (2) as amended by Act No. 14 of 1976 is applicable to the appeals and revisions, which make it retrospective to limited extent. It is perfectly true that whenever an amended Act has to be applied subsequent to the date of the amendment, various unamended provisions of the Act have to be read along with the amended provisions, but this is for the purposes of determining what the meaning of any particular provision of the Act as amended is, whether it is in the unamended part or in the amended part. But this does not mean that the amendment itself must be taken to have been in existence as from the date of the earlier Act. That would be imputing to the amendment retrospective operation to the extent which the legislature never intended to do, otherwise it would have so provided to, expressly or by necessary application. If Section 14 (2) read with Section 13 is held to be retrospective in its operation to the extent the learned counsel for the respondent wants me to hold it, the consequence would be that almost all pending actions in which the landlords have applied for possession in execution of the decrees passed in their favour would automatically fail because they would not satisfy the test imposed by Section 14 (2) of the Act as amended by Act No. 14 of 1976. If such a drastic consequence was really intended by the legislature, it would certainly have made

appropriate provisions in ex-press terms in that behalf. In the case on hand the execution proceedings were initiated much prior to the passing of the Act No. 14 of 1976. It could never be the intention of the legislature that the judgment-debtor-tenants who by their dilatory tactics could prolong the execution proceedings against eviction should be given the advantage of Section 14 (2) of the Act. This Court in Bhanwar Lal v. Nathmal, AIR 1976 Raj 137 has held,--

'The point of time when Sub-sections (1) and (2) of Section 14 will operate is that the decree for recovery of possession will have to be finally passed.'

Hon'ble S. N. Modi, J., in Prabhashanker v. Smt. Rukmani (AIR 1976 Raj 17) (supra), as already quoted above, held that Section 14 (2) of the Act as amended by the Ordinance 1975 (later on amended by Act No. 14 of 1976) has no effect on the execution proceedings pending in the Excelling Court. A similar point which has been raised before me was raised in Civil Revision Petn. No. 7 of 1976 : Ikbāl Ahmed v. Purshotamlal, decided on January 6, 1976 (Raj). Hon'ble Sharma J., was pleased to hold as under,--

'It has been contended before me on behalf of the petitioner that in view of the amended provisions of Section 14 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, hereinafter referred to as the Act, the decree for eviction cannot be executed as such because no decree for eviction on the grounds set forth in Clause (h) of Sub-section (1) of Section 13 of the Act could be passed unless the Court was satisfied that greater hardship would be caused to the tenant by passing the decree than by refusing to pass it. (sic) The above contention has no force, because the amended provisions contained in Section 14 of the Act are not applicable to a case in which decree for eviction on the grounds set forth in Clause (h) of Sub-section (1) of Section 13 of the Act was already finally passed prior to the coming into force of the Rajasthan premises (Control of Rent & Eviction) Amendment Ordinance, 1975.'

I respectfully agree with the opinions expressed by Hon'ble Sharma J., in Ikbāl Ahmed v. Purshotam Lal (supra) and by S. N. Modi J., in Prabhashanker v. Rukmani (supra). While considering the effect of introduction of Section 13-A in the Rajasthan premises (Control of Rent & Eviction) Act, 1950 by Ordinance No.

26 of 1975, later on replaced by Act No. 14 of 1976 their Lordships of the Supreme Court in *Gyanchand v. K. B. Lal*, 1976 WLN 803 : (AIR 1977 SC 858) observed as under :--

'Thus the scope of the amendment was to confine protection given to the tenants within the limits of the hierarchy to Courts mentioned by the Act and to Courts in the State of Rajasthan. It may be noticed that the statement of objects and reasons does not even give a hint that the benefit conferred by Section 13-A would be available even in the execution proceedings after the decree had been passed.'

On the parity of reasoning it can be said that the benefit of Section 14 (2) of the Act as introduced by Act No. 14 of 1976 has not been extended to the execution proceedings.

12. The learned counsel for the respondent urged that the decree as it exists is a nullity, it could be held to be executable if after taking evidence of the parties the landlord could satisfy that she would suffer greater hardship if the execution was refused than that would be caused to the respondent, if the decree for eviction is executed. In support of his contention he placed reliance on *Kaushalya Devi v. K. L. Bansal*, AIR 1970 SC 838 and *K. K. Chari v. R. N. Seshadri*, AIR 1973 SC 1311.

13. In *Kaushalya Devi v. K. L. Bansal*, (AIR 1970 SC 838) the judgment-debtor challenged the validity of the decree by presenting an application under Section 47, C. P. C., alleging that it had been passed in contravention of the provisions of Section 13 of the Delhi and Ajmer Rent Control Act, 1952. In that case the decree was held to be a nullity as it was passed solely on the basis of a compromise. This case was considered by their Lordships of the Supreme Court in *Nagindas Ramdas v. Dalpatram Iccha-ram*, AIR 1974 SC 471 (at pp. 476, 477) and it was observed that,

'From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was

so satisfied and the decree for eviction apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself.'

14. In the above quoted authority the important words which have a bearing in the present case, are 'at the time of passing of the decree.' In the present case the decree was passed after the parties were heard, and the Court was satisfied regarding existence of the statutory ground for eviction on the date of the passing of the decree. The said decision In Kaushalya Devi v. K. L- Bansal (AIR 1970 SC 838) has no application to the facts of the present case. The case; K, K. Chari v. R. M. Seshadri (AIR 1973 SC 1311) also does not advance the cause of the respondent.

15. Admittedly the decree under execution dated April 28, 1975 was passed in accordance with the law which existed on the date of the passing of the decree and the Court could have passed the decree after being satisfied itself about the existence of the statutory grounds for eviction and as such it cannot be said that the decreepassed by this Court was without jurisdiction de hors the Act or ultra vires the Act. In the circumstances established in the case on hand, it was beyond the jurisdiction of the first appellate Court to go further and question the express finding of the Courts regarding reasonable bona fide necessity of the landlord based on the material available on the record. To allow the Executing Court to go beyond that limit and ask it to take further evidence and then to determine whether the decree is in accordance with Section 14 (2) of the Act as amended by Act No. 14 of 1976 would amount to exalt it to the status of a super Court sitting in appeal over the decision of this Court affirmed by the Hon'ble Supreme Court of India. The Executing Court is not competent to go behind the decree and challenge its validity which has been passed in accordance with the provisions of this Act after taking into consideration the grounds mentioned in Section 13 of the Act.! as they existed on the date of passing the decree.

16. Apart from the position of law enunciated above a resume' of the easy given in the judgment on which the decree under execution is based reveals that Mst.

Maggi Bai -- the appellant before this Court is the owner of two shops, situated at Ada Bazar, Jodhpur, one of which was given on rent to respondent Sita Ram and the other one was given to Sita Ram and his brother in joint tenancy. The appellant is an old woman and her son for whose business the shop is needed is 22 years of age. The Courts decreeing the suit have found the necessity of the plaintiff to be reasonable and bona fide. It would be too much to deny the owner's right to occupy the shop in execution of the decree and leave this old woman to search out some other rented accommodation for establishing her son in business and save him from squandering his youth by idling away the time specially when the respondent is in occupation of a shop with his brother in the same building where he can do the business. It can be safely said that on the proved facts and circumstances of the case the execution of the decree on hand is not likely to be of greater hardship to the tenant, since the facts on record satisfy the conditions mentioned under Section 14 (2) of the Act.

17. The net result of the above discussion is that this appeal is accepted, the impugned judgment and decree dated December 9, 1975 passed by the learned Additional District Judge No. 1, Jodhpur are set aside, and the order of the learned Munsiff City, Jodhpur dated November 12, 1975 is affirmed, and he is directed to take further proceedings in accordance with law. The respondent will bear the costs of the appellant throughout. The case is an old one. the executing Court will dispose of the case as expeditiously as possible. The record of the Courts below may be sent forthwith.

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