

Akbar Ali Vs. Ali Mohammed

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Court : Rajasthan

Decided On : Mar-26-1975

Reported in : 1975WLN(UC)133

Judge : J.P. Jain, J.

Appeal No. : S.B. Civil Second Appeal No. 7/1975

Appellant : Akbar Ali

Respondent : Ali Mohammed

Disposition : Appeal dismissed

Judgement :

J.P. Jain, J.

1. This second appeal is by defendant Akbar Ali against whom a decree for eviction from the suit has been passed by both the courts below. The facts of the case are these.

2. Akbar Ali is the tenant of the suit house since 16.5.63 at the rate of Rs. 51/- per month. Ali Mohammed, the owner of the house served quit notice on Akbar Ali calling upon him to surrender vacant possession of the house as he wanted the same for his own use. The tenant having failed to surrender possession, Ali Mohammed sued Akbar Ali for eviction and for arrears of rent. The suit was tried

by Additional Munsif Court No. 2, Udaipur The grounds on which the eviction was sought were two fold: one that the defendant had not paid the rent from 16.12.1969 to 16.7.70 i e. for a period of seven months and as such he was a defaulter. The second ground was that the plaintiff required the suit house for personal necessity.

3. The suit was resisted by the defendant-tenant. After trial the learned trial Judge accepted the case of the plaintiff and decreed his suit for eviction. The defendant unsuccessfully appealed. The appeal was dismissed by the Additional Civil Judge, Udaipur by his order dated 11.12.1974. This order is the subject matter of challenge in the second appeal.

4. I have heard the learned Counsel for the parties. The evidence was read out before me There is over whelming evidence to support the finding that plaintiff's requirement of the suit house was bona fide and reasonable. The courts below were right in the appraisal of the evidence and I find no good reason to interfere in the second appeal. In my opinion the decree has rightly been passed and it must be maintained.

5. However, for the appellant Mr. Bhandari has urged that he may be allowed sometime to surrender the vacant possession. Mr. H.M. Parikh has no serious objection and is prepared to allow him six months' time for the purpose.

6. In the result, the appeal fails and it is here by dismissed, with costs I allow the defendant appellant six months' time to surrender vacant possession The decree bolder will not accordingly execute the decree for six months from today. The appellant will however continue to pay the mesne profits for this period at the same rate.