

Saidas Vs. Legal Representatives of Deceased Ameerbux

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Court : Rajasthan

Decided On : Oct-29-1974

Reported in : AIR1975Raj128; 1974(7)WLN805

Judge : C.M. Lodha, J.

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

Appeal No. : Second Appeal No. 19 of 1968

Appellant : Saidas

Respondent : Legal Representatives of Deceased Ameerbux

Advocate for Def. : H.C. Jain, Adv.

Advocate for Pet/Ap. : L.R. Mehta, Adv.

Disposition : Appeal allowed

Judgement :

C.M. Lodha, J.

1. This is a plaintiff-landlord's second appeal arising out of a suit for ejection in respect of a shop situated in the town of Sri Ganganagar. The suit was originally instituted against Ameerbux, who died during the pendency of this appeal on 10-5-74, and the present respondents have been substituted in his place as his legal

representatives. The suit for ejection was based on two grounds: (1) default in payment of rent; and (2) sub-letting. The trial Court dismissed the suit, and its judgment and decree were upheld by the District Judge, Sri Ganganagar. Hence, this second appeal by the plaintiff.

2. Kallu, one of the sons of Ameerbux has filed a written objection in this Court on 3-10-74 that besides his father Ameer Bux, he was also tenant in respect of the suit premises in his personal capacity. In support of this assertion he has filed a number of rent-receipts alleged to have been issued in his favour by the plaintiff. The plaintiff-appellant has denied Kallu's status as a co-tenant in his personal capacity, and it has been urged on his behalf that since Ameerbux was a statutory tenant, and, therefore, his legal representatives including Kallu are not entitled to get protection against ejection under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950.

3. Learned counsel for both the parties have relied upon the observations of their Lordships of the Supreme Court in J. C. Chatterjee v. S. K. Tandon, AIR 1972 SC ,2526. From the side of the appellant it is urged that the deceased Ameer Bux being a statutory tenant, the benefit under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 cannot be availed of by his legal representatives Kallu and others. On the other hand learned counsel for Kallu has urged that Kallu is clearly proved to be a co-tenant with, Ameer Bux in his personal capacity, and, therefore, he is entitled to resist the plaintiff-appellant's suit under the provisions of the Act in his own right.

4. Of course, as a legal representative of Ameer Bux, Kallu is not entitled to claim protection under the Act. This position does not admit of doubt at this stage, and has rightly been not challenged by the learned counsel for Kallu. The sole question for determination is, whether Kallu is entitled to resist the plaintiff's suit in his personal capacity as a co-tenant. Certain evidence in the shape of receipts of rent has been placed on record in support of his plea that he is a co-tenant. I do not want to express any opinion on the controverted question of fact, whether Kallu was a co-tenant with Ameer Bux in respect of the suit premises. The point for decision before me is, whether Kallu should be permitted to raise the plea in this

appeal. Here, I may make mention of another important fact that before making the application on 3-10-74, Kallu had instituted a regular suit to get his right as a tenant in his personal capacity determined, in the Court of Civil Judge, Sri Ganganagar on 9th May, 1974, and that suit is registered as Civil Suit No. 320/74. It is admitted that the suit has been instituted for getting a declaration that Kallu is a co-tenant in his personal right in respect of the premises in dispute. It has been further prayed in the suit that an injunction be issued against Sal Das (appellant) restraining him from evicting Kallu from the suit premises, whether in execution of any decree or otherwise. Thus, the matter which Kallu wants to get decided by his application dated 3-10-74 is undoubtedly the subject-matter of the Suit No. 320/74 instituted by him.

5. Learned counsel for Kallu has placed strong reliance on the following observations of their Lordships made in AIR 1972 SC 2526:--

'Indeed this does not prevent the legal representatives from setting up also their own independent title, in which case there could be no objection to the Court impleading them not merely as the legal representatives of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on the independent title.'

6. It may be relevant to point out, here, that when notice was served on Kallu to show cause why he may not be substituted as a legal representative of the deceased Ameer Bux, he did not come forward with an objection that besides being a legal representative of the deceased, he is also entitled to resist the suit in his personal capacity. After filing a regular suit on 9th May, 1974, he filed the present application on 3-10-74 to the effect that he was a tenant in his personal capacity. Thus, it is obvious that he wants to pursue two parallel remedies at the same time; one by way of suit, and the other by way of this application. The suit, as already stated above, has been instituted about five months earlier than this application. There is, thus, no question of impleading Kallu in his personal capacity in the present appeal so as to avoid a separate suit for a decision on his independent title, because such a suit has already been instituted. In this view of the matter, I do not think it just and proper to investigate into the question as to the

independent title of Kallu as a tenant in his personal capacity, and leave him to pursue his remedy in the Civil Suit. Consequently, so far as this appeal is concerned, there is no escape from the conclusion that as a legal representative of Ameer Bux, Kallu is, or for that matter, the legal representatives of Ameer Bux, are not entitled to get protection under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, and the plaintiff is entitled to get a decree for ejection against them in their capacity as legal representatives of Ameer Bux.

7. I, therefore, allow this appeal, set aside the judgments and decrees by the Courts below and hereby decree the plaintiff's suit for ejection against the respondents Kallu and others in their capacity as legal representatives of the deceased Ameer Bux. There will be no order as to costs.

8. However, before parting with the case, I wish to make it clear that this decree is being passed against Kallu and others only in their capacity as legal representatives of the deceased Ameer Bux without prejudice to the adjudication of Kallu's independent title as a tenant in his personal capacity in Suit No. 320/74. I may further make it clear that it will be open to Kallu to approach the Civil Court where the suit is pending for issue of an appropriate order restraining the appellant from executing the decree for ejection against Kallu in his personal capacity, and the Civil Court will be free, unhampered by this judgment, to pass appropriate order on the merits of the case, and issue any interim order as it may think fit.

9. Let a copy of this judgment be sent to the Court of Civil Judge, Ganganagar where Suit No. 320/74 is pending.

10. Learned counsel for the respondents prays for certifying this case to be a fit one for appeal under Section 18 (2) of the Rajasthan High Court Ordinance. Prayer is refused.