

Sukh Lal Vs. Legal Representatives of Narayan Das and anr.

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Court : Rajasthan

Decided On : Apr-06-1994

Reported in : AIR1995Raj5

Judge : Milap Chandra Jain, J.

Acts : Rajathan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13

Appeal No. : Civil Second Appeal No. 229 of 1993

Appellant : Sukh Lal

Respondent : Legal Representatives of Narayan Das and anr.

Advocate for Def. : M.M. Singhvi, Adv.

Advocate for Pet/Ap. : A.L. Chopra, Adv.

Disposition : Appeal dismissed

Judgement :

Milap Chandra Jain, J.

1. This second appeal has been filed against the judgment of the learned Additional District Judge, Nagaur dated September 25, 1993 by which she has dismissed the appeal of the defendant-appellant filed against the judgment of the learned Munsif, Nagaur dated December 7, 1981, decreeing the suit for recovery

of arrears of rent and mesne profits and ejectment of the defendant-appellant from the suit shop situated in the town of Nagaur.

2. The facts of the case giving rise to this second appeal may be summarised thus. On April 23, 1973, the plaintiff Narayan Das filed a suit for recovery of arrears, of rent and ejectment against the defendant-appellant Sukhlal and his brother Sampat Lal on the grounds of default in payment of rent of three years and reasonable and bona fide necessity of the suit shop for his brother Jai Kishan, a member of his joint family. The suit was resisted by the defendants. On February 7, 1974, issues on reasonable and bona fide necessity and default were framed besides an usual issue of relief. Subsequently, issues on comparative hardship and partial eviction were also framed in pursuance of the orders of the Appellate Courts. On the application of the defendant-appellant amount of arrears of rent and interest was determined vide order dated December 3, 1974 and the determined amount was paid. Issue of default did not survive. By his judgment dated December 7, 1981, the learned Munsif, Nagaur decreed the suit for arrears of rent and ejectment holding that the defendants have committed default in payment of rent for more than 3 years, the suit shop is reasonably and bona fide required by the plaintiffs brother Jai Kishan and if the suit is not decreed he would suffer greater hardship. Appeal No. 1 of 1982 Sukhlal v. Legal Representatives of Narayan Das was filed. Shri Brijlal Bundel Additional District Judge, Nagaur allowed the appeal and remanded the case with the direction that the trial Court would frame an issue under Section 14(2) of the Act regarding partial eviction, take evidence of the parties on newly framed issue and, thereafter, decide the suit. Civil Misc. Appeal No. 121/87 was filed by the_ legal representatives of Narayan Das and it was partly allowed. By order dated May 21, 1988, this Court framed an additional issue on partial eviction, remitted it to the trial Court with the direction to record the evidence of the parties on it and send the record to the first appellate court who would decide the appeal in accordance with law. Thereafter, the learned Munsiff, Nagaur recorded his findings on the said issue in favour of the plaintiff-respondents by his order dated August 8, 1990. In compliance with the said order dated May 21, 1988, the first appeal was heard by the learned Additional District Judge, Nagaur and it was dismissed by judgment dated September 25, 1993 holding that the issue regarding reasonable and bona fide necessity was not

pressed by the learned counsel for the appellant before her and partial eviction would cause greater hardship to the plaintiffs brother Jai Rishan. Review petition No. 15/93 was moved by the defendant-appellant Sukhlal before the learned Additional District Judge, Nagaur challenging the observations made in her judgment dated September 25, 1993 that the issue regarding reasonable and bona fide necessity was not challenged before her. This review petition was dismissed by the learned Additional District Judge, Nagaur by her order dated December 20, 1993. Civil Revision No. 158/94 was filed against this order and it was also rejected by this Court by its order dated February 24, 1994.

3. In the memorandum of appeal, the following substantial questions of law have been stated as required under Section 100(3), C.P.C.:

'(1) Whether the necessity of Shri Jai-kishan can be treated as the necessity of the plaintiff specially when Shri Jaikishan is carrying on his separate business from his elder brother and is earning separately?

(2) Whether a younger brother who has his own family and children and who is earning separately, living separately and carrying on business separately can be treated as a family member of elder brother?

(3) Whether in the facts and the circumstances of this case it can be said that there is a reasonable and bona fide necessity for the shop in question to the plaintiff?

(4) Whether the lower appellate court was wrong in holding that after the death of the landlord Narayan Das his brother Shri Jaikishan as well as his sons and daughters and other legal representatives are parties and should be brought on record as respondents?

(5) Whether the court below was wrong in holding that more hardship will be caused to the plaintiff and to Shri Jaikishan if the decree for eviction is not passed?

(6) Whether the courts below were wrong in refusing to pass the decree for partial eviction?'

Obviously, none of these questions involve any substantial question of law.

4. However, I have myself carefully gone through, the record of the case. In his statement dated April 26, 1974, the plaintiff Narayan Das P.W. 1 has categorically stated that Jai Kishan is his real brother, the suit shop belonged to their ancestors, it is the joint property of himself and his brother Jai Kishan, joint properties have not been partitioned amongst them, Jai Kishan lives with him, ration-card is one, Jai Kishan took training in the cloth business as an employee in the shop of Javarimal, thereafter, he took a-shop on rent from Fateh Mohd. and at present he is carrying on business in the shop of Raja Ram, not as a tenant but as a licensee, Raja Ram P.W. 3 has deposed that Jaikishan lives with his brother Narain Das, partition has not been effected in between them, at present Jaikishan is carrying on business in his shop as a licensee as he is his friend and he needs the suit shop for carrying on his business. Jai Kishan P.W. 4 has deposed that Narayan Das is his elder brother, he lives jointly with him, partition has not been effected in between the brothers, the suit shop belonged to their ancestors and now to them jointly, it is genuinely required by him for his cloth business. Babulal P.W. 6 has deposed that Narayan Das and his brother Jai Kishan live together, partition has not been effected in between them, Jai Kishan carried on his business and he requires the suit shop for his cloth business. Manak Chand P.W. 7 has deposed that Jai Kishan carried on his cloth business in his shop taken on rent from him but it is very small. The defendant Sukhlal D. W. 1 has deposed that Jai Kishan lives and carried on business separately from his elder brother Narayan Das (plaintiff). Paras Mal D.W. 3 has deposed that both the brothers Narayan Das and Jai Kishan live and carry on business separately. In his cross-examination, he has disclosed that there is no question of his witnessing partition amongst the two brothers. Mangilal D.W. 4 has deposed that he is not aware whether rice is taken for the families of Narain Das and Jai Kishan from one ration card or two ration cards but their ration cards are separate. The defendant has examined many other witnesses. Neither the defendant nor any of his witnesses has said that Jai Kishan has no share in the suit shop. It has also not been said by any of them that Jai Kishan carries on business in his own shop. It is thus well proved from the evidence on record that the suit shop belongs to the joint family whose karta was Narayan Das (plaintiff), his younger brother Jaikishan was a member of this Hindu

undivided family, the suit shop belongs to this joint family and Jai Kishan requires the suit shop reasonably and bona fide for carrying on his cloth business therein. Jaikishan was not supposed to sit idle till he gets the suit shop for carrying the business. Already 20 years have passed since the filing of the present suit. If he has carried on business during this period by taking a shop as a licensee or a tenant, it cannot be said that his need for the suit shop for his own business ceased to exist. After the institution of the suit, if Jaikishan has started living separately from his brother Narayan Das, it has not gone to adversely affect his need.

5. Admittedly, after the death of Narayan Das, his brother Jaikishan, his sons and daughters and other legal representatives were brought on record under Order XXII Rule 4, C.P.C. This order was not challenged. No exception can be taken against this order.

6. There is yet another aspect of the matter. Admittedly, no affidavit was immediately filed by the learned Counsel for the appellant before the learned Additional District Judge, Nagaur challenging her observation made in para No. 10 of her judgment dated September 25, 1993 that the findings of the trial Court that the suit shop is reasonably and bona fide required by the plaintiff's brother Jaikishan were not challenged before her. It has been observed in *State of Maharashtra v. Ramdas Shrinivas Nayak*, AIR 1982 SC 1249 : (1982 Cri LJ 1581) at page 1251 paras 4 and 7, as follows:--

'4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A. K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submission made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. 'Judgments cannot be treated as mere counters in the game of litigation'.

(Per Lord Atkinson in *Soma-sundaran v. Subramanian*, AIR 1926 PC 136.) We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done said or admitted before them, that has to be the last word on the subject. The principle is wellsettled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error (Per Lord Buckmaster in *Madhusudan v. Chandrabati*, AIR 1917 PC 30.) That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course, a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

xxxxx 7. So the Judges, record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else.'

7. It may be mentioned here that the review petition was filed challenging the said observation made in the judgment dated September 25, 1993. It was dismissed by order dated December 20, 1993. Revision petition No. 121/87 was also filed against this order. By order dated May 21, 1988, the revision petition was also dismissed by this Court. Legally and factually, it is not now open to the appellant to challenge that the suit shop is not required by plaintiff's brother Jai Kishan.

8. The above quoted questions Nos.5 and 6 are based on findings of fact which are not open to challenge in second appeal.

9. Thus there is no merit in the second appeal. The defendant-appellants have been successful to delay the disposal of the suit for over 20 years. As such they are not now entitled to get more than three months' time to deliver the actual and physical possession of the suit shop to the respondents.

10. Accordingly, the second appeal is dismissed with costs. The defendant-appellant is given time to vacate the suit shop and deliver its actual and physical possession to the plaintiff-respondents by or before 6th July, 1994 provided he remits through money orders the entire arrears of rent, mesne profits and costs of all the three courts to the plaintiff-respondent Jai Kishan and gives an undertaking to the effect that during this period he will not part with the possession of the suit shop and will deliver its actual and physical possession to the plaintiff-respondents on or before July 6, 1994, within one month from today.

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