

Ramdayal Vs. Ram Narayan

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Court : Rajasthan

Decided On : Jul-14-1952

Reported in : AIR1953Raj125

Judge : Bapna, J.

Acts : Marwar House Rent Control Act, 1949 - Sections 11; Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13

Appeal No. : Second Appeal No. 190 of 1951

Appellant : Ramdayal

Respondent : Ram Narayan

Advocate for Def. : Hastimal, Adv.

Advocate for Pet/Ap. : Utsav Lal, Adv.

Disposition : Appeal dismissed

Judgement :

Bapna, J.

1. This is a second appeal by the defendant in a suit for recovery of rent and ejection.

2. The case for the plaintiff-respondent is that the defendant rented certain premises mentioned in para (1) of the plaint from the plaintiff at a rent of Rs. 8/- per mensem by a deed dated Poh Sudi 1, Smt. 2002. Thereafter the plaintiff wanted to build a second storey and it was alleged that the defendant agreed to vacate the premises, or to pay Rs. IV- for the upper storey and Rs. 8/- for the lower storey as rent per mensem. It was alleged that after the upper storey was built the defendant took possession of it without permission of the plaintiff but did, not pay Rs. 23/- as agreed upon and also refused to vacate the premises. A notice was served but to no effect. The plaintiff claimed Rs. 31/8/- by way of rent in arrears and prayed for ejectment of the defendant on the ground that it was required for his 'bona fide' personal necessity.

3. The defendant admitted the tenancy but pleaded that his possession over the upper storey was in pursuance of the agreement with the plaintiff to occupy the upper storey along with such portion as remained with the defendant in the lower storey at the same rate of Rs. 8/- per mensem. He denied having agreed to pay Rs. 23/- per mensem as alleged by the plaintiff. He pleaded that the plaintiff had no personal necessity to occupy the premises. In the additional pleas it was mentioned that the premises when taken on rent by the defendant consisted of single storey and the plaintiff converted all the rooms in the lower storey into shops with the consent of the defendant. It was alleged that the plaintiff had agreed to let the defendant in occupation of the upper storey at the same rent of Rs. 8/- per mensem and the defendant agreed to pay the same rent although the area of occupation had become much less.

4. The trial Court after evidence passed a decree in favour of the plaintiff against the defendant for eviction but held that the rent payable was only Rs. 8/- per mensem and the defendant was directed to pay at that rate till he was evicted.

5. The defendant filed an appeal and the learned District Judge agreed with the lower Court that the plaintiff having intended to install a flour mill in one of the shops into which the lower storey had been converted, required the premises for his own use, and saw no reason to differ from the lower Court as regards decree for ejectment so far as the lower storey was concerned. He however, was of the

view that as the defendant was alleged to have taken possession of the upper storey without permission of the plaintiff, he could not be said to be a tenant of the plaintiff and as such the decree for ejectment from the upper storey had been erroneously given as in respect of that property the relationship of landlord and tenant could not be said to have been established. He directed that the claim of the plaintiff as regards ejectment from the upper storey will stand dismissed and the defendant will have the right of passage through the lower storey so long as he remained in lawful possession of the upper storey. He left the parties to bear their own costs in the appeal and as regards the costs of the lower Court, the plaintiff was allowed costs only to the extent of his success treating the rent at Rs. 8/- per mensem. The defendant has come up in appeal while the plaintiff has filed cross-objections.

6. It was urged that the plaintiff had failed to prove that he required the premises for his own use. It was further argued that according to the Marwar House Rent Control Act, which was in force on the date of the institution of the suit, ejectment could only be allowed, as laid down by Section 11, Marwar House Rent Control Act, 1949, viz., '

(a) if the tenant fails to pay the rent for three successive months or is a habitual-defaulter;

(b) if the house is reasonably and in good faith required by the landlord for his own occupation or of any person for whose benefit the house is held by him in the capacity of a trustee or guardian;

(c) if the tenant has not been performing any of the conditions of the tenancy;

(d) for any other reasons which the Court may consider sufficient.'

It was argued that the plaintiff alleged his case to fall under Clause (b), but since, on his own showing, he required the premises for installing a flour mill, it could not be said that it was required for his own occupation. Learned counsel contended that the occupation of the landlord meant that the landlord was to live in it.

7. As regards the first contention, there is a concurrent finding of fact by the two Courts below that the plaintiff wanted to install a flour mill and that this was a bona fide requirement of the plaintiff. It only remains to be seen whether the necessity made out fulfilled the conditions laid down by Clause (b) of Section 11, Marwar House Rent Control Act, 1949. The word 'occupation' occurs in certain similar Acts in other parts of India and there are authorities which lay down that the use of the building for the purposes of residence of the landlord would certainly be occupation, but 'occupation' is not restricted to that kind of use only, and a building would be said to be required for the occupation of the landlord even if he requires it for the purposes of carrying on business or for any other use which would be beneficial to the landlord. Reference may be made to -- 'Baladin v. Lakhan Singh', AIR 1927 All 214; -- 'Balmukund v. Hari Narain', AIR 1949 Pat 31, and -- 'Ratilal Bros. v. Govt. of Mysore', AIR 1951 Mys 66 where it was held that

'the word 'occupation' has been used in its ordinary dictionary sense, meaning the actual user of the property for the purpose for which it is meant, and it cannot be restricted in its meaning by making it synonymous with residence.'

8. It may be pointed out that the word 'house' is defined in the Marwar Act, and besides meaning a building or part of a building suitable for use as a place of residence, it also means a building or part of a building suitable for use as a place for business or entertainment, a garden, a shed or a garage, and includes any furniture supplied by the landlord for use in such building or part of a building with or without compound and outhouses. A building suitable for business or entertainment could not obviously be used for the purposes of residence. The provisions of Section 11 were however applicable to it and therefore the word 'occupation' must be interpreted in a wider sense.

9. It was also argued that the defendant's occupation of the upper storey of the house having been maintained by the lower Court, he should also have been given the right to use the latrine which is in the first storey. Another contention raised was that the necessity had only been proved with respect to one of the shops and, therefore, the defendant could not be ejected from the other portions in the lower storey which consisted of, besides the shops, a veranda, a

small room and a latrine. It is quite clear that if the possession of the defendant over the upper storey was to be maintained, he should have been given the right to use the latrine which is in the lower storey as that convenience was attached both to the lower and the upper storey. But this matter would depend upon whether the decree of the lower Court in maintaining the possession of the upper storey is correct, and the question will have to be re-examined as the plaintiff-respondent has filed cross-objections.

The other contention that the defendant may be allowed to retain possession of such part of the first storey as had not been proved to be required by the plff., is not correct. It is not necessary in such cases for the plaintiff to prove that every portion of the premises leased to the defendant was required for occupation by the plaintiff since the Court cannot make out a new agreement of tenancy between the parties for the property which may not immediately be required by the plaintiff. If the plaintiff succeeds in proving that any substantial portion of the leased premises is required by him for his own use, he would be entitled to a decree for ejectment of the lessee from the entire premises leased to him. If the leased premises, for instance, consisted of several rooms, outhouses, garages, court-yards and gardens, it would be absurd to think that the landlord stood in the necessity of proving his requirement in respect of every room or garage or cut-house, or every inch of the court-yard or, garden.

10. In the recent Act known as the Rajas-than Premises (Control of Rent and Eviction) Act, 1950 (17 of 1950), the matter of eviction of tenants is provided under Section 13, and Clause (h) thereof requires the Court to see that the premises are required reasonably and bona fide by the landlord for the use or occupation of himself or his family. What is important, therefore, to see is that the needs of the landlord are bona fide, and once the needs are bona fide in respect of a portion of the leased premises, the landlord has a right to come to Court to ask for eviction of the tenant from the entire leased premises. The contention of the defendant, that he may be allowed to retain possession of a small portion of the first storey for which no definite evidence has been led by the plaintiff as to his own requirement, has, therefore, no force.

11. Now as to cross-objections, the plaintiff-respondent has urged that the defendant, all along pleaded that he occupied the upper storey as a tenant and, therefore, the lower Court was wrong in treating the defendant to be a trespasser. The lower Court has taken its clue from the language used by the plaintiff in the plaint inasmuch as in para. (3) of the plaint, the plaintiff mentioned that the defendant had taken possession of the upper storey without permission of the plaintiff. That statement was, however, to be read with para (2) of the plaint in which it was mentioned that it had been agreed between the parties that the defendant would vacate the premises but in case of his failure to do so, he would occupy both the upper and the lower storey at a rent of Rs. 23/-per mensem.

The plaint, therefore, indicated that the plaintiff had agreed to take the defendant as his tenant both for the upper storey and such part of the lower storey as remained unconverted into shops, and the allegation that the defendant had actually occupied the upper storey without permission did not make the defendant a trespasser. The defendant's version was, however, clear that he had occupied the upper storey as a tenant of the plaintiff on the same rent as before and this indeed has been the finding of the first Court, The lower appellate Court, therefore, erred in relying on one paragraph alone of the plaint in holding that the defendant was a trespasser in respect of the upper storey. The cross-objections, therefore, succeed.

12. As a result, the appeal is dismissed with costs and the cross-objections are accepted, and the decree of the lower Court is modified so that the plaintiff will get a decree for eviction, of the defendant from the entire premises --both the old portion remaining in the occupation of the defendant and the new portion subsequently constructed and occupied by the defendant. The defendant will pay costs of the cross-objections in this Court. The plaintiff will get his costs on the claim of ejectment both in the lower appellate Court and the original Court on a rental value of the house at Rs. 8/-per mensem. The decree of the trial Court as regards payment of rent at Rs. 8/- per mensem till eviction will stand.