

Naraln Chand Mehta Vs. Krishna Kumar

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Court : Rajasthan

Decided On : Aug-07-1973

Reported in : 1973(6)WLN546

Judge : Kansingh, J.

Appeal No. : S.B. Civil Second Appeal No. 36(sic) of 1972

Appellant : Naraln Chand Mehta

Respondent : Krishna Kumar

Disposition : Appeal allowed

Judgement :

Kansingh, J.

1. This is a plaintiff's second appeal directed against the appellate decree of the learned Additional Districe judge No. 1 Jodhpur and arises out of a suit tor ejectment.

2. The subject matter of the suit is a shop forming part of a building situated outside Jatori Gate, Jodhpur known as Ramnath Chand Mehta Bhawan. It comprises a residential bungalow and two wings in which there are ten shops abutting the road. The property was owned by Shri Thanchand Mehta, Advocate Shri Thanchand Mehta had introduced the defendant-respondent as a tenant on

the suit shop on 1-4-56 on a monthly rent of Rs. 32/-The defendant was running an Optician's shop there. Subsequently on 22-9-56, Shri Thanchand Mehta made a gift of the shops including the suit shop in Ramnath Chand Mehta Bhawan to his son Shri Narain Chand Mahta, the plaintiff. Thereafter the defendant started paying rent to Shri Narain Chand. Shri Narain Chand Mehta passed his LL.B. Examination in 1965 and was enrolled as an Advocate of the Rajasthan High Court in January, 1966. Shri Narain Chand Mehta then gave a notice to the defendant determining his tenancy saying that he needed the suit shop for purposes of establishing his office as an Advocate as he had no accommodation for the same in the residential portion of the building He averred that there were three rooms in the house where visitors campone was the drawing-cum dining room, another was an office room of Shri Than Chand Mehta and the third one was a guest room. The plaintiff went on to say that he was having certain cases exclusively for himself and was facing difficulty in talking with his clients and he had to utilise the verandah of the residential portion for having meetings with his clients, which was inconvenient. Therefore, he sought to make out a case of his bona-fide personal necessity for the suit premises.

3. The defendant contested the suit. He denied that the plaintiff had any bona-fide personal necessity for the suit shop. He pleaded that the suit was filed with an oblique motive of enhancing the rent. The defendant went on to state that prior to the present suit the plaintiff had filed a suit for eviction against the defendant on the ground that the Rajasthan Premises (Control of Rent and Evictiont Act, 1950, hereinafter referred to as the 'Act', did not apply to the suit premises at the time as the building was constructed within 7 years of the filing of the suit. When the plaintiff was net successful in that suit even upto the High Court, he had filed the present suit.

4. The main issue that went on to trial before the learned Munsif, before whom the suit was hied, was whether the plaintiff required the shop in dispute for his profession as an Advocate, reasonably and bona-fide. In support of his case the plaintiff examined himself and in rebuttal the defendant examined himself as D.W. 1 and produced two witnesses DW 2 S.P. Pawa. and DW 3 H.C. Mehta. The learned Mansif held that though the need of the plaintiff for the suit shop was

reasonable, it was not bonafide. Consequently he dismissed the suit.

5. Aggrieved by the decision of the learned Munsif the plaintiff went up in appeal to the court of the District Judge No. 1, Jodhpur. The learned Additional District Judge postulated that 'the best judge of his requirement is the landlord unless from the circumstances of a particular case it can be shown that the desire of the plaintiff is out of some oblique motive, such as, increase in rent etc.' The learned Additional District Judge on considering the evidence, came to the conclusion that the evidence of the defendant that the plaintiff wanted to increase the rent could not be relied on. In this regard he adversely commented on the observations made by the learned Munsif and remarked that it appeared that the learned Munsif did not go through the statements of the witnesses (defendant's witnesses). Then the learned Additional District Judge closely scrutinised the statements of the defendant's witnesses and discarded them. I may read the relevant portion of the judgment:

The learned Munsif has relied on the statement of DW 2 S.P. Pawa & DW 3 Shri H.C. Mehta on the ground that they are the persons who are friendly to Shri Thanchand Mehta. But it appears that the learned Munsif did not go through the statements of these witnesses. Shri Pawa had admitted that the defendant is the son-in-law of his sister. Shri H.C. Mehta has stated in his statement that he had lived in the house of Hansraj with his family without payment of rent for a considerable time. Hansrajji is the father-in-law of Krishna Kumar the defendant. Therefore, both these witnesses are interested in the defendant and it cannot be said that they are friendly to Shri Thanchand Mehta. A scrutiny of the statement of Shri Narainchand Mehta, PW 1 will show that he was not cross-examined on the point that either Pawa or Shri Mehta DW 2 or DW 3 had talked to his father Shri Thanchand Mehta about the increase of the rent. Therefore, in the absence of any question to the plaintiff in this connection, and looking to the fact that both these witnesses are interested witnesses it becomes highly doubtful if any talks for the increase of rent in between Shri Thanchand Mehta and these witnesses had taken place. Even in the written statement that fact was not disclosed otherwise the plaintiff might have examined his father Shri Thanchand and Mehta as a witness to disprove these allegations. Even the defendant in his statement has

admitted that the plaintiff never talked to him about increasing the rent.

In spite of his having reached this conclusion the learned Additional District Judge addressed himself to a number of other circumstances saying that in spite of the lack of evidence on behalf of the defendant with regard to the motive of the plaintiff to increase the rent the plaintiff had yet to make out a case of his reasonable and bonafide necessity. The first circumstance adverted to by him was that the plaintiff had filed a suit against the defendant earlier in 1961-62 on the ground that the building was a newly constructed one and, therefore, the provisions of the Act did not apply to it. That suit was dismissed by the first Court and the decision was upheld in appeal. The plaintiff then approached the High Court in second appeal, but was not successful. The second circumstance pointed out by the learned Additional District Judge was that the plaintiff had given one more notice to the defendant for ejectment sometime in the year 1964 on the ground that he required the shop to run business. Having referred to these circumstances the learned Additional District Judge concluded that 'it appears that since 1961 on one pretext or the other attempts have been made by the plaintiff landlord to eject the defendant from the suit shop'. The learned Additional District Judge added that it was not understandable why the plaintiff did not give a notice in July, 1966 when he thought of starting a separate office and had waited till the decision of the appeal by the High Court. The learned Judge then proceeded to consider the suitability of the shop as an Office for an Advocate. He noticed that the shop was abutting a busy road which was quite noisy. The plaintiff was not working completely independently of his father. Further there were no Advocates' offices near the suit shop. Having said so the learned Additional District Judge concluded 'that the shop in a commercial place where there are other shops to my mind cannot be considered to be an appropriate place for an Advocate to run his office'. In repelling the contention that the plaintiff had no genuine necessity as he did not occupy another shop which had fallen vacant in the meantime, the learned District Judge observed that this was not relevant as it was the choice of the landlord to occupy the portion that he thought would be convenient to him. Lastly, the learned Additional District Judge emphasised that it was the plaintiff who had to establish by cogent and convincing evidence that the shop in dispute is reasonably and bonafide required by him for his own Advocate's Office. For that he considered the

statement of the plaintiff and observed:

The plaintiff Narain Chand Mehta in his statement had admitted that he had served notices of ejectment on all the tenants residing in the other shops in the southern wing as he then thought of living separately because of quarrel between his wife and his mother. But his father intervened and did not like it and so he dropped the idea. This shows that Shri Than Chand Mehta, the father has too much affection for his only son and this appears to be natural. Shri Than Chand Mehta has not appeared in the witness box to say that there is no accommodation with him in his office which can be shared by his son. An eminent Advocate like Mr. Mehta will always need the assistance of a junior and more so of his own son and the services of his son for the father are very important. More so, when according to the statement of Shri Narainchand the senses of hearing of Mr. Than Chand have been affected to certain extent. No doubt Shri Thanchand Mehta is using an instrument. I am not convinced by the statement of, Shri Narain hand that he requires the shop to start his separate office as an Advocate. Not a single litigant has been produced to show that the plaintiff was sitting in the verandah and when the litigants visit the plaintiff, there is no room for consultation. Shri Narainchand has not given a straight forward statement in as much as at many places he did not give clear answers and stated that he did not remember whether the other shops in the building had fallen vacant after his enrollment as an Advocate or prior to his enrollment.

In the result, the learned Judge held that the plaintiff had failed to satisfy the court by cogent evidence that he needed the shop in dispute bonafide and reasonably and accordingly he dismissed the appeal. It is in these circumstances that the plaintiff has come in further appeal to this Court.

6. Learned Counsel for the appellant contends that though the principles governing such cases have been correctly brought out by the learned Additional District Judge, he has not applied them correctly to the facts and circumstances of the case. Learned Counsel emphasises that according to the finding of the learned Additional District Judge himself the alleged oblique motive on the part of the plaintiff to enhance the rent was absent and there was no gain saying the fact that

the plaintiff had a practice of his own as an Advocate and needed accommodation for his office and further the residential portion of the building did not provide any accommodation for the plaintiff's office. Learned Counsel here submitted that the residential portion of the building was the self-acquired property of the plaintiff's father and, therefore, if the plaintiff wanted to establish his Office on his own property, his demand for the same could not be characterised as an unreasonable one. Then learned Counsel submitted that in arriving at the conclusion to which he did the learned Additional District Judge has been influenced by some extraneous considerations like the one that the plaintiff's father is hard of hearing and needs a hearing aid and that he will always need the assistance of a junior, more so of his own son. Learned Counsel also pointed out that the learned Additional District Judge was in error in observing that any litigant should have been produced by the plaintiff for showing that he used to sit in the verandah when the litigants would be visiting him. Learned Counsel maintains that the question whether the premises were needed by the plaintiff bonafide and reasonably was a mixed one of law and fact, and therefore, he could question the correctness of the findings of the learned Additional District Judge in this second appeal.

7. Learned Counsel for the defendant-respondent has tried to counter the several arguments raised by learned Counsel for the appellant and has supported the conclusions of the learned Additional District Judge. The learned Counsel also raised a two-fold contention: (1) that no second appeal was maintainable in the present case according to the provisions of Section 22 of the Act in as much as the decree or order passed by the lower court was one under the Act; (2) in the second place he argued that the case did not give rise to any question of law so as to justify the court's interference in the second appeal. He pointed out that the learned Additional District Judge has disbelieved the plaintiff's statement in clear terms as would be evident from the passage quoted by me above and, therefore, this was nothing but a finding of fact that the plaintiff had not been able to establish bonafide and reasonable necessity of the suit premises. Learned Counsel also emphasised that the conclusion of the learned Additional District Judge and the assessment of the plaintiff's statement has not been challenged in the memo of appeal.

8. Both the learned Counsel reinforced their submissions by a number of cases, the more important of which I will be referring in the course of the discussion that follows.

9. To start with I may deal with the contention founded on Section 22 of the Act. I may read the section:

Section 22 Appeal and revision.--(1) From every decree or order passed by a Court under this Act, and appeal shall lie to the Court to which appeals ordinarily lie from original decrees and orders passed by such former Court.

(2) No second appeal shall lie from any such decree or order;

Provided that nothing herein contained shall affect the powers of the High Court for Rajasthan in revision.

(3) Any person aggrieved by an order of the Magistrate may, within fifteen days from the date of such order, appeal therefrom to the District Magistrate or such authority as the State Government may from time to time appoint in that month.

The argument of the learned Counsel for the respondent is that since in seeking the eviction of a tenant from the premises let out to him a plaintiff has necessarily to bring his case within the provisions of Section 13 of the Act, the decree, that is, the outcome of the suit would be one under this Act. With the result that though there could be an appeal from the original decree, the second appeal shall not lie from any such decree or order (vide Sub-section (2) of Section 22). The essence of the matter is whether the decree in the present case was 'passed by a court under this Act'. According to the plain meaning of these words, a decree can be said to have been passed under this Act when any section of this Act makes provision for the passing of a decree. Perusal of Section 6 of the Act, for example, shows that in cases of fixation of standard rent the landlord or the tenant may institute a suit in the lowest court of competent jurisdiction and the court shall, after holding such summary inquiry as it may consider just and necessary, determine the standard rent for the premises in question and shall be guided by certain principles laid down in the section. Then it is laid down that in every case in which

the court determines the standard rent of any premises it shall appoint a date from which the standard rent shall be deemed to have effect. Therefore, for the fixation of rent a suit is filed in accordance with the provisions of this Act and it results in the determination of rent which has the force of a decree. Then there is Section 11 of the Act which makes provision for increase of rent. After performing certain formalities the landlord is entitled to bring a suit for increase in the rent in the lowest court of competent jurisdiction. The court makes such summary inquiry as it may think necessary and make orders according to law and a decree shall follow. This section clearly provides for the passing of a decree.

11. Now, so far as eviction of tenants is concerned, there is Section 13. The relevant portion of which I may read:

Section 13. Eviction of tenant.--(1) Notwithstanding anything contained in any law or contract, no Court shall pass any decree, or make 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. ...(several other grounds for eviction are mentioned).

Section 13 makes no provision for passing of any decree as such, but it lays down certain limitations on courts in passing decrees or making any order in favour of a landlord evicting the tenant so long as he is ready and willing to pay rent to the full extent allowable by this Act unless the court was satisfied regarding one of the several grounds contained in the section.

11. A comparison of Sections 6, 11 and 13 of the Act would show that decree for eviction is not passed under Section 13 of the Act, but this Section only contains certain limitations. It is true, as a part of his cause of action the plaintiff has to assert: (J) that there is a relationship of landlord and tenant between the parties; 1960 RLW 676 that the tenancy has been determined in accordance with the provisions of the Transfer of Property Act, and 1957 RLW 497 that the grounds mentioned in Section 13 of the Act justifying eviction of the tenant exists,

nevertheless neither the suit is instituted under the Act nor for that matter the decree is passed under the Act within the meaning of Section 22 of the Act. If in stating the cause of action the plaintiff has to refer to the contract of tenancy, its determination according to general law, at the same time has to make an assertion that the grounds for eviction contemplated by Section 13 exist in the case thereby it cannot be said that the suit is instituted under the Act or the decree is passed under the Act. To my mind, Section 22 will cover only such of the decrees as are exclusively referable to the provisions of the Act. If the provisions of the general law or for that matter the provisions of the Civil Procedure Code have to be referred & or relied upon, then in such a case it cannot be said that the decree has been passed by a court under this Act within the meaning of Section 22 of the Act. The question came to be considered in a number of cases, such as, Gordhanlal v. Nathulal 1955 RLW 520, Anand Singh v. Chandmal 1960 RLW 676, Shivkumar v. Ballabhdas 1957 RLW 497. Balchand v. Smt. Dhan Kanwar 1960 RLW 670 and Dr. Harumal v. Smt. Sahjadi Bibi 1970 RLW 193. I may mention that the contention was raised before Lodha J by learned Counsel who appeared for the respondent in the case, but it was given up when his attention was invited to the cases just now cited by me.

12. In Shivkumar v. Ballabhdass 1957 RLW 497, on consideration of the provisions of Section 22, 6 and 13 of the Act Bapna J. observed that 'the right to recover rent or to claim ejectment does not rest upon the Rajasthan Premises (Control of Rent and Eviction) Act, but on other laws, and, therefore, every decree or order passed in a suit for arrears of rent and ejectment is not appealable by virtue of Section 22 of the Act,' I am in respectful agreement with this view, but only with one small reservation that even for seeking eviction the plaintiff is required to aver as a part of his cause of action that the grounds for eviction under Section 13 of the Act are available to him inspite of his having determined the tenancy according to the general law. Therefore, to that extent provisions of the Act would be attracted and the case may be in part under the Act as well, but as I have pointed out above, Section 22 of the Act will govern only such of the decrees as are passed under the provisions of this Act exclusively as in the case of decrees under Section 6 or 11 of the Act. There may be cases of other orders as well which are exclusively under this Act for example Section 12 and 15 of the Act.

Therefore, I am unable to hold that the second appeal is barred under the provisions of Section 22 of the Act.

13. I may next turn to the contention that no question of law is involved in the appeal, the conclusion reached by the first appellate court, according to learned Counsel, being one of fact only. Learned Counsel has underlined the concluding part of Para-15 of the judgment (already reproduced above) and argued that the plaintiff has been held to be an unreliable witness. Consequently the issue has rightly been held to be not proved and this was, therefore, nothing but a finding of fact which could not be assailed in second appeal, I was considerably impressed by the contention and, therefore, I subjected it to a close and careful scrutiny. The learned Additional District Judge has thought that the plaintiff did not give clear answers in his statement as he stated that he did not remember whether the other shops in the buildings had fallen vacant after his enrolment as an Advocate or prior to his enrolment. In the preceding paragraph, however, the learned Additional District Judge had in his judgment himself observed that 'it is not relevant as to whether any other accommodation had fallen vacant or not as it is the choice of the landlord to choose. Therefore, even if the other shops had fallen vacant, it cannot be said that the plaintiff could have occupied any of those shops, but the plaintiff has to establish by cogent and convincing evidence that the shop in dispute is reasonably and bonafide required by him for his own Advocate's Office ' I am afraid, the argument runs into a circle. On the one hand, the learned Additional District Judge thought that the availability of other shops in the meantime was not a relevant factor, he has, on the other hand discounted the plaintiff's statement by saying that he was not able to say as to whether any of the shops had fallen vacant before his enrolment as an Advocate or thereafter. If the fact was not so relevant then the plaintiff may not have cared to remember or recollect it properly. Therefore, nothing should have turned on this consideration. The main question to which the learned Additional District Judge was required to address himself was: (1) whether there was a necessity for the plaintiff to have accommodation for an Office as an Advocate. (2) whether the necessity was bonafide, and (3) whether it was reasonable. In a case reported in 1973 Weekly Law Notes page 214 *Mirchumal v. Ramchandra and Anr.*, I had pointed out that the question whether a landlord has a bonafide reasonable necessity for the suit

premises is a mixed question of law and fact, and as in any other mixed question of law and fact there are two aspects: (i) regarding the existence of primary facts, and (ii) regarding the application of the legal principles to such primary facts. Referring to *Sree Meenakshi Mills Ltd. v. Income tax Commissioner, Madras* AIR 1957 SC 41 I had indicated how a mixed question of law and fact should be approached. Relying on the observations of there Lordships I pointed out that where a finding is given on a question of fact based upon an inference from facts, that is not always a question of law, but the proposition that an inference from facts is one of law will be correct in its application to mixed questions of law and fact though not pure questions of fact Inferences from facts may themselves be inferences of fact and not of law and such inferences are not open to review by the court. Inference from facts would be a question of fact or of law according as the point for determination is one of pure fact or mixed question of law and fact. When I went on to say that of the three component questions the first one whether the plaintiff has a necessity for the suit premises is primarily a question of fact. Likewise, whether it is bonafide is also largely a question of fact. I used the expression 'largely' here, because in one Supreme Court case this question whether the necessity is bonafide has been held to be a mixed question of law and fact (vide 1970 Rent Control Journal page 34 *Smt. Kamla Soni v. Rup Lal Mehraj*) The third component whether the necessity was reasonable was a mixed question of law and fact. It would undoubtedly attract well known legal principles for judging objectively whether the necessity is reasonable or otherwise. Once the court on consideration of ail the facts & circumstances of the case, comes to the conclusion that the plaintiffs' necessity for the suit premises is a reasonable one then that inference would, by and large, also lead to the conclusion that the necessity of the plaintiffs was bonafide unless oblique motives like that of enhancement of tent or otherwise of harassing the tenant have been made out. To repeat what I have observed in that case:

Once the court on consideration of all the facts and circumstances of the case comes to the conclusion that the plaintiffs' necessity for the sun premises is a reasonable one then that inference would, by & large, also lead to the conclusion that the necessity of the plaintiffs was bonafide unless oblique motives like that of enhancement of rent or otherwise of harassing the tenant have been made out.

The underlying concepts of the words 'bonafide' and 'reasonable' overlap in some measure though they do not exactly correspond with each other. Therefore, in a case where the plaintiff is found to have a necessity for the suit premise's and that necessity is found to be a reasonable one then the inference that it is bonafide also would be drawn therefrom; if there is no oblique motive like that of enhancement of rent or of otherwise harassing the tenant.

14. Now the primary question is whether the plaintiff had a necessity for the suit premises for his Office as an Advocate. The learned Additional District Judge has observed in the passage quoted by me (1) that Shri Than Chand Mehta has too much affection for his only son, the plaintiff; (2) that Shri Thanchand Mehta has not appeared to say that there was no accommodation with him in his Office which can be shared by his son; and (3) that an eminent Advocate like Mr. Mehta will always need the assistance of a junior and more so his own son and services of his son for the father are very important, because according to the statement of the plaintiff the senses of hearing of Shri Thanchand Mehta have been affected to a certain extent. From these facts the learned Judge concluded that he was not convinced by the statement of the plaintiff that he required the shop to start his separate Office as an Advocate. I am afraid, the observations of the learned Additional District Judge are thoroughly off the mark. The plaintiff may be the only son of an eminent Advocate, the eminent Advocate may need a junior and none other than the plaintiff himself, but I fail to see what relevance Shri Than Chand Mehta's defect in the sense of hearing would have, more so, when according to the learned Judge, Shri Thanchand Mehta is using a hearing aid. The learned Judge here has completely overlooked the portion of the plaintiff's statement wherein he had said that he had about 35 cases of his own and that he has thus his own practice which is independent of his his father. It is not unusual for junior Advocates to work with senior Advocates in the cases in which senior Advocate may need their assistance and yet to have cases of their own. There may be several considerations for having such an arrangement and amongst others one is that the senior may not like to accept small briefs which the junior may very well be inclined to do. I have, therefore, no doubt that the plaintiff has a practice of his own as an Advocate though he may be assisting his own father in the cases conducted by his father.

15. Then the question is whether there is accommodation for his Office in the residential portion of the building. The plaintiff has clearly stated that there are three rooms in the portion of the house where gentlemen from outside would be admitted, one is the drawing cum-dining room, the other is the Office where Shri Thanchand Mehta sits for his professional work along with his Munshi, and the third one is a room ear-marked for guests. The plaintiff was cross-examined by the defendant but nothing has been brought out for showing that besides these 3 rooms there is yet other room which could be used by Shri Narainchand Mehta. That being so, there is no room for doubting Shri Narainchand Mehta on this aspect of the matter and I may observe that the learned Additional District Judge has not doubted Shri Narainchand Mehta here at all; the fact being that he had not at all discussed this aspect in the judgment. There was, therefore, no good reason for the learned Additional District Judge to disturb the conclusion of the learned Munsif that the need of the plaintiff for the shop in dispute was a reasonable one, though according to the learned Munsif it was not bonafide. The learned Additional District judge has, as already pointed out, reached the conclusion that there was no oblique motive of enhancing the rent when the plaintiff was seeking the eviction. Therefore, though the learned Additional District Judge has, no doubt, reached a conclusion contrary to that of the Munsif regarding the bonafides, I am afraid, he was not justified in disturbing the conclusion of the learned Munsif that the plaintiff's need for the suit premises was a reasonable one.

16. Now, if the plaintiff had a need for the suit premises and no oblique more existed then it would be quite reasonable to infer that the need of the plaintiff was reasonable as well as bonafide. Learned Counsel for the respondent submitted here that the statements of the defendant's witnesses were wrongly discarded by the learned Additional District Judge. Since the whole matter was placed before me, I went into the question. In the written statement that was filed by the defendant on 17-10-67, the defendant averred that for the first time in 1961 the plaintiff asked the defendant to increase the rent from Rs. 32/ to Rs 65/ per month, but the defendant did not agree and accordingly the plaintiff filed the suit on 8-3-63 in the court of the learned Civil Judge, Jodhpur which decision was upheld both in the first appeal as well as in the second appeal decided by the High Court on 23-9-66. Then it was added that as the plaintiff did not succeed in his suit he

trotted forth the false plea of necessity for the suit premises and filed the suit. In a subsequent amended written statement filed on 19-1-68 the same stand was upheld. What is to be noticed here is that in none of the written statements it was mentioned that subsequent to the dismissal of the appeal or for that matter prior to it during the pendency of the earlier suit the plaintiff or his father Shri Thanchand Mehta had ever called upon the defendant to enhance the rent. When the defendant appeared as DW 1 he stated that Shri Thanchand Mehta had a talk with Shri H.C. Mehta regarding the increase of rent to Rs. 45/-, but he did not make a mention of Shri S.P. Pawa. Shri S.P. Pawa, however, stated that Shri H.C. Mehta too had met Shri Thanchand Mehta who asked for more rent. Therefore, the only thing that requires consideration here is, even if one were to accept the version that in 1961 the higher rent was demanded from the defendant the question, whether any oblique motive can be imputed to the plaintiff or of his father. The earlier suit was filed on the ground that the Act was not applicable to the premises, because they were newly constructed. That suit failed because before the suit could be decided the 7 years period of exemption had come to an end. If a landlord were to demand more rent which he would be entitled to do in the absence of any legal impediment then he can not be imputed with motives on that account i.e. It was just ordinarily exercise of his right of ownership in the property and was a matter of contract between the parties what to pay and what not to pay. If, however, subsequently the plaintiff was to ask for more rent then that may furnish a basis for holding that the plaintiff was having any oblique motive of enhancing rent and had no real need for the premises. Therefore, having considered the matter I am unable to hold that the learned Additional District Judge was in error in discarding the defendant's evidence on this point. Then learned Counsel submitted about the earlier notice of the plaintiff, which he admitted in cross-examination, saying that in 1964-65 he needed the premises for starting a business. There would have been something substantial here, if the matter were to stand at that, but it has to be remembered that the plaintiff passed his Law Examination subsequently in 1965 and was enrolled as a member of the Bar in the beginning of 1966. So even if he had changed his mind from that of business to that of the legal profession that is nothing unusual or extraordinary. For starting practice for his own the plaintiff could thumb on many of the facilities

that his father may be able to provide for. Business requires certain other equipment. Therefore, there is nothing much in the earlier notice that was given in 1961-65, but that was not pursued as no suit was filed on that footing. The learned Counsel pointed out that the notice incorporating the plaintiff's need for an Office as an Advocate was not given earlier to the decision in the first suit. Here also there is nothing unusual or extraordinary. The plaintiff may be expecting that he may succeed in the appeal before the High Court. Since the fate of the case turned only on a question of law the plaintiff could afford to wait for the result of the suit.

17. Then the learned Counsel pointed out that the plaintiff had given notices to the other shop keepers for vacating the premises sometime in Dec, 1966 & though called upon the plaintiff had not produced the copies of such notices. The plaintiff had brought on record one copy of such a notice which is Ex.A/13. It is mentioned therein that the plaintiff wanted to construct residential house in place of the shops as there used to be a quarrel between his wife & his mother, but on the plaintiff's own showing he did not separate from his father on his persuasion. I may state at once that I was not impressed at all by the story of the quarrel between the plaintiff's wife and his mother or for that reason he wanted to demolish shops and construct a new house in their place for his residence, but that has to my mind nothing to do with the requirement for an Office as an Advocate. The matter relating to the other shops is not the subject matter of the present litigation and, therefore, nothing more need be said about it.

18. The learned Counsel invited attention to the plaintiff's statement wherein he had not given the dimensions of the other shops. Even so there is nothing in it. He may not be able to give the correct dimensions, but that could not change the position of the several shops or their dimensions.

19. Having considered the matter, I am satisfied that the plaintiff has been able to establish that he has a bonafide and reasonable necessity for the suit premises and is entitled to seek defendant's eviction on that ground.

20. In the result, I allow this appeal, set aside the judgment and decree of the learned Additional District Judge, Jodhpur and pass a decree for eviction in favour

of the plaintiff and against the defendant. Four months time is allowed to the defendant to hand over vacant possession to the plaintiff, but this shall be subject to the condition that the defendant pays all the arrears of rent, if any, within one month and thereafter goes on paying compensation (at the rate of rent) month by month by 15th of the following month till he vacates the premises. The parties are left to bear their own costs of this appeal.

21. Learned Counsel orally prayed for grant of leave to appeal under Section 18 of the Rajasthan High Court Ordinance, 1949, but in the circumstances I am not inclined to grant the leave which is hereby refused.

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