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Court : Rajasthan

Decided On : Apr-23-2004

Reported in : RLW2004(3)Raj1747; 2004(3)WLC240

Judge : A.C. Goyal, J.

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

Appeal No. : S.B. Civil Second Appeal No. 171 of 2002

Appellant : Agarwal Trader and anr.

Respondent : Smt. Chand Devi and ors.

Advocate for Def. : B.L. Agarwal, Adv.

Advocate for Pet/Ap. : R.P. Singh, Adv.

Disposition : Appeal dismissed

Judgement :

A.C. Goyal, J.

1. This is the second appeal by the defendants-tenants against the judgment and decree dated 13.2.2002, whereby learned Additional District Judge, Kishangarh, Ajmer, affirmed the judgment and decree of eviction passed by learned Civil Judge

(Jr. Div.) Kishangarh, on 14.3,2001. The parties would be referred in this appeal as arrayed in the plaint.

2. The relevant facts in brief are that the plaintiff- respondent No. 1 Smt. Chand Devi filed civil suit for eviction with the averments that suit shop was let out to defendant appellant No. 2 Govind Ram, through his Firm-defendant No. 1, on monthly rent of Rs. 145/-. All the acts of recovery of rent are being carried out by plaintiff's husband Shri Ghanshyam Das. The eviction was sought on the grounds of default in payment of rent; sub-letting of the shop to the defendant No. 3 Shri Nand Kishore, who is real brother of defendant-appellant No. 2 Shri Govind Ram and on account of closure of the shop. The defendants No. 1 to 3 in their written statement having admitted the tenancy, denied all the grounds of eviction with a prayer for fixation of standard rent at the rate of Rs. 80/- p.m.

3. During the course of proceedings, Punjab National Bank was also arrayed as defendant No. 4. On the basis of the pleadings of the parties, as many as nine issues were framed. Having recorded evidence of the parties, learned trial Judge decided Issues of sub-letting and closure of shop in favour of the plaintiff landlord and passed a decree of eviction.

4. First appeal preferred by the present appellants was dismissed by learned Additional District Judge, Kishangarh, vide impugned judgment dated 13.2.2002.

5. I have heard learned counsel for the parties. On the point of sub-letting, it was submitted by learned counsel for the appellants that both the courts below observed that the defendant No. 4 Punjab National Bank admitted this fact that Pankaj Textile had bank account in the year 1985-86. According to learned counsel for the appellants this finding is based upon no evidence as answer to interrogatories by the defendant No. 4, no-where discloses this fact that the defendant No. 3 Nand Kishore, Proprietor of Pankaj Textile had bank account in the years 1985- 86. It was also submitted that the first appellate court decided this issue against the appellants placing the burden of proving the sub-tenancy upon the appellants. Learned counsel for the plaintiff respondent contended that there is no ground to interfere with the concurrent findings of the courts below. It was also contended that once sub-letting is proved, the right to sue accrues to the landlord.

He placed reliance upon *Sare Mal v. Juhar Mal* (1), wherein it was held that right to sue accrues once the premises sublet, whether or not sub-tenant had vacated before filing of the suit.

6. I have considered the rival submissions and am of the considered view that the concurrent findings of the courts below are in no way perverse. The burden of proving this fact was never placed upon the appellants-tenants and both the courts having considered the entire evidence came to this conclusion that the suit shop was sub-let by the tenants to defendant No. 3 Nand Kishore and the goods pledged with the defendant No. 4 Bank by Sh. Nand Kishore were stored in the suit shop at the instance of defendant No. 4. Mere omission of the year 1985-86 in the answers of defendant No. 4 Bank does not make any difference in the conclusion arrived at by the courts below.

7. On the point of closure of the business, it was contended that there is no specific plea in the plaint that the tenants have not used the premises for a continuous period of six months immediately preceding the date of the suit, hence the decision of this issue is perverse. Learned counsel also contended that there was no evidence that the suit shop was not used for a continuous period of more than six months before filing the present suit. He placed reliance upon *Gauri Lal v. Gujar Mal* through his legal representatives (2). The legal proposition as submitted by learned counsel for the appellants finds support from the judgment delivered in *Gauri Lal's* case (*supra*). Per contra, learned counsel for the landlord respondent contended that both the courts below arrived at concurrent finding that the suit shop was closed for a period of more than two years just before filing the present suit and mere omission in the plaint that the shop remained closed for a period of six months does not make any difference. It was also contended that facts relating to non-user of the premises with or without reasonable cause are within special knowledge of the tenant and it is for the tenant to prove. He placed reliance upon *Sant Lal v. Harbans Singh* (3), wherein it was held that it is for the tenant to prove facts relating to non - user of the premises with or without reasonable cause, as such facts are within the special knowledge of the tenant. It was also held in para 14 of this judgment that the pleadings should not be construed very strictly and the Court must look essential justice of the case.

8. Both the courts below arrived at concurrent findings that the suit shop was closed for a continuous period of more than two years just before the filing of present suit and mere omission of this specific plea of six months in the plaint is not sufficient to discard the concurrent findings of the courts below. The pleadings are loosely drafted in the courts, and the courts should not scrutinise the pleadings with such meticulous care so as to result in genuine claims, being defeated on trivial grounds.

9. Thus findings of the courts below on these two points are in no way perverse and no substantial question of law arises in this second appeal. Consequently, this second appeal alongwith stay application is dismissed at the admission stage.

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