

Khajoolal Vs. Amarchand

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Court : Rajasthan

Decided On : Jul-25-1973

Reported in : 1973(6)WLN841

Judge : Kan Singh, J.

Appeal No. : S.B. Civil Second Appeal No. 372 of 1869

Appellant : Khajoolal

Respondent : Amarchand

Judgement :

Kan Singh, J.

1. This is a tenant's second appeal arising out of a suit for eviction from two suit shops contiguous to each other, belonging to the same land lord, which shops were alleged to have been covered into one shop by removing the intervening partition wall.

2. The two shops were situated in the town Nawa. They belonged to one Maji Dariab Kaur deceased. The shop situated on north side was taken on rent by the defendant from Maji Dariab Kaur on Falgun Vadi 1, Smawat 2009 on a yearly rent of Rs. 20/- The second shop situated on the south was taken on rent by the defendant 8 years thereafter on a monthly rent of Rs 3.75. Separate rent notes

were executed for both the shops. Plaintiff-respondent Amar Chand purchased both the shops treating them as one and got executed a sale deed from Maji Dariab Kaur in his favour on 25-7-1964. The defendant was informed of the sale in favour of the plaintiff. According to the plaintiff, the defendant did not pay him the rent inspite of the demand. ON 22-7-65 the plaintiff served the defendant with a notice that the defendant should pay rent to the plaintiff from 25-7-64 to 13-7-65 or till such date on which he thought that his monthly tenancy would terminate and further handover the possession of the shop to the plaintiff. Since the defendant neither paid the rent nor had surrendered the possession of she shop, the plaintiff filed a suit for the arrears of rent and eviction against the defendant on 11 8-1865 in the court of Munsiff, Nawa.

3. The eviction was sought on two grounds: one of default in the payment of rent and the other of bonafide personal necessity of the land lord.

4 The suit was resisted by the defendant. He denied that he was a defaulter in the payment of rent or that the plaintiff had any bonafide personal necessity for the suit shops The defendant further pleaded that the notice of termination of the tenancy was invalid.

5. The learned Munsiff framed a number of issues, inter alia, regarding (1), that the defendant was a defaulter, (2) regarding the bonafide personal necessity of the plaintiff for the suit shops and (3) regarding the validity of the notice.

6. The plaintiff examined himself as PW/1 and produced four other witnesses. In rebuttal the defendant examined himself as DW/1 and produced two other witnesses.

7. The learned Munsiff decided the above issues against the defendant and he consequently decreed the suit for arrears of rent as well as for eviction.

8. Aggrieved by the decree of the learned Munsiff the defendant went up in appeal to the court of Civil Judge, Merta. The learned Civil Judge observed in his judgment that only the issue regarding the default was argued before him. On this point the learned Civil Judge affirmed the decree of the learned Munsiff and

accordingly dismissed the appeal.

9. It is in these circumstances that the defendant has come up in further appeal to this Court.

10. Learned Counsel for the appellant has challenged the judgment and decree of the learned Civil Judge on all the three points. When the appeal came up for hearing before me on 12-12-1972 it was noticed that though the learned Counsel for the defendant wanted to reagitate all the contentions raised by him before the trial court, a perusal of the judgment of the learned appellate Judge went to show that only the question of default in payment of rent was argued by the learned Counsel who appeared for the defendant in that court. Learned Counsel for the appellant, therefore, sought an adjournment for filing an affidavit of the counsel who had argued the case on behalf of the defendant before the learned trial court. On 16-12-1972 learned Counsel produced an affidavit of Shri Rama Kishan Jain Advocate, Merta. Shri Jain stated that he had argued the point regarding the validity of the notice given to the plaintiff by the appellant regarding the termination of the tenancy. He further stated that he had also argued before the learned Judge that the plaintiff did not require the shop in dispute bonafide and reasonably. Shri Jain took both the grounds mentioned in the memo of appeal.

11. Now a perusal of the two orders of the learned appellate court dated 25-8-1969 and 26-8-1969 go to show that the case was taken up for arguments on 25-8-69 in the early part of the day at about 11:25 A.M The learned Civil Judge waited for ten minutes for the appellant who did not turn up and then ordered that the case be taken up after lunch at 2.00 P.M The learned Counsel for the appellant appeared at 2.00 P.M. and then the arguments were heard and the case was posted for judgment on the next day i.e. 26-8-1969.

12. On 26-8-1969 learned Counsel for both the parties were present. The learned Judge dictated the judgment in Court and signed the same Thus the time left between the hearing of the arguments and the pronouncement of the judgment was not more than a day. It is extremely unlikely that in the circumstances the learned Civil Judge would not be dealing with all the three points, if pressed, but would be dealing with only one point i.e of default, Knowing that only that point

was taken to have been argued by him before the Civil Judge, it is further extraordinary that inspite of this Shri Jain did not appear to have brought it to the notice of the learned Judge that he had overlooked the other two contentions raised by him. Then Shri Jain could have advised his client to apply for the review, if really, he had argued all the points In the circumstances presented, I cannot prefect the affidavit of Shri Jain produced almost after 3 years to the observations made by the learned Civil Judge in his judgment, delivered within 24 hours of his hearing the arguments, to the effect that only the question of default was argued before him.

13. Learned Counsel for the tenant further produced the notice of the termination of the tenancy in this Court. It is strange that this notice was not produced in either the trial court or in the first appellate court It is true even a point, which is not argued in the lower court could be allowed to be raised in Second appeal in an appropriate case but looking to the conduct of the tenant-appellant that he had not paid the rent to the defendant during the pendency of the appeal, almost for 4 years, I am not inclined to allow these points to be raised in second appeal in exercise or the Court's discretion It is true on the stay application argued by the defendant-appellant, though it was ordered that the appellant shall not be dispossessed from the suit premises, the condition of payment of rent was not imposed. Nevertheless it was the duty of the tenant appellant to have paid the rent in order to continue to enjoy the statutory protection against eviction. In the circumstances the learned Counsel was permitted to agitate the point of default only.

14. As regards the premises, in question, there is no manner of doubt that there were two separate tenancies in respect of the two shops, though contiguous, one being situated on the north and the other on the south. Even though the partition wall may have been removed, the tenancies would yet continue to be separate unless it can be established that by any subsequent agreement the parties treated the two tenancies as one which is not the case here. It is an admitted case of both the parties that the northern shop was taken on rent on Falgun Vadi 1, Samwat 2009 on an yearly rent of Rs. 20/ and the southern shop was taken on rent on Falgun Vadi 1, 2017 on a monthly rent of Rs. 3.75/-. It is also not disputed that the

rent was claimed by the plaintiff who was the transferee from the original landlord from 25-7-64 to 13-7-65 or till the day of the end of the month. It is also noteworthy that the suit was filed on 11-8-1965. I have no doubt that for the southern shop the tenancy was monthly and rent was also to be paid monthly. It is also alleged that the defendant had not paid any rent to Maji Dariah Kaur prior to 25-7-1964. But we are not concerned with the truthfulness of the allegations. It is not disputed that from 18-5-1964 to 13-7-1965 or even upto the date of the suit no rent was paid in respect of the southern shop. Therefore, the defendant was clearly a defaulter for a period exceeding six months.

15. The next question relates to the Shop for which the rent was yearly. According to Section 107 of the Transfer of Property Act, a lease of immovable property from year to year for any term exceeding one year or reserving an yearly rent can be made only by a registered instrument. Since admittedly the first rent note reserving a yearly rent was not a registered one, tenancy could be treated as one from month to month and not from year to year. Nonetheless the question crops up how the rent was to be paid and when and in what circumstances the tenant can be said to have been a defaulter. The parties have not directed their attention regarding the mode of payment of this yearly rent of Rs 20/-; whether it was to be paid in one lump sum or in instalments or otherwise. In the absence of anything it is legitimate to presume that it could be paid in terms of the rent note. Taking the things on their face only a rent of one year was due on the date of the suit. The nub of the matter, therefore, is whether in such a situation it can be held that within the meaning of Section 13(1)(a) of Rajasthan Premises (Control of Rent & Eviction) Act, 1950, it can be held against the tenant that he has neither paid, nor tendered the amount of rent due to him for six months. I may read the relevant portion of the section:

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 therefore 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

16. The language of the section is not appropriate in the case of the present kind. It means (1) that the amount of rent must have fallen due and that would naturally be in terms of the contract and (2) that it should not have been paid or tendered for six months. To my mind, the default after the rent is due, should continue for six months. The section would normally be applicable to a case where rent is required to be paid month by month but in a case where the yearly rent is reserved or required to be paid in terms of the contract the rent must not have been paid for six months after it had fallen due and then alone this clause would be attracted.

17. According to the tenor of the plaint, the rent became due on 25-7-65 and the suit was filed in less than a month thereafter i.e. on 11-8-65, it cannot be predicated that the tenant was in violation of Section 13(1)(a) of the Act.

18. Learned Counsel for the respondent advanced an alternative argument that as the tenant had not shown his readiness or willingness to pay rent either in the reply to the plaintiffs' notice or in the written statement for that matter, the protection under Section 13 itself would not be available to the tenant. Learned Counsel pointed out that when the rent was demanded from the defendant he tried to dodge the payment.' He first inquired which was the shop that was sold to the plaintiff by Mst. Maji Dariab Kaur though it was mentioned in the notice itself that the two shops which were merged into one and which were occupied by the defendant were sold to him. Likewise his attention was invited to the language of the sale deed. Learned Counsel, therefore, urged that there was no readiness or willingness to pay rent on the part of the defendant. Learned Counsel also drew my attention to the written statement.

19. I have considered the question. It is true that the plaintiff had tried to explain in the notice that the shop was now One but from the totality of the circumstances it cannot be easily inferred that there was no readiness or willingness on the part of the defendant to pay the rent. In the written statement he has made the submission that it be determined as to in respect of which shop the defendant has to pay rent and as soon as the Court so orders he would deposit the rent. Relevant para of

the written statement is No. 3 of the additional pleas which runs as follows:

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vnktr okyk dk ftl nqdku ds ckcr fdjk;k tek djkus dk vkns'k gksxk mlh nqdku dk fdjk;k
gqDe gksrs gh vnk djkus dks rS;kj gS A

I am, therefore, not impressed by the argument of the learned Counsel.

20. The result is that I allow the appeal in part and reverse the decree of the lower appellate court in respect of the northern shop but allow it to, stand in respect of the southern shop. The defendant shall vacate the same within two months after restoring the partition wall if it had been removed. The parties shall bear their Own costs throughout.

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