

Santlal Vs. Harbanssingh

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Court : Rajasthan

Decided On : Jan-06-1972

Reported in : AIR1972Raj228; 1972()WLN1

Judge : B.P. Beri, J.

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

Appeal No. : Civil Revn. No. 447 of 1970

Appellant : Santlal

Respondent : Harbanssingh

Advocate for Def. : Guru Prakash, Advs.

Advocate for Pet/Ap. : H.C. Jain, Adv.

Disposition : Revision allowed

Judgement :

ORDER

B.P. Beri, J.

1. This is an application by way of revision against the order dated 10-7-70 of the Munsiff, Ganeanasar regarding the correctness of the issues framed.

2. Facts it is necessary to notice for the disposal of the application briefly stated are these: The landlord instituted a suit against the tenant for his eviction from a shop No. 52/4 situate in Gol Bazar Sri Ganganagar inter alia on the ground that the tenant has his own shops which he is using for his business. The tenant contested the suit. On 6-2-1970 four issues were framed. The first issue is the only issue which has been challenged. It reads as follows:--

'1. Has the defendant acquired vacant possession of another suitable premises?'

On 6-5-70 an application was moved by the tenant for the amendment or deletion of issue No. 1 on the ground that the admitted case of the parties in the pleadings related to a shop while the issue employed the word 'premises'. The learned Munsiff observed that the use of the word 'premises' was proper and rejected the application in so far as this point was concerned. It is against this order on 10th July, 1970 that the present application is directed.

3. Learned counsel for the applicant argues that the ground on which eviction of the tenant has been claimed is under Section 13 (1) fi) of the Raiasthan Premises (Control of Rent and Eviction) Act. 1950 (hereinafter called 'the Act'), which applies only to a tenant who has built, acquired vacant possession of or has been allotted a suitable residence and not to a shop. The issue No. 1. argued the learned counsel, should accordingly have been whether the defendant acquired vacant possession of another suitable shop and if so what is its effect.

4. Mr. Guru Prakash, learned counsel for the non-applicant-landlord. argues that the word 'premises' is wide enough to include a shop and as the suit relates to a shop the issue should be deemed to cover it.

5. The Code of Civil Procedure insists on the necessity of framing issues which arise from the material proposition of fact and law asserted by one party and denied by the other party for the obvious purpose of guiding the investigation within well-settled boundaries. Precision in the matter of issues is a guarantee against digression and discursiveness. Any time or thought bestowed in the framing of issues is well spent because it saves future waste of time. Reference in this connection may be made to Savad Mubammad v. Fatteh Muhammad (1895)

ILR 22 Cal 324 (PC). It is true that in Sub-section (v) of Section 3 the generic word premises in the Act is wide enough to include any building or part of a building (other than a farm building) let or intended to be let for use as a residence or for commercial use or any other purpose, including the gardens, grounds, eodowns. garages and outhouses, if anv. appurtenant to such building, etc. etc. and should, therefore, ordinarily include a shop because the purpose being commercial user thereof. But even in the definition the legislature has qualified buildings by reference to their use. namely, 'let for use as a residence or for commercial use'. The same distinction appears to have been maintained while drafting Section 13 in which excepting for Clauses (a) and (i) the word used throughout is premises. It will be appropriate here to extract the language of Section 13 to the extent it is material for our purposes:

'Section 13 -- Eviction of Tenants.

(1) Notwithstanding anything contained in any law or contract no court shall pass any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant, so long as he is ready and willing to pay rent therefor to the full extent allowable by this Act. unless it is satisfied:--

(a) that the tenant has neither paid nor tendered the amount of rent due from him for six months: or

(b) that the tenant has wilfully caused or permitted to be caused substantial damage to the premises, or

(c) that the tenant has without the permission of the landlord made or permitted to be made any such construction as in the opinion of the court, has materially altered the premises or is likely to diminish the value thereof: or

(d) that the tenant has created a nuisance or has done anv act which is inconsistent with the purposes for which he was admitted to the tenancy of the premises or which is likely to affect adversely and substantially the landlord's interest therein: or

(e) that the tenant has assigned, subject or otherwise parted with the possession of the whole or part of the premises, without the permission of the landlord: or

(f) that the tenant has renounced his character as such or denied the title of the landlord and the latter has not waived his right or condoned the conduct of the tenant; or

(g) that the premises were let to the tenant for use and residence by reason of his being in the service or employment of the landlord and that the tenant has ceased to be in such service or employment: or

(h) that the premises are required reasonably and bona fide by the landlord--

(i) for the use or occupation of himself or his family: or

(ii) for the use and occupation of any person for whose benefit the premises are held; or

(iii) for a public purpose;

(iv) for philanthropic use: or

(i) that the tenant has himself, acquired vacant possession of or being allotted a suitable residence: or

.....'

Clause (i) alone employs the words 'suitable residence'. A survey of parallel statutes of other States in India done by Mr. R. C. Kochatta in his book 'Fundamentals of Rent Control legislation in India' shows that the Acts of Assam, Bombay, Delhi, Madhya Pradesh and Rajasthan confine the ground of alternative accommodation only to residential building while the Acts of Andhra Pradesh, Kerala and Mysore are wider in this respect because they apply to all varieties of buildings, residential or otherwise. Thus it would be clear that acquisition of alternative accommodation can be a ground for eviction if only the terms of Section 13 (1) (i) are satisfied. The simple question, therefore, is whether the issue as framed by the learned Munsiff, when he employs the word 'premises' is precise

enough to pinpoint the controversy. The answer must be in the negative. Law insists on precision. It is correct that the word 'premises' may include a shop but when the dispute admittedly is in regard to a shop the proper issue should be in regard to the shop specified as such. The issue No. 1 if properly drafted would be: 'Has the defendant acquired another suitable shop and if so whether he is liable to be evicted on that account?' Mr. Guru Prakash does not dispute that this is a part of his case. Accordingly in the interest of exactitude the issue No. 1 should read as indicated above in place of the issue No. 1 as framed by the learned Munsiff.

6. It will be open to the learned Munsiff to revise his issue No. 2 in the light of the observations made above because no grievance has been made before me in regard to issue No. 2. I do not wish to interfere.

7. The revision-application is allowed. There will be no order as to costs.

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