

Kewal Ram Vs. Mangu Mal

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Court : Rajasthan

Decided On : Mar-20-1974

Reported in : AIR1974Raj201; 1974(7)WLN241

Judge : C.M. Lodha, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 105 and 111

Appeal No. : Second Appeal No. 81 of 1973

Appellant : Kewal Ram

Respondent : Mangu Mal

Advocate for Def. : Ganpat Singh and; Gopal Singh, Advs.

Advocate for Pet/Ap. : N.M. Kasliwal and; S.R. Joshi, Advs.

Disposition : Appeal partly allowed

Judgement :

C.M. Lodha, J.

1. This is a defendant-tenant's second appeal arising out of a suit for ejectment and arrears of rent,

2. The facts of the case are rather uncommon, and an interesting question has been raised as to the rights of a sub-tenant. One Nandkumar leased out a "Gokha" (a sort of covered raised platform outside the house) to the plaintiff Mangumal in 1950 A. D. at a monthly rent of Rs. 15/-. Subsequently Mansu Mal took on lease an open piece of land situate near the 'Gokha' from the Municipal Council, Jaipur on a rent of -/12/- per month in the year 1954. On 19-2-1961 Mangu Mal sub-let the 'Gokha' as well as the open land on which a cabin had been fixed to the appellant Kewalram on a rent of Rs. 60/- per month. But in order to conceal the sub-lease made by him, Mangu Mal got executed a deed of partnership between him and the said Kewalram. This was obviously done in order to save themselves from ejectment under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 on the ground of subletting. It appears that for some time the parties pulled on well. However, after a few years the parties fell out and on 30-11-1965 Mangu Mal filed a suit for rendition of accounts and dissolution of partnership against Kewalram on the basis of the partnership deed executed between them on 19-2-1961. Kewalram resisted the suit on the ground that the alleged partnership deed was merely a device to conceal the sub-lease made by the plaintiff in his favour in respect of the 'Gokha' and the open land. Mangu Mal, however, got the suit dismissed as withdrawn on 14-2-1968. It seems, however, that he had made up his mind, before withdrawing the suit, to bring another suit for ejectment on the basis of relationship of landlord and tenant and so he prepared the ground for the same. He served a notice of ejectment dated 22nd September, 1967 on Kewalram alleging therein that Kewalram was his tenant and had committed default in payment of rent and the premises in question meaning thereby the 'Gokha' and the land over which the cabin had been constructed, were required for his personal use. He filed the present suit on 2-3-1968 for ejectment against Kewalram on two grounds: (i) default in payment of rent, and (ii) personal necessity. Defendant Kewalram resisted the suit. He denied the plaintiff's personal necessity for the premises in question as well as the alleged default in payment of rent. He further pleaded that so far as the 'Gokha' was concerned he had attorned in favour of its owner Nandkumar and consequently the sublease with respect to the 'Gokha' came to an end and Mangu Mal could not claim ejectment in respect of it.

3. After recording the evidence produced by the parties the learned Additional Civil Judge, Jaipur City No. 4 by his judgment and decree dated 24-5-1971 decreed the plaintiff's suit for ejectment in respect of the cabin but dismissed it in respect of 'Gokha'. The rent for the cabin was decreed at the rate of Rs. 50/- per month.

4. Aggrieved by the judgment and decree of the trial court, both the parties filed appeals and the learned Additional District Judge No. 2, Jaipur City by a single judgment dated 4-9-1972 allowed the plaintiff's appeal in part and granted a decree for ejectment in favour of the plaintiff in respect of 'Gokha' also. As a necessary corollary the decree for arrears of rent was also increased so as to include the rent for the 'Gokha' at the rate of Rs. 10/- per month. In other words arrears of rent were decreed at the rate of Rs. 60/- per month. The appeal filed by the defendant was dismissed. Dissatisfied with the judgment and decree by the Additional District Judge No. 2, Jaipur City the defendant Kewalram has come in appeal.

5. The learned counsel for the appellant has argued the following three points in support of his case:

(i) Notice of ejectment was not valid.

(ii) The plaintiff is not entitled to any relief as he had taken inconsistent pleas in the plaint, and

(iii) that relationship of landlord and tenant had been established between the alleged sub-tenant Kewalram and the original landlord Nandkumar and therefore in any case a decree for ejectment from 'Gokha' and arrears of rent in respect of it cannot be sustained.

6. The first two points canvassed by the learned counsel should not detain me long. The plea regarding validity of the notice taken in the courts below was that the notice had not been served on the defendant. This plea was not substantiated and has not been pressed before me. Learned counsel has, however, argued that the notice was served at a time when the previous suit based on the alleged partnership between the parties was pending and consequently the plaintiff could

not take the plea of the alleged tenancy between him and the defendant and serve a notice on the defendant on that basis. In this connection it has also been argued that in the present suit too the plaintiff has pleaded that there was partnership between him and the defendant and then an inconsistent plea has been taken that the relationship between the plaintiff and the defendant was that of tenant and sub-tenant. At this stage, it may be pointed out that the defendant had pleaded in the previous suit and his stand in the present suit also is that he was a sub-lessee from the plaintiff. It is, therefore, wholly immaterial that the plaintiff took an alternative plea in the present suit that there existed a relationship of partnership between the parties. No prejudice has been caused to the defendant by the inconsistent plea of partnership taken by the plaintiff. The suit has been tried and decreed on the basis of the alleged relationship of land-lord and tenant which is also the admitted case of the defendant. The notice of ejectment cannot be characterised as illegal or bad merely because it was served at a time when the previous suit was pending. In my opinion, the first two points raised by the learned counsel are devoid of substance.

7. The third and the last point, no doubt, as already stated above, raises an interesting question. The trial court accepted the plea of the defendant that he had attorned in favour of the original landlord Nandkumar by lease deed Ex. A-1 dated 4-6-1968 and that the receipt Ex. A-2 in respect of the rent paid by the defendant to Nandkumar was a genuine document. It further accepted the evidence of Kewalram as well as Nandkumar in support of the defendant Kewalram's plea that the sub-lease had come to an end on account of attornment by the defendant in favour of Nandkumar who held paramount title. The first appellate court, however, did not agree with the trial court on this question. It found that the lease deed Ex. A-1 was not a genuine document and had been prepared by Kewalram in collusion with Nandkumar in order to defeat the rights of the plaintiff.

8. It has been argued by the learned counsel for the appellant that since Kewalram had subsequently attorned in favour of the owner Nandkumar by executing a lease deed in his favour and also by payment of rent to him the sub-lease made by Mangu Mal in his favour was extinguished. His contention is that in the first place no collusion can be inferred between him and Nandkumar on the ground that the

stamp on which the lease deed was written out was purchased much prior to the date of the lease or that the purpose mentioned in the stamp paper is different from the one for which it has been actually used. The learned counsel goes on to argue that the statements of Kewalram and Nandkumar have not been considered by the learned first appellate court. His submission, in the alternative, is that the moment the owner of the property who is holder of the paramount title admits that a direct tenancy between him and the alleged sub-tenant was established, the sub-lease made by the plaintiff in his favour must per force come to an end. To support his contention he has relied on *Hanumanthaiya v. Thavakal San*, AIR 1950 Mys 9. The facts of that case were different. The plaintiff in that case brought a suit for his share of the produce against the defendants to whom the land had been leased out. The defendants denied the lease and pleaded that a third party in pursuance of a decree against the plaintiff brought the property to sale and purchased the same and thereafter took possession of the property through the Court. Their plea was that they had delivered the produce to the third party who had a paramount title and thus their liability was discharged. It was held that subsequent to the creation of tenancy, the tenant was not debarred from contending that the landlord's title was subsequently lost or defeated, and the tenancy may amongst other reasons be terminated by act of parties or by operation of law. It was further held that actual physical ouster by title paramount is not necessary to prove eviction. If there is clear proof of the person claiming paramount title, it constitutes cessation of title in the lessor. After placing reliance on certain Calcutta cases it was further observed that if the lessee consents to an attornment to such person to change the title under which he holds or enters into new arrangement for holding under him, it will be equivalent to an eviction and fresh taking. In the case of eviction by title paramount, actual surrender of possession to the intermediate owner is also unnecessary. In the present case, a third party has not dispossessed both the lessor and the lessee nor the covenant for quiet enjoyment by the lessee has been disturbed.

9. The important question, however, is whether the sub-lease was created by Mangu Mal without the consent of the landlord? If it was with his consent, neither under general law nor under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 the landlord can evict the tenant or for that matter the

sub-tenant, on the ground of sub-letting. But on the other hand if it is without the consent of the landlord, the landlord has a right to evict the tenant as well as the sub-tenant. Now in the present case it is amply clear that the sub-lease was created without the consent of the landlord and to cover up the real nature of the transaction viz. the sub-lease, a partnership deed was executed between the lessee and the sub-lessee as a camouflage. We have it from the statements of Kewalram as well as Nandkumar that on having come to know of the alleged sub-lease created by Mangu Mal, Nandkumar threatened to having an action for eviction against both and the defendant in order to save himself against eviction, attorned in favour of the owner of the property i.e. the original landlord Nandkumar. Thus, in the circumstances of the case, it was open to the owner to enter into an agreement of lease directly with the sub-lessee and remove the lessee from the scene, and thereby bring about cessation of the relationship of sub-tenancy between the lessor Mangu Mal and the sub-lessee Kewal Ram. Admittedly, no rent had been paid by Kewalram to Mangu Mal after the date of the alleged attornment evidenced by Ex. A-1 dated 4-6-1968. Nandkumar admits that he has received rent from the sub-tenant Kewalram for the period commencing from January 1968. In this view of the matter I have come to the conclusion that the relationship of lessor and lessee between the tenant Mangu Mal and the sub-tenant Kewalram came to an end from the date of attornment by Kewalram in favour of the owner Nandkumar. This finding disposes of the question of the alleged collusion between the owner Nandkumar and the sub-tenant Kewalram because in the circumstances of the case, it was permissible for Nandkumar and Kewalram to enter into such an agreement, and thereby defeat the rights of Mangu Mal under the sublease.

10. In the view I have taken, the decree passed by the learned Additional District Judge No. 2, Jaipur with respect to the 'Gokha' cannot be maintained. Consequently, I allow this appeal in part, set aside the judgment and decree by the learned Additional District Judge in respect of 'Gokha' and arrears of rent pertaining thereto and restore the judgment and decree by the trial court. The parties are left to bear their own costs throughout.

11. Learned counsel prays for leave to appeal under Section 18(2) of the Rajasthan High Court Ordinance. Leave is refused.

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