

**Jaisaram Vs. Sohandas**

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**Court :** Rajasthan

**Decided On :** Feb-24-1970

**Reported in :** 1970WLN209

**Judge :** C.M. Lodha, J.

**Appeal No. :** S.B. Civil Second Appeal Nos. 92 and 107 of 1967

**Appellant :** Jaisaram

**Respondent :** Sohandas

**Judgement :**

**C.M. Lodha, J.**

1. The point in controversy in these two appeals by the defendant-tenants are exactly identical. The landlord plaintiff respondent is the same in both the cases though the tenants are different. In the circumstances it would be convenient to dispose of both these appeals by a single judgment.

2. The plaintiff-respondent Sohandas purchased two shops from one Ballabhdas on 25 10 1961 for a sum of Rs 16999/-, One of these shops was occupied by the tenant Jaissaram and the other shop was occupied by tenant Anandilal. After having purchased both these shops, the plaintiff served notices of ejectment on each of the two tenants and called upon them to vacate the shops on the ground

that the same were required for reasonable and bonafide personal necessity of the plaintiff, who wanted to run a book stall and stationery mart in these shops. The suit against Jaissaram was instituted on 31-1-1962 and was registered as suit No. 85/1962, and the suit against Anandilal was instituted after about a week on 8-2-1962 and was registered as suit No. 95 of 1962.

3. Separate evidence was recorded in both the cases and the learned Additional Civil Judge, Jaipur City decreed the suit against Anandilal on the ground that the plaintiff had succeeded in establishing his reasonable and bonafide personal requirement for the shop, On the same day subsequently he decided the suit against Jaissaram and held that the plaintiffs requirement for one shop was undoubtedly established. He further observed that since the plaintiff's suit for possession of one shop had been decreed against Anandilal, no decree for ejectment could be passed, against the other tenant Jaissaram as the plaintiff had failed to establish his reasonable and bonafide personal necessity for both the shops. To be more precise the finding of the learned trial court in Jaissaram's case was that the plaintiff's demand for two shops was unreasonable, and he was entitled to get possession of one shop. Thus Jaissaram escaped ejectment on simple ground that the plaintiff's suit against Anandilal had been decreed prior to the announcement of the judgment in his case.

4. Aggrieved by the judgment and decree in the suit against Jaisaram the plaintiff Sohan Das filed appeal in the Court of District Judge, Jaipur City, which was registered as Civil Regular Appeal No 31 of 1965. Similarly Anandilal against whom the suit for ejectment had been decreed also preferred an appeal in the same court and his appeal was registered as Appeal No. 30 of 1965. The appeal filed by Anandilal was dismissed on the ground' that the plaintiff's reasonable and bonafide need for the suit shop had been established and that the tenant Anandilal had failed to show that the plaintiff was motivated by considerations of either increasing the rent or re-selling the shop at a higher price.

5. The appeal filed by the plaintiff in Jaissaram's case was, however,

allowed and the learned District Judge, held that since the plaintiff's need for the shop has been established it was not legal and proper for the trial court to have

imported into the judgment in this case the finding arrived at in the case instituted against Anandilal. According to the learned Judge, since in both the cases the plaintiff had succeeded in establishing his need for the shop in question in each case, both the suits should have been decreed without taking into consideration the finding arrived at in the other case. Thus the result of these suits in the first appellate court was that both the suits stood decreed.

6. Dissatisfied with the judgments given in both the cases the tenants, namely, Jaissaram and Anandilal have filed second appeal to this Court.

7. The first contention raised by the learned counsel for the appellants in both the appeals is that the plaintiff has failed to establish his reasonable and bonafide personal necessity for any one of the two shops in question. It is urged that the plaintiff was still a member of the joint Hindu family and living with his father Madho Das, who was carrying on business in books and stationery on a large scale and that the plaintiff was also doing business at the shop of his brother Mohandas which is contiguous to the shop occupied by Jaissaram. It was contended that there had been no partition between the father and sons, and that both the shops had been purchased in the name of Sohandas for the benefit of the whole family and a matter of fact neither the family consisting of Madhodas and his sons nor Sohandas needed any of the two shops for starting business in books and stationery.

8. It may be noticed that the sale deed of the shops in question is in favour of Sohandas alone. The evidence regarding the alleged partition between Madhodas and his son is no doubt very weak. It is not evidenced by any document. Nevertheless it does appear that Madhodas had given some money to his son, the plaintiff Sohandas, with which he purchased the shops in question and Sohandas acquired this property in his own name. Assuming for the sake of argument that no partition had taken place between the father and sons the fact remains that the shops in question were acquired by Sohandas as his separate property. It further transpires that Sohandas had graduated in commerce and had received training at his father's shop in the business pertaining to sale of books. The learned District Judge had referred to the evidence produced by the plaintiff in both the cases and

has come to a finding that it has been fully proved that the plaintiff's assertion that he wanted to do separate business in books was proved. Learned counsel for both the appellants have taken me through the evidence consisting of Sohandas, Ballabhdas and Madhodas in the case of Jaissaram, so also through the statements of the plaintiff's witnesses Sohandas, Mohandas, Madhodas, Mangilal, Ballabhdas and Roop Narain in Anandi Lal's case and after going through their statements I have come to the conclusion that the finding of the learned District Judge does not call for any interference and I hold in the agreement with the learned District Judge that the plaintiff had succeeded in establishing his need for suitable premises for setting up business in books.

9. The next question which has been hotly contested at the bar is whether the plaintiff's need for both the shops is established. Learned counsel for the appellant Jaissaram has urged that since the plaintiff's need for one shop to start business in books has been established and the decree for ejectment in respect of one shop occupied by Anandilal was passed by the trial court, the suit against him should not have been decreed, The learned counsel for Anandilal has however urged that the suit against Jaissaram had been filed first and thus the plaintiff had exercised his option for ejecting Jaissaram for the purposes of his personal necessity, and, therefore, the suit against Jaissaram should have been decreed and the subsequent suit filed against his client Anandilal should have been dismissed in view of the finding that the plaintiff's need only for one shop has been established, On the other hand Mr, Tiwari, learned counsel for the plaintiff has strenuously urged that the plaintiff had succeeded in establishing his necessity for both the shops, and it has been proved that the business which the plaintiff proposes to start cannot be conveniently done in one shop as both, the shops are small. Thus there is a triangular fight between the parties.

10. I would first take up the question whether the plaintiff had succeeded in establishing his requirement for both the shops?

11. It may be observed that in the plaint in both the suit it has been stated that both the shops have been purchased by the plaintiff for his own business but in none of the two plaints it has been specified that the plaintiff would convert both

the shops into one in order to have a bigger shop and it is only at the stage of evidence that the plaintiff has stated that he intends to get both the shops converted into one for the purposes of his business. It is also clear from the statement of Sohandas recorded in both the cases that he had not made any application to the Municipal Council, Jaipur for getting the two shop converted into one. Learned counsel for the plaintiff respondent has submitted that all the witnesses produced by the plaintiff including the plaintiff himself in both the cases has stated in clear terms in examination-in-chief that both the shops are required by the plaintiff for his business as his business cannot be done in one shop as the shops are small ones. He has contended that this statement given by the witnesses has not been challenged by the defendants in the course of cross-examination, and, therefore, what has been stated in the examination-in-chief must be accepted as correct. His contention that the absence of cross-examination on this point goes to show that the defendants did not challenge the correctness of the statement. On the other hand learned counsel for the appellants have urged with some emphasis that a decree for ejection under the Rent Control Law cannot be granted to a landlord merely for asking and it is his bounden duty not only to show his requirement but to further establish that the requirement is reasonable and bonafide. It is thus argued on behalf of the appellants that the plaintiff should have furnished necessary material before the court to enable it to come to a finding that the requirement of the plaintiff was reasonable and bonafide. The bald statement made by the plaintiff and his other that both the shops were required by the plaintiff cannot be considered as sufficient for upholding the requirement of the plaintiff as reasonable and bonafide.

12. After having considered the rival contentions advanced on behalf of the respective parties I have come to the conclusion that even though the plaintiff has succeeded in establishing his reasonable and bonafide requirement for suitable accommodation for starting his personal business in books he had not succeeded in proving that both the shops are reasonably and bonafide required by him for setting up his business in books. It may be observed that the plaintiff's brother Mohandas is carrying on business in a shop contiguous to the shop occupied by Jaissa Ram. It is agreed between the parties that the shop occupied by Mohandas is almost of a similar size as each of the two shops in question and Mohandas is

carrying on business in shop not only in musical instruments but in books also. Each of the two shops in question is about 10' wide and 20' long. The plaintiff Sohandas will start new shop in books and it is common knowledge that a beginner in any business does not start with business on a very large scale and it would be reasonable to presume unless contrary is shown that to begin with the plaintiff does not require a big shop. If the plaintiff's intention was to start business on a very large scale it was his duty to have shown as to how much space would be required for the business which he proposes to start, and how much money he would be able to invest at the very inception of the business. In the evidence recorded in the case of Jaisaram it has been brought out that after having paid the price; for the shops in question only a sum of Rs. 8000/- was lying with Midhodas, the father of the plaintiff. Nothing beyond that has been placed on the record regarding the financial position of the plaintiff and his capacity to invest for the proposed business. As I have already stated above no other material has been placed on the record in respect of the plaintiff's alleged requirement for both the shops except the bald statement of the plaintiff and his witnesses that both the shops are required. In my opinion, it was the duty of the plaintiff to have made out a case for reasonable and bonafide need for both the shops. It is also not without significance that in none of the two complaints the plaintiff has alleged that his intention was to convert both the shops into one. If the plaintiff's need for both the shops had been genuine one should have also expected him to take appropriate proceedings to obtain permission from the Municipality for converting both the shops into one. The explanation given by the plaintiff that he would make the application after he has got possession of both the shops is not convincing. Taking all the circumstances of the case into consideration, the plaintiff, in my opinion, has failed to establish reasonable and bonafide necessity for both the shops, for starting his personal business in books. Learned counsel for the plaintiff-respondent submitted that the width of the shop being so small it would not be possible for the plaintiff to exhibit the books in proper show cases also to provide a suitable counter. It may be noticed that no such explanation has been given by the plaintiff in his statement, and I am not satisfied that the business cannot be carried on in one of the shops. No case for starting business on a very large scale at the very start has been made out.

13. Learned counsel for the plaintiff also urged that the finding arrived at by the learned District Judge regarding the necessity for the shops in question is a finding of fact and should not be interfered with in second appeal. In the first instance the learned District Judge had not given a finding in any of the two cases that both the shops are required reasonably and bonafide by the plaintiff for his business. In the second place whether on the facts proved the requirement of the landlord is bonafide and reasonable is a finding on a mixed question of fact and law, and, therefore, in an appropriate case this Court is competent to go into this question in second appeal. At this stage I must also observe that the observation of the learned District Judge in Jaissa Ram's case that trial court was not at all entitled to import the knowledge of the one case into the other is not correct. The trial court was seized of both the cases instituted by the same landlord and ejectment was sought from the two shops in both the cases on the ground that both the shops were required by the plaintiff for his reasonable necessity. The argument of the learned counsel for the plaintiff-respondent that each case should have been decided completely divorced of the facts of the other, and decree should have been granted for ejectment each case on the ground that the shop was reasonably required by the plaintiff for his business is, in my opinion, not correct. If that principle were accepted it would mean that the landlord owning ten shops might institute ten suits against all the tenants on the ground that a shop was required by him for his business and on the reasoning submitted by the learned counsel, the Court would be bound to decree all the suits with the result that even though the landlord's requirement may be for one shop only he may get tenants from all the ten shops evicted/ Such a position, would be *reductio-ad-absurdum* and defeat the provisions and the objects of the Rajasthan Premises (Control of Rent and Eviction), Act, 1950.

14. The net result of this discussion is that the plaintiff is entitled to get possession of one shop for which he has proved his reasonable and bonafide requirement.

15. The question then arises as to possession of which shop should be granted to the plaintiff? Learned counsel for Jaissa Ram relied upon *Institute of Radio Technology v. Pandurang* AIR 1946 Bom. 212 for determination of such a question. In that case, the landlord had filed four applications for eviction from four blocks in

possession of four different tenants. The Court found the plaintiff's requirement for three blocks as proved and gave him choice to select three blocks. The plaintiff did so and accordingly a decree was passed in respect of three blocks chosen by the plaintiff. It was urged before the learned Judges of the Bombay High Court in appeal by the three tenants, who had been ordered to be ejected that the trial court ought not to have given the plaintiff the choice of selecting the three blocks of which he wanted possession and the court should have decided after taking into consideration the wants, not only of the plaintiff but also of the defendants, as to which of the four blocks should be given to the plaintiff. The decision of the trial court was upheld by the High Court on the ground that if the plaintiff had withdrawn his suit against the other defendants the Court could not have compelled him to go on with the suit, and it is the plaintiff's choice as to which part of the property he wishes to proceed against. This case, in my opinion, furnishes a useful analogy and accordingly I called upon the learned counsel for the respondent as to which shop his client would choose to have in case his claim for only one of the shops was to be decreed, and without prejudice to his other submissions he stated that in case decree for only one shop is granted in favour of the plaintiff he would like to have the shop occupied by Jaissaram. Thus according to the choice of the plaintiff plaintiff the suit against Jaissaram must be decreed.

16. This choice made by the plaintiff here is consistent with his conduct from the very start. He filed suit against Jaissaram first, that is, on 31-1-1962 and the suit against Anandilal was instituted later on. As already stated above both the suits were decided on the same day, but the judgment in Anandilal's case was announced first, and, therefore, the suit against him was decreed and the suit against Jaissaram was dismissed on the simple ground that the learned trial court happened to decide it after having given the decision in Anandilal's case. In view of the aforesaid discussion, the decree for ejectment passed against Anandilal must be set aside, and the decree and judgment given in Jaissaram's case must be upheld.

17. Accordingly I allow the appeal No. 107/67 by Anandilal and set aside the judgment and decree passed by the courts below and dismiss the plaintiff's suit but without any order as to costs.

18. The appeal filed by Jaissa Ram is, however, dismissed. The plaintiff-respondent will get half the costs from the appellant Jaissa Ram.

19. Learned counsel for Jaiss Ram wants some time to vacate the shop. In the facts and circumstances of the case 1 hereby grant him three months' time for for giving vacant possession of the shop in question to the plaintiff provided he pays arrears of rent, if any, within one month from today and goes on paying monthly rent thereafter within 15 days of its falling due.

20. Learned counsel for the respondent as well as learned counsel for Jaissaram pray for grant of leave to appeal to Division Bench. However, I do not consider it a fit case for grant of leave. The prayer is disallowed.

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