

Nizru Vs. Rewar Mal

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Court : Rajasthan

Decided On : Jan-06-1976

Reported in : 1976WLN(UC)33

Judge : M.L. Shrimal, J.

Appeal No. : S.B. Civil Second Appeal No. 389 of 1977

Appellant : Nizru

Respondent : Rewar Mal

Disposition : Appeal dismissed

Judgement :

M.L. Shrimal, J.

1. This is the plaintiff-landlord's second appeal arising out of a suit for arrears of rent and ejectment in respect of the premises described in para No. 3 of the plaint.

2. The property is situated in village Motuka. The case set out in the plaint was that the plaintiff-appellant was the owner of the property in dispute. Owing to communal disturbances he left the village for some other place in India. During his absence from the village the property was declared as evacuee property and was allotted to Rewarmal the respondent on payment of the monthly rent of annas tan. It is alleged that after the peace was restored in the area, he returned to the village

and filed an application under Section 16 of the Administration of Evacuee Property Act. The property was ordered to be restored by the Central Government. In pursuance to the order of restoration a notice was issued to the respondent asking him to make payment of rent to the plaintiff appellant, a copy of which was also endorsed to the appellant which has been placed on the record and is marked Ex. 1, There after the plaintiff-appellant terminated the tenancy of the defendant by a notice dated February 13, 1959 Ex. 4, The defendant failed to deliver possession of the property so the plaintiff-appellant filed the present suit. The defendant-respondent denied the plaintiff's allegations. He further denied the relationship of landlord & tenant between the plaintiff & the defendant & also challenged the validity of the notice terminating the tenancy. The allotment order made by the Central Government under the provisions of the Administration of Evacuee Property Act, 1950 was also challenged.

3. After recording the evidence produced by the parties, the trial court decreed the suit as prayed. An appeal was filed by the defendant which was accepted by the learned Civil Judge, Alwar by his judgment and decree dated March 6, 1967 and the suit was dismissed. Hence the plaintiff has come up in second appeal to this Court.

4. After the admission of the appeal a notice was issued to the respondent Rewarmal which stated that the appeal filed by the appellant Nizru challenging the judgment and decree dated March 6, 1967 passed in favour of the respondent by the Civil Judge, Alwar has been admitted and the appeal would be taken up for hearing on November 14, 1967. The notice was served on the respondent on September 29, 1967. The respondent has not chosen to appear before this Court to contest the appeal.

5. Learned counsel for the appellant has urged that the judgment and decree passed by the first appellate court is contrary to law. The learned Judge has misread the statement of P.W. 4 V.G. Pahlajani and has further erred in holding that notice Ex. 1 is a copy of the notice issued by the Evacuee Department to the appellant for restoration of the property. He has drawn my attention to the statement of PW 4 V.G. Pahlajani, who stated that the signature marked at 'A' in

Ex. 1 was that of Jetley, who was working as Assistant Custodian at Alwar on the relevant date. He further stated that he was acquainted with the signature of Mr. Jetley and the entries in Ex. 1 for restoration of the property must have been made after proper enquiry. A perusal of Ex. 1 shows that it is an original notice issued to the plaintiff appellant and is not a copy of the original. The defendant failed to cross-examine P. W. 4 V. G. Pahlajani regarding signature of the Assistant Custodian made at point 'A' in Ex 1. The appellant has stated on oath that the property in dispute belonged to him. The respondent has not claimed the ownership of this property. He has further stated in para No. 3 of the written statement that the property was allotted to him by the Custodian after being declared as evacuee property. In his statement before the court he stated that he did not make any payment of rent to the Custodian and had taken the possession of the property of his own accord as it was lying vacant. Thus the finding arrived at by the first appellate court regarding ownership of the property and restoration of the same to the appellant stand vitiated by misreading of the evidence. The trial court after careful examination of the evidence led by the plaintiff-appellant and the defendant-respondent had come to the conclusion that the disputed property belonged to the plaintiff appellant and decided house No. 1 in favour of the appellant. The first appellate court without considering the reasons given by the trial court and by misreading the evidence in the case held that the plaintiff failed to prove that he is the owner of the disputed property. I therefore, set aside the finding of the first appellate court on this (sic)sue and restore the finding of the trial court.

6. As regards the legality of the termination of the tenancy it is sufficient to say that mere look at Ex 4 shows that the notice terminating the tenancy was regarding the property No. 104 whereas the suit has been filed regarding the property No. 109. The four boundaries of the disputed house have also not been mentioned in the notice. As such the tenancy cannot be said to have been validly terminated by this notice. Besides this, it is the case of the plaintiff that the tenancy was month to month. The notice Ex 4 does not expire on the last date of the tenancy and there is no escape from the conclusion that the notice suffers from two above mentioned fatal defects and the first appellate court is right in holding that the tenancy not been properly terminated. Determination of tenancy is a pre-requisite of an

ejectment suit against the tensor.

7. The net result of the above discussion is that the appeal fails and is hereby dismissed. As the suit has been dismissed on technical grounds, the parties are ordered to bear their own costs throughout.

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