

Dheeraj Mal Vs. Ajeet Kumar and ors.

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Court : Rajasthan

Decided On : Feb-25-1980

Reported in : 1980WLN(UC)52

Judge : M.C. Jain, J.

Appeal No. : S.B. Civil Second Appeal No. 146 of 1979

Appellant : Dheeraj Mal

Respondent : Ajeet Kumar and ors.

Advocate for Def. : Shri. M.C. Bhandari

Advocate for Pet/Ap. : Shri. Ganpatsingh Mehta

Disposition : Appeal allowed

Judgement :

M.C. Jain, J.

1. This is an appeal by the defendant-tenant against the judgment and decree of Civil Judge, Chittorgarh (Camp Pratapgarh) dated 11-9-1979 upholding the decree for eviction passed by the Munsif, Pratapgarh, in Civil Suit No. 85 of 1974.

2. The controversy in the present appeal is quite narrow. The appellant was a tenant in the suit shop and the plaintiffs landlords instituted the suit for eviction

inter alia on the ground of subletting. There was issue No. 2 relating to the ground of sub letting. The learned Munsif decided this issue in favour of the plaintiffs and held that the defendant-appellant has sublet the suit shop to Shantilal son of Hiralal without the consent of the plaintiffs. There was also the ground of reasonable and bonafide need for eviction of the defendant, but the issue No. 1 relating to reasonable and bonafide need was decided against the plaintiffs by the trial court. The defendant-tenant preferred an appeal against the decree for eviction. The learned Civil Judge found that the defendant-tenant has sub-let the tin-shed in front of the suit shop to Shantilal. The learned Civil Judge framed two points for determination.

(1) Whether the portion said to be sub-let was part of the demised premises?

(2) Whether that portion has actually been leased by the defendant?

The learned Civil Judge determined both the points against the defendant-tenant. Hence this appeal by the defendant-tenant.

3. I have heard Shri M.C. Bhandari, learned Counsel for the defendant appellant and Shri Ganpatsingh Mehta, learned Counsel for the plaintiff respondents.

4. On behalf of the defendant appellant Shri Bhandari vehemently urged that the first appellate court has seriously erred in holding that the tin shed situated in front of the suit shop was part of the demised premises and has been sub-let by the appellant. He urged that neither it was pleaded that this tin-shed portion was leased out to the defendant, nor there is any evidence on record to prove that the tin-shed portion was part of the demised premises. The learned appellate court has made out a new case, neither pleaded nor proved. He urged that in case it is found that there is no evidence on record to establish that the tinshed portion was part of the demised premises, then the question of sub-letting does not arise and the decree for eviction on that ground, is liable to be set aside. He referred to the necessary averments in the plaint and the rent-note, as well as the statement of the plaintiff and on that basis submitted that the finding on issue No. 2, is liable to be reversed. He submitted that the land covered with tin-shed, may be appurtenant to the suit shop, but it cannot be considered to be the part of the

demised premises, unless it is the subject matter of the lease and the learned Civil Judge was in error in making reference to the definition of the word 'premises' in Section 3. Clause (v)' Sub-clause (iv) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950) (hereinafter referred to as 'the Act').

5. Shri Ganpatsingh Mehta, learned Counsel for the plaintiff-respondents, on the other hand, submitted that the description of the shop leased out, has been stated in para 2 of the plaint and in the boundaries of the shop it is mentioned that towards north of the suit shop there is public way and 'sethon-ka-chowk'. Earlier this description has been given that there is tin-shed covering in front of the shop. This description clearly indicated that the tin-shed portion was also let out to the tenant. He submitted that it has not been denied in the written statement that the description of the suit shop, is incorrect and it has not been pleaded specifically by the defendant in his written statement that the tin-shed portion was not let out to him. Reference was also made by him to the relevant evidence of the parties. He particularly emphasised that when there is no specific denial in the written statement, it should be taken as an admitted fact that the tin-shed portion was part and parcel of the premises let out to the defendant. He, however, submitted that in case it is found that the tin-shed portion was not let out to the defendant, there can be no sub-letting of such a portion to the defendant. He also contended that the finding on issue of sub letting is the finding of fact, so it is not open to challenge in the second appeal.

6. Having heard the learned Counsel for the parties, I shall deal with the preliminary objection as to the maintainability of the appeal along with the main contention. It is true that both the courts have concurrently found against the appellant and in favour of the plaintiff-respondents that the defendant had sub-let the premises or part of the premises. The question is whether the finding has been based on any evidence. In case it is based on no evidence, then certainly the appeal involves a substantial question of law. On behalf of the appellant it is contended that the finding is based on no evidence. The plaintiffs have not come out with a specific case or any case, whatsoever, that the tin-shed portion was at all let out to the defendant and it is that portion, which has been sublet by the defendant. It is to be seen from the evidence as to whether the present case is a

case of complete want of evidence or there is any evidence on record to prove that the tin-shed portion was let out to the defendant? It may be mentioned here that if the plaintiff's pleading is perused it will be abundantly clear that he has come out with the cause of sub-letting of the suit shop itself and not any part of it. It is true that if on evidence it is found that only part of the suit shop has been sub-let, still the plaintiffs can be entitled to relief for eviction, but from the pleading it appears that the case, which has actually been put forth by the plaintiff is that actually the shop has been sub-let and not the outer most part of the demised premises, as contended before the court below. It may also be pointed out here that in case there would have been specific pleading of the plaintiffs with regard to sub-letting of the tin-shed portion and a clear averment that the tin-shed portion was part of the premises let out to the defendant, the defendant would have been able to meet that case. In any event it has to be seen as to whether there is any material on evidence on record for the finding that the tin-shed portion was part of the demised premises. As regards the description of the suit shop it may be stated that from the inspection note it appears that the suit shop is facing towards north and in front of the suit shop there is a verandah and the roof is covered with wooden beams having support of the pillars and thereafter there is a tin shed. This tin-shed is marked by point 9' in the site inspection memo. The question is as to whether this portion marked with point '9', is part of the premises let out to the defendant? In evidence the parties used a local expression 'Padsal'. The learned Civil Judge has given a specific finding that it is this portion marked with point '9', which has been sub-let by the defendant. If the description of the suit shop, as stated in para 2 of the plaint, is minutely examined, it cannot be found that this portion has been included in the premises let out to the defendant. While giving the boundaries of the suit shop it has been stated that the suit shop is situated in 'Sethon-ka-Chowk' in front of the 'gali' of Kamdar Sahib in the south line and in front of the suit shop there is a tin-shed towards north. What has been further described, is that there is a public way. From this description of the suit shop, it does not appear that the tin-shed portion was part of the suit shop, which has been let out. No such description has been given in the rent-note Ex 1. The only description given in the rent note, is that the shop situated in Sethon-ka-Chowk and it is towards east of the shop of Sabji Amritlalji. Even the plaintiff in his statement, has not stated that the tin-shed

portion was let out to the defendant. With regard to the ground of sub letting, his entire statement is to the effect that the entire shop has been let out by the defendant to Shanti Lal and it is Shantilal, who is in occupation of it and using it as his business premises. I have not been referred to any evidence on the basis of which this finding can at all be sustained that the tin-shed portion was the part of the suit shop. To me it appears to be a simple projection and open to public at large. The first 'Padsal', adjoining the suit shop covered by wooden beams, is undoubtedly the part of the suit shop. There is 'pakka' construction in this 'Padsal', but so far as the tinshed projection is concerned. From the expression that there is projection, ahead of the shop, of tins, it cannot be inferred that the land beneath the tin-shed portion, had been let out to the tenant. When there is no clear pleading in the plaint itself, the question of any admission on the part of the defendant that the tin-shed portion is part of the demised premise, does not arise. I may refer here to the definition of the word 'premises' in the Act. In any land to be considered as the part of the premises, what is essential is that the land should not only be appurtenant to the building, but should also be led with any such building or a part thereof. In order to constitute 'premises' as defined in clause (v) of Section 3, what is material is that the land should be let along with the building. I do not find that there is any averment to that effect in the plaint that the land covered with the tin-shed portion, was let along with the suit shop. So neither on the basis of the pleadings, nor on the basis of the rent note, nor on the basis of the evidence on record, it can be found that the tin-shed was part of the premises let out to the defendant. In this view of the matter, the finding of sub-letting, cannot be sustained and deserves to be set aside. As there is complete lack of evidence for sustaining this finding, this second appeal is thus competent.

7. No other point has been pressed before me.

8. In the result, this appeal is allowed and the decree for eviction passed by by the court below, is set aside. In the circumstances of the case. I leave the parties to bear their own costs.