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Court : Rajasthan

Decided On : May-13-1971

Reported in : 1971WLN(UC)25

Judge : C.M. Lodha, J.

Appeal No. : S.B. Civil Second Appeal No. 315 of 1970

Appellant : Ghisi Lal

Respondent : Phoolchand

Judgement :

C.M. Lodha, J.

1. The suit out of which this second appeal arises was instituted by the plaintiff respondent Phoolchand on 15th May, 1968 in the court of the Additional Munsiff No. 1, Jaipur (East) for ejectment and arrears of rent in respect of shop situated in the city of Jaipur. The plaintiff's case was that in a partition suit between himself and other co-sharers in respect of the joint family property belonging to them the shop in dispute fell to his share and symbiotic possession of the same was delivered to him by the receiver appointed in the partition suit on 27th May, 1962 (vide certified copy of the report of the Commissioner Ex. 2) Another copy of these proceeding has been filed by the defendant also and that is marked as Ex. A.3. The plaintiff's case is that the shop was originally rented out to one Bhoren Sahai

on Choth Sudi 1, Samvat 2003 equivalent to 3rd April, 1946 at monthly rent of Rs. 72/- and Bhoren Sahai had sub-let the same without permission of the landlord and consequently the sub-lessee Ghisilal defendant was liable to be ejected because the original tenant Bhoren Sahai had handed over possession of the shop to the said Ghisilal. It was further alleged that the plaintiff required the shop in question for carrying on his own business in jewellery.

2. The suit was resisted by the defendant Ghisilal who while denying the alleged personal necessity of the landlord further pleaded that he had been admitted into the shop in question with the permission of the receiver & within his knowledge and that the receiver had been also accepting rent from him. In other words, his plea was that he had come to occupy the shop in question with the consent of the receiver who was competent to grant the same and therefore he was not liable to be ejected. A plea regarding the validity of the notice of ejectment served upon him was also taken.

3. After recording the evidence produced by the parties the trial court, vide its judgment dated 30th January, 1969 held that the plaintiff had failed to prove his reasonable and bonafide personal necessity for the shop in question and that the plaintiff has also failed to prove that the defendant had been admitted as a sub-tenant to the shop in question without his consent and without the consent of the receiver. In this view of matter the trial court dismissed the plaintiff's suit.

4. Aggrieved by the judgment and decree of the trial court the plaintiff filed appeal which was allowed by the Additional District Judge No. 1, Jaipur city vide his judgment dated 7th July, 1970. Consequently, the defendant has come in second appeal to this court.

5. The learned Counsel for the appellant has argued the following three points in support of this appeal:

1. That it is fully established on the record that the defendant had been admitted as a sub-tenant with the consent of the plaintiff as well as the receiver.

2. That the plaintiff has failed to establish his bonafide and reasonable requirement for the shop in question, and that there was no valid notice of termination of tenancy.

6. It is not disputed before me that the defendant is a sub-tenant. What is contended is that he was admitted as a sub-tenant by Bhoren Sabai, the original tenant with the consent of the plaintiff as well as of the receiver. It is urged that the defendant has been in possession of the shop since 1955 and has been carrying on business in it under the name and style 'Fine Tailoring Works'. In this connection it may be noticed that the case set up by the defendant in his written statement vide para No. 4 was that he had been admitted into the occupation of the shop with the permission of the receiver and within his knowledge and that he had paid to the receiver the rent for the month of May, on 27th May, 1962 against the receipt issued by the receiver dated 31st May, 1962 (Ex A.1). It has been further pleaded by him in this para that at the time of handing over symbolical possession, to the plaintiff, the receiver had asked the defendant that he should henceforth pay the rent to plaintiff and the same thing was also said by Bohren Sahai, the original tenant. He goes on to state that from these facts it would be clear that the defendant was not a sub-lessee but that he had been a tenant.

7. As already stated above, the case of direct tenancy has been given up before me by the learned Counsel for the appellant. As a matter of fact, it appears that the defendant did not rely on the case of direct tenancy between him and the plaintiff even at the stage of trial. The question, therefore, for determination is whether the consent, express or implied, either of the plaintiff or the receiver to the defendant's occupation of the shop in question as a sub-lessee has been established. It is interesting to note that when the defendant came in the witness box as D.W. 1 he stated that he had started sitting on shop in question with the permission of the plaintiff and his brother Gopallal who expressly permitted him to occupy the shop. They are, further, alleged to have asked him to execute the rent note in favour of person to whom the shop is ultimately allotted as a result of the partition suit. There is nothing in the statement of this witness to show that he had ever obtained the permission of the receiver or that the receiver having come to know that he was occupying the shop as a subtenant acquiesced in his continuing as

a sub-lessee.

8. The receiver Shri Raghunath Sahai has been produced by the defendant in his evidence. He is D.W. 4. He has stated that when he went to the shop for handing over the possession of the same to the plaintiff he found the defendant sitting in the shop. He states that he did not at that time try to find out as to who was the tenant. He has deposed that he asked the defendant to henceforth pay the rent of the shop to the plaintiff and that for the month of May, 1962 he accepted the rent and passed the receipt Ex. A.1 dated 31st May, 1962. In the course of the cross-examination he has deposed that he had never obtained a rent-note with respect to the shop in question from the defendant. According to him no such question ever arose for his granting permission to Ghisilal to occupy the shop in question. He has clearly stated that during his receivership, according to the record, Bhoren Sahai alone was the tenant. He has further admitted that prior to handing over possession of the shop to the plaintiff all the receipts for rent were issued in the name of Bhoren Sahai as tenant. Thus, there is nothing in the statement of this witness to show that he had expressly or impliedly consented to the defendant continuing in occupation of the shop in question as a sub-tenant. No doubt, at one stage the witness has stated that even though he had bound down Bhoren Sahai at the time of handing over possession of the shop to the plaintiff to pay the rent henceforth to the plaintiff but at the instance of the plaintiff he bound down the defendant also to pay the rent. It is this part of the statement of this witness on which great stress has been laid by the trial court. The learned Counsel for the appellant also tried to show that the plaintiff has acquiesced in the sub-lease in favour of Ghisilal. In this connection it may be pointed out that in the proceedings recorded by the receiver in connection with handing over possession of the shop (Ex 2) it has nowhere been mentioned that plaintiff had asked the receiver to bind down Ghisilal to pay rent to him. What appears from Ex. 2 is that Bhoren Sahai made a request to the receiver that since Ghisilal had been paying the rent hitherto, he may be bound down to pay rent hereafter to the plaintiff Phool Chand. This statement of Bhoren Sahai recorded in Ex. 2, in my opinion, cannot by any stretch of imagination be construed as a consent on the part of the plaintiff to agree to the sub-lessee in favour of Ghisilal.

9. The learned trial court has drawn an inference against the plaintiff because the plaintiff did not raise objection either before the receiver or at any time prior to the occupation by the defendant of the shop in question as a sub-lease. It is sufficient to point out that before the symbolical possession of the shop in question was handed over to the plaintiff the latter was not in a possession to raise any such objection. But apart from that there is nothing on the record to show that the plaintiff had come to know of this sub-tenancy in favour of the defendant at any time before the symbolical possession of the shop was delivered to him.

10. The case of the defendant that he had been admitted as a subtenant with the consent of the receiver is also not at all established. On the other hand, the plaintiff has given an equivocal statement as P.W. 1 that neither he nor the receiver had ever given consent to the shop in question being sub-let by Bhoren Sahai to the defendant. The finding arrived at by the first appellate court that the defendant had been admitted as a sub-tenant without the consent of the landlord, express or implied, in these circumstances, cannot be said to suffer from any error of fact or law, and must therefore, be upheld,

11. As regards the ground of personal necessity it is admitted even by the defendant himself that the plaintiff carries on business in jewellery, but he contends that he can carry on that business in the residential portion of the house. The first appellate court has found that the requirement of the plaintiff for the shop in question to carry on his own business in jewellery is not unreasonable and is bonafide. In my opinion, no just exception can be taken to this finding.

12. Lastly coming to the question of notice, in the first place, it was not obligatory on the part of the plaintiff to serve a notice of termination of tenancy on the defendant with whom he had no contractual relationship of landlord and tenant, yet, by way of abundant caution he served a notice of ejectment on the defendant (Ex. 7). Besides, I fail to see any such defect in the notice as may make it invalid. In fact, nothing substantial has been pointed out to indicate any defect in the notice, except that it is not mentioned therein that Ghisilal has been admitted as a sub-tenant. Omission to mention this fact in the notice does not adversely affect the merits of the notice.

13. The result is that I do not see any force in this appeal and hereby dismiss it with costs. The learned Counsel for the appellant prays for grant of reasonable time to the appellant to vacate the shop in question. In the circumstances of the case I grant 6 months time to the appellant during which execution for vacation shall not be taken put against him. provided he deposits in the trial court or pays to the respondent, against the latter's receipt arrears of rent, if any, due upto the end of April, 1971 within one month from today and goes on paying rent month to month hereafter, within 15 days of its falling due. In case the appellant fails to comply with this condition the respondent shall be at liberty to take out execution forthwith.

14. The learned Counsel for the respondent prays for 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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