

Sadiq Ali Vs. Sagarmal

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Court : Rajasthan

Decided On : Feb-08-1994

Reported in : AIR1994Raj203; 1994(1)WLC519; 1994(1)WLN148

Judge : O.P. Jain, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13(1)

Appeal No. : Civil Reg. Second Appeal No. 223/1980

Appellant : Sadiq Ali

Respondent : Sagarmal

Advocate for Def. : D. Maheshwari, Adv.

Advocate for Pet/Ap. : N.P. Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

O.P. Jain, J.

1. This is a second appeal under Section 100, C.P.C. and is directed against the judgment of Dist. Judge, Pratap-garh dated 28th August, 1980.

2. The brief facts of the case are that a shop situated in the main market of Pratapgarh town was let out by the plaintiff to the defendant on 29th May, 1968. The plaintiff filed a suit for ejectment of the defendant mainly on the ground that the defendant himself is the owner of a shop and had obtained a decree against his tenant Bhagwan Dass. Therefore, the plaintiff is entitled to get vacant possession of his own shop.

3. The defendant admitted the tenancy and also admitted the fact that he has obtained vacant possession of his shop from Bhagwan Dass. The defendant however contested the suit on the ground that the plaintiff has no bona fide personal necessity of the suit shop. After recording the evidence produced by the parties, the learned Munsif dismissed the suit on 28-10-1978. Plaintiff Sadiq Ali filed an appeal before Dist. Judge, Pratapgarh but was unsuccessful and therefore, he has filed the present second appeal.

4. I have heard learned counsel for the parties and have gone through the record.

5. The only question which arises in this appeal is whether the plaintiff is or is not entitled to evict the defendant under Section 13(l)(i) of the Rajasthan Premises (Control of Rent and Eviction) Act of 1950. The learned trial court has relied on AIR 1972 Raj 228 (Santlal's case) in which it has been held that there is difference between premises let out for use as a residence and premises let out for commercial purpose. Under Clause (i) of Section 13(1) the words used are 'suitable residence'. Therefore, acquisition of alternative accommodation can be a ground of eviction in the case of residential use but not for commercial use.

6. It has been held in 1969 (1) SCC 760 : (AIR 1969 SC 1288) that a tenancy cannot be terminated merely by showing that the tenant had acquired alternative accommodation. In the case before the Hon'ble Supreme Court the tenancy had been created both for the purpose of residence and carrying on of a profession. In the case in hand, the tenancy was created for commercial purpose only. Therefore, in the case of such a tenancy the mere fact that the tenant had acquired another shop is no ground to eject him.

7. The learned counsel for the appellant has argued that the Rajasthan High Court has taken a different view in the case of Chandra Kumar v. Smt. Kankoo which is not a reported case. He wanted two days' time to produce the copy of that judgment. But it was not produced.

As a result of the above discussion, the second appeal has no force and is hereby dismissed with costs throughout.

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