

Rajeshwar Dayal Vs. Dhan Kumar

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Court : Rajasthan

Decided On : Apr-10-1973

Reported in : AIR1973Raj345; 1973()WLN278

Judge : Kan Singh, J.

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

Appeal No. : C.S.A. No. 172 of 1973

Appellant : Rajeshwar Dayal

Respondent : Dhan Kumar

Advocate for Pet/Ap. : K.N. Tikku, Adv.

Disposition : Appeal dismissed

Judgement :

Kan Singh, J.

1. Heard learned counsel.

2. The eviction of the defendant-appellant from the suit premises was sought on the ground of his having built a suitable residence in Adarsh Nagar, Jaipur. The issue that was tried was whether the defendant had constructed his own house in Adarsh Nagar and started living in the same and that the house was suitable for

his residence. Both the parties produced their evidence. The learned Munsif held that the newly constructed house by the defendant was not suitable. The lower appellate court came to a contrary conclusion. He observed that the newly constructed house consisted of 6 rooms, one garage, kitchen, store room, latrine, bath room and a chowk. He further found that the defendant-tenant had started living in this house from 23-1-67 on which date the house warming ceremony was performed. Ex. 1 was the invitation card for this ceremony and Ex. 2 and Ex. 3 were the photos of the house. Further the marriage of defendant's son Munish was also performed in this house and the invitation card for the marriage Ex- 4 as also for the 'At Home' were also exhibited. The learned Additional District Judge, Tonk who heard the appeal, therefore, came to the conclusion that the newly constructed house of the defendant was suitable for his residence.

It was argued before him on behalf of the defendant-tenant that he was keeping his Dental and Optician's Clinic on the lower portion of the suit premises and as the house built by him was at a distance of two miles from the suit premises, it was not suitable for him for carrying on his profession as a Dentist or as an Optician. This was repelled by the learned Additional District Judge observing that the defendant was having his transport (Motor Cycle) and could, therefore, cover the two miles distance in no time.

3. Learned counsel for the tenant has argued that on the date the defendant occupied the house it was incomplete and he had only shifted to the house temporarily for the purposes of the marriage of his son. Apart from this it was submitted that the defendant had sold away the house during the pendency of the suit on account of his indebtedness. Learned counsel stressed that the suit has to be decided by the Court in the light of the facts as they existed on the date of the decree. In other words, subsequent events have to be taken due note of inasmuch as Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, prohibited the Court from passing any decree for eviction unless it was satisfied that the tenant has built a suitable residence. In the present case according to learned counsel, as the defendant was constrained to alienate the property to clear his debts he was yet entitled to the protection of the Act. Learned counsel placed reliance on a number of cases, such as Smt. Ashrafi Devi v. Choudhri Mukh Ram

Saini. 1971 Ren CJ 691 (Delhi); S. B. K. Oil Mills v. Subhash Chandra. AIR 1961 SC 1596, Kathringa v. Lonappan. 1969 Ker LT 334 and Narayan Chand v. Krishna Kumar. 1967 Raj LW 312.

4. So far as the question of the defendant having built a house in Adarsh Nagar is concerned the position is admitted. It is however, submitted that the house was incomplete and was otherwise not suitable for the defendant as he could not carry on his profession there. Whether the house was complete or suitable for the residence of the defendant is a question of fact. I am, therefore, not inclined to go behind the finding of the lower appellate court. Learned counsel for the appellant submitted that the court below has been guided by an extraneous consideration in that it observed that the defendant had not produced any licence for the carrying on of the profession of a Dentist or an Optician. This is true, nevertheless the Court had taken into consideration all the salient facts and has then reached the conclusion that the house was suitable for residence. It has referred to the various exhibits. The photographs of the house on record show that the house seems to be a good one.

5. The next question is whether the sale of the house by the defendant during the pendency of the suit entitles him to claim the protection of Section 13 of the Act. It has to be borne in mind that the act of alienation of the house was a voluntary act of the defendant. Once the liability for eviction had arisen under Section 13 of the Act on account of the tenant having built a house then the right to sue for eviction has accrued to the landlord and that right could be taken away only by an express provision of the statute or by necessary intendment. Section 13 does not lay down as to what would happen if the tenant has once built a suitable residence and has then disposed of it during the pendency of the suit. Therefore, the section cannot be resorted to for divesting the right of seeking an eviction which has accrued to the landlord.

6. In 1971 Ren CJ 691 (Delhi) the tenants had built certain huts. They were built unlawfully without the permission of the competent authority and had consequently been demolished. It was in this context that the learned Judge held that the words 'has built' would obviously mean built lawfully and not in contravention of law. This

is not the case here.

7. In AIR 1961 SC 1596, their Lordships pointed out that the proviso added to Section 50 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 could not be used to decide whether Section 12 was retrospective. They pointed out that the section was prospective in part. In the light of that their Lordships considered the question whether under Section 6 no decree would be passed granting possession to the landlord if the tenant fulfilled the conditions mentioned in the Act. Their Lordships added that the point of time when the sub-section would operate is when the decree for recovery of possession will have to be passed.

8. From these observations learned counsel wants me to hold that the position regarding the building of a residence by the tenant has to be seen at the time of the decree and not at any time anterior to that, I am afraid, the observations of their Lordships cannot lead to that interpretation. If the tenant had once built a suitable house then the right to seek his eviction accrues to the landlord and that right is not defeated if by a voluntary act the defendant subsequently parts with the residence built by him. The position might be different if for any compelling reason for which the defendant-tenant is in no way responsible he is made to part with the property.

9. In 1969 Ker LT 334, the learned Judge pointed out that there was a discretion vested in the Court to depart from the general view that the rights of the parties must be determined as on the date of the institution of the action in justifiable circumstances provided such departure will not have the effect of conferring any manifest advantage or disadvantage on either party. The learned Judge pointed out that it was not as if there is an absolute, rigid or inflexible rule that under no circumstances the court should take into account subsequent events in determining the rights of parties pending adjudication before it. If there is no manifest injustice resulting therefrom, but on the other hand, such course would advance the cause of justice and prevent unnecessary implication, there is then ample jurisdiction vested in the court to take note of relevant subsequent events in deciding a case and moulding the relief to be granted.

10. I have no quarrel with these observations. In my view, however, if once having built a residence the defendant of his own volition alienates that residence then it would work manifest injustice to the landlord if that alienation is made a basis for depriving the landlord to seek eviction of the property. If this were permissible it will always be open to a calculating person to alienate the residence built by him even a day before the judgment and then plead that the courts should take note of the subsequent event of his having transferred the property. It is true, the tenant has led some evidence to show that he was under a debt and as a result of the sale he has paid off his creditors but that will not make the act of transferring the house any the less voluntary.

11. 1967 Raj LW 312, was a case in which the landlord had constructed the house and he sought the eviction of the tenant within the period of exemption of 7 years, but the suit could not be disposed of within the period of exemption. It was in that context that Tyagi J. held that since the period of 7 years was over, the tenant could claim the protection of Section 13 of the Act. The case was thus dealing with a different situation altogether.

12. In the present case, as I have already observed, the right of the landlord to seek eviction of the defendant on the ground that the latter had built a residence of his own cannot be defeated by the subsequent sale of that residence by the tenant during the pendency of the suit.

13. The appeal has thus no force and is consequently rejected.

14. Learned counsel prayed that as at present the defendant is having no residence of his own some respite may be granted to him. Looking to the shortage of accommodation four months' time is allowed to the defendant to vacate the premises, but this shall be subject to the condition that he pays all the arrears of rent upto date within one month from today and thereafter pays compensation (at the rate of rent) month by month by the 15th of the following month till he vacates the premises.