

Ratan Lal Vs. Moti Lal

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Court : Rajasthan

Decided On : Dec-07-1972

Reported in : 1972WLN918

Judge : Kan Singh, J.

Appeal No. : S.B. Civil Second Appeal No. 221 of 72

Appellant : Ratan Lal

Respondent : Moti Lal

Disposition : Appeal dismissed

Judgement :

Kan Singh, J.

1. This is a tenant's second appeal directed against the appellate decree for eviction by the learned Civil Judge, Beawar and raises the point whether a tenant has or has not made any material alteration within the meaning of Section 13(1)(c) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, is a question of law or one of fact or both. It arises in the following circumstances:

2. The plaintiff-respondent sought to the eviction of the tenant on three grounds: (1) of bonafide personal necessity, (2) default in payment of rent, and (3) material alterations made by the tenant in the suit premises. The first court held against the

landlord on the question of personal necessity and about the defaults in payment of rent but decreed the suit on the ground that the tenant had made material alterations in the suit premises. It was, inter alia averred in the plaint that the defendant-tenant had closed the open 'Chabutari' in front of the shop by a wooden partition and by making Pucka construction. According to the plaintiff, this was without his consent. In the appeal before the learned Additional District Judge, Ajmer the only question that was argued was whether these were material alterations so as to render the tenant liable to eviction on that score. The learned Additional District Judge went into the evidence and came to the conclusion that the tenant had enclosed the open 'Chabutari' of the shop by placing shutters at the end of the Chabutari, and by covering the same. This was material alteration, according to the learned Judge. In the result, therefore, the learned Judge affirmed the decree of the first court and dismissed the appeal.

3. It is in these circumstances that the tenant has come in further appeal to this Court.

4. Learned Counsel for the appellant was confronted with the question whether he is entitled to challenge the concurrent findings of the two courts on this question. Learned Counsel maintains that the question whether the alterations in the suit premises made by the tenant were material alterations within the meaning of Section 13(1)(c) or not was a mixed question of law and fact and consequently the findings could be challenged in second appeal. According to learned Counsel, the courts below were in error in reaching the conclusion that the alterations were material so as to entitle the landlord to evict the tenant on that ground. Learned Counsel cited two cases of the Allahabad High Court: S.B. Mathur v. K.P. Gupta 1981 ALJ 137 and Dr. Jai Gopal Gupta and Ors. v. Bodh Mal 1969 RCJ 717 as also Jugal Kishore v. Subh Karan : AIR1952 Cal571 to reinforce his argument that the question involved was not one of fact only, but a mixed question of law and fact. Learned Counsel submitted that the Allahabad cases fully govern a situation like the present one. Learned Counsel also attempted to draw some support from the line of approach of their Lordships of the Supreme Court in Manmohan Das v. Bishun Das : [1967]1SCR836 in dealing with the question, although learned Counsel was not in a position to say that their Lordships had decided this matter

whether the question raised was one of law or a mixed question of law and fact.

5. Learned Counsel for the respondent, on the other hand, tried to support the view taken by the courts below. He relied on a later Full Bench case of the Allahabad High Court reported as *Sitaram v. Johri Mal* : AIR1972 All317 and also invited attention to three cases of this Court reported as *Khinya Ram v. Lakhi Prashad* ILR 14 Raj. 819, *Madhavlal v. Smt. Govindi Bai* 1971 RLW 64 and *Sukh Lal v. Bhopal Singh and Ors.* 1972 WLN 101.

6. I may start with Allahabad cases. In *S.B. Mathur v. K.P. Gupta* 1981 ALJ 137, the learned Single Judge was considering the question while dealing with a similar provision of U.P. (Temporary) Control of Rent and Eviction Act, 1947. He observed.

Whether the constructions amounted to 'a material alteration in the accommodation' really depends on the interpretation that is to be put on these words as used in Section 3 Cl. (c). That is really 3 question of law. It is true that the alterations made must be material in the opinion of the court but the question involved is not a pure question of fact. The alteration must be material in the opinion of the court which is the final court for determining what the words 'materially altered' mean as a matter of law.

In that case the alterations made in the premises were:

(1) in the bottom portion of the second floor there was a verandah which was enclosed on the eastern and western sides by walls. On the eastern side of the verandah there was an iron jangla. The tenant had built a brick wall 3' thick and 2' 9' high adjacent to the jangla, but the entire jangla had not been closed by this wall;

(2) above the iron rod of the jangle the tenant had constructed a wooden jali between points P and P 1 as shown in the Commissioner's map;

(3) another wall 3' thick and 7' 2' wide had been constructed in the verandha from east to west. This was a sort of partition. The wall did not go upto the ceiling and some space had been left between the top of this partition wall and the ceiling;

(4) on the 3rd floor there was originally a shed having walls on the eastern and northern sides and having pillars on the other two sides. The tenant constructed a brick jali from east to west. The height of the brick jali varied from 7' 2' to 16' 3' according to the slope of the roof of the shed. The jali constructed was 9' thick. A brick Jali had been constructed in the northern wall of the shed also, The learned Judge went on to say that the word 'materially' or the word 'altered' had not been defined in the Act. Therefore, he took their dictionary meaning. Referring to Concise Oxford Dictionary he observed that the word 'alter' as a verb means 'change in character, position etc' and 'materially' as an adverb means 'important, essentially, concerned with matter not with form.' Thus he construed the words 'materially altered' to mean a change in the character or position of the accommodation of which was essential or important. He referred to some English cases as well as from which he deduced the principle that the question whether the accommodation in a particular case is materially altered by some construction made by a tenant must naturally depend on the facts and circumstances of each case. Then he indicated some considerations for dealing with this question which I need not notice.

7. In the second case which was by a Division Bench the learned Judge approved the view taken in the first case. The question was examined more critically. It was observed that the Court is required to form opinion on three matters: (1) actual constructions made by the tenant; (2) the construction had altered the accommodation; and (3) the alteration is material and further it was observed that the opinion regarding the Construction being material alterations is one of law. The relevant observations are these:

The Court is required to form opinion on three matters: (1) The actual constructions made by the tenant; (2) the construction has altered the accommodation; and (3) the alteration is material. The finding of the lower appellate court regarding the actual construction made by the tenant is a finding of fact But its opinion regarding the constructions being material alterations is one of law. The statute prescribes a standard. That standard is that the construction should materially alter the accommodation. Whether the actual construction made in a particular case reach up to the statutory standard is, we think, a question of

law.

The contrary view taken by Dhavan, J. in *Jai Bhawan v. Padam Sen and Anr.* 1964 ALJ 961 was dissented from. It was observed that the passage from Halsbury's Laws of England which was quoted by Dhavan, J. did not show that it was concerned with a statutory standard. The learned Judges further observed that in a suit based on material alterations the Court has first to record a finding about the actual constructions made by the tenant and that finding will be a finding of fact, but after the actual constructions had been ascertained the Court has to form an opinion as to whether these constructions had materially altered the accommodation. The expression 'materially altered', it was added, finds place in a statute and its meaning has to be ascertained first and then the Court has to see whether the constructions made amount to material alterations within the meaning of the Act and this will be ordinarily a finding of law.

8. In this Court Bhargava, J. had taken the view in *Khinya Ram v. Lakhi Prashad* ILR 14 Raj. 819 that the question whether any material alteration has been made in the premises is a question of fact in each case depending on the nature of the premises and the nature, extent and effect of the constructions made therein. The learned Judge pointed out that the alteration should be structural nature and not merely of decorative nature. In that case a 'Chabutra' with a tin shed over it was rented out by the landlord to the tenant. The tenant was said to have raised, the height of the tin shed and had closed the 'Chabutra' by fixing doors fitted in a wooden frame. The trial court and the first appellate court found that the tenant had made such constructions as materially altered the premises. Bhargava, J. affirmed the conclusions of the courts below and dismissed the appeal.

9. In *Madhavlal v. Smt. Govindi Bai* 1971 RLW 64, which was decided by Lodha, J. the question was not examined whether the finding about there being material alterations made by the tenant was one of fact or law. The case is cited by learned Counsel for the respondent only as an example for showing that in a case where a cabin had been constructed on the raised platform adjacent to the shop Lodha, J. took the view that the alterations were material.

10. In *Sukh Lal v. Bhopal Singh and Ors.* 1972 WLN 101, I had to consider a case in which the tenant had made a Kucha floor Pucka and bad plastered a Kucha wall and had put a door frame in the opening or entrance. These were not held by me to be material alterations. The question, however was not gone into whether this would be a question of fact or law. The learned Counsel for the appellant wants to rely on this case as an example for showing that this was not treated as a finding of fact though it was not said so in so many words otherwise the Court would not have interfered with the findings of the two courts below. It is true, there was interference, with the conclusions reached by the two courts below but it cannot be argued with cogency that I had held this to be a question of law and not one of fact. The attachment was not directed on this question at all. It is not that a finding of fact can never be interfered within second appeal. It can be if it is shown that in arriving at such a finding any legal principle was erroneously applied or some important piece of evidence was overlooked or the view taken was such that no reasonable person could ever come to the conclusion to which the lower court had arrived at.

11. In the Supreme Court case (4) relied on by learned Counsel their Lordships has occasion to deal with the import of the words 'material alterations'. Their Lordships were dealing with a case under the U.P. (Temporary) Control of Rent and Eviction Act. Their Lordships observed:

As regards the alterations, there is no dispute that the respondent carried them out without the permission of the appellants. The question then is whether they were such that they materially altered the accommodation as provided by Cl (c). Without attempting to lay down any general definition as to what material alterations mean, as such a question would depend on the facts and circumstances of each case, the alterations in the present case must mean material alterations as the construction carried out by the respondent had the effect of altering the form and structure of the accommodation. The expression 'material alterations' in its ordinary meaning would mean important alterations, such as these which materially or substantially change the form or the structure of the premises. It may be that such alterations in a given case might not cause damage to the premises or its value or might not amount to an unreasonable use of the leased premises or

constitute a change in the purpose of the lease.

Learned Counsel for the appellant wants me to read these observations to imply that their Lordships were treating this to be a question of law otherwise they would not have dealt with the question in the manner it was done. Learned Counsel, however, realises that their Lordships have not said a word whether this is a question of law or of fact only. A case is an authority for what it decides and not for seems to flow from it. The observations in a given case should be taken to be circumscribed by the facts and circumstances of the Case and unless the observations justify no rule of general application can be deduced to govern each and every case. The Allahabad Cases show that the learned Judge have thought that since the words 'material alteration' in the section have to be interpreted it would raise a question of law or a mixed question of law and fact.

12. Having considered the various cases I find myself in thorough agreement with what Bhargava J, had laid down in *Khinya Ram v. Lakhi Prashad* ILR 14 Raj. 819.

13. A very recent case of the House of Lords has come to my notice. It is *Brutus v. Cozens* 1972 (2) All, E.R. 1297 in which their Lordships had to consider the question when the interpretation of words in a section visa vis their application to a given set of facts would raise a question of law. In that case during the annual tournament at the All England Lawn Tennis Club, Wimbledon while a match was in progress on Court No. 2 the accused went on to the Court, blew a whistle and threw leaflets around. On the whistle being blown nine or ten others invaded the court with banners and placards. It was assumed that this was done at the instigation of the appellant Brutus. The appellant sat down there and had to be forcibly removed by the police. The whole incident lasted for two or three minutes. The spectators at Court No. 2 were up set by the appellant's behaviour. They made loud shouts gesticulated and shook their fists and while the appellant was being removed by the police they showed hostility and attempted to strike him The appellant was put on trial before the Justices for the offence under Section 5 of the Public Order Act, 1936 which ran as follows:

Any person who in any public place or at any public meeting (a) uses threatening, abusive or insulting words or behaviour...with intent to provoke a breach of the

peace or where by a breach of the peace is likely to be occasioned, shall be guilty of an offence.

The Justices came to the conclusion that the appellant's behaviour was not insulting within the terms of the offence alleged. They did not consider the other points raised in arguments and dismissed the case without calling on the appellant to answer the charge. The case was, however, stated for the opinion of the Divisional Court (High Court) as it was felt that a question of law was raised. The question of law formulated was 'whether on the statement of facts the Justices had come to a correct determination and decision in point of law'. The Divisional Court who heard the case came to the conclusion that the behaviour of the appellant affronted other people and evidenced a disrespect or contempt for their rights, including behaviour which reasonable persons would foresee was likely to cause the resentment or protest which had occurred in this case and consequently the case was sent back to the Justices with the direction to proceed further in the matter. On a certificate by the Divisional Court an appeal was lodged before the House of Lords. Their Lordships pointed out that it was assumed that the meaning of the word 'insulting' in Section 5 was a matter of law and then the Divisional Court proceeded to examine the matter. This, according to their Lordships, was not right and their Lordships observed (per speech of Lord Reid):

The meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law. If the context shows, that a word is used in an unusual sense the court will determine in other words what that unusual sense is; But here there is in my opinion no question of the word 'insulting' being used in any unusual sense. It appears to me, for reasons which I shall give later, to be intended to have its ordinary meaning. It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved. If it is alleged that the tribunal has reached a wrong decision then there can be a question of law but only of a limited character. The question would normally be whether their decision was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably reach that decision.

Their Lordships further went on to say, 'when considering the meaning of the word one often goes to a dictionary, there one finds other words set out And if one wants to pursue the matter and, find the meaning of those other words the dictionary will give the meaning of those other words in still further words which often include the word for whose meaning one is searching No doubt the court could act as dictionary. It could direct the tribunal to take some word or phrase other than the word in the statute and consider whether that word or phrase applied to or covered the facts proved But we have been warned time and again not to substitute other words for the words of a statute. And there is very good reason for that. Few words have exact synonyms. The overtones are almost always different, or the court could frame a definition. But then again the tribunal would be left with words to consider. No doubt a statute may contain a definition which incidentally often creates more problems than it solves but the purpose of a definition is to limit or modify the ordinary meaning of a word and the court is not entitled to do that.' Learned Law Lord further said: that the question of in this case must be whether it was unreasonable to hold that the appellant's behaviour was not insulting,' and then answered that question by saying that it could be only 'No'

14. Lord Morris spoke in the following terms:

The words 'insulting behaviour' are words that permit of ready comprehension Having found the facts it was for the justices applying rational judgment and common sense to reach a decision

The other learned Law Lords agreed with the speech of Lord Reid.

15. From this judgment the following points emerge:

(1) If a word has its ordinary meaning then it is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved.

(2) The proper construction of a statute is a question of law. If the context shows that a word is used in an unusual sense the court will determine in other words

what that unusual sense is.

(3) If it is alleged that the tribunal has reached a wrong decision then there can be a question of law but only of a limited character and the question would normally be whether their decision was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably reach that decision.

16. In the Allahabad Division Bench case, noticed above, the learned Judges have said that the legal standard has been laid down by the statute for determining what is material alteration when it is provided that this has to be so in the opinion of the Court. With all respect I find myself unable to agree with this view. The words 'in the opinion of the Court' do not add anything in particular. Even if these words were not there, it would have been the opinion of the Court that would have settled the question whether the alteration was material. Even without these words it is the Court who has to decide the question judicially whether there was material alteration of the premises to justify the eviction of the tenant therefrom. Therefore, these words alone will not make it a question of law if it is otherwise one of fact. There is no standard prescribed by the statute for judging whether any alteration is material or not as these terms have not been defined by the statute, nor has any explanation or provision added to illustrate when the alteration should be taken to be material. The Court has to construe these words in their ordinary sense. The words are quite comprehensive and easy to understand and any easier word to give their meaning is not conceivable. In *Brutus v. Cozens*, Lord Kilbrandon quoted from Dr. Johnson the following passage:

To explain, requires the use of terms less abstruse than that which is to be explained, and such terms cannot always be found.... The easiest word, whatever it may be, can never be translated into one more easy.

This, in my view illustrates the difficulty in defining or explaining the words when they are easy to understand. To my mind, therefore, there is hardly any question of interpreting the section here, but one of taking the words 'materially altered' in their ordinary sense and then to see if the given set of facts establish that there was material alteration. This has no doubt to be so in the opinion of the Court, but

this always happens when the evidence regarding an issue of fact has to be dealt with. The fact is proved when the Court believes it to exist. Therefore, the subjective element so far as the Court is concerned, will always be there, but that will not change the character of determination from one of fact to that of law

17. Learned Counsel for the appellant submitted that this was a mixed question of law and fact and for this he referred me to *Meenakshi Mills Madurai v. Commissioner of Income Tax. Madras (10)* and in particular to the passage reproduced in Allahabad case *Dr. Jai Gopal Gupta and Ors. v. Bodh Mal* 1969 RCJ 717. In that passage it was pointed out that in between the two domains occupied respectively by questions of facts and of law, there is a large area in which both these questions run into each other, forming so to say, enclaves within each other. The questions that arise for determination in that area are known mixed question of law and fact. Their lordships pointed out that the court has first to determine the facts and then to apply legal principles to those facts. I am aware of this passage. Whenever the primary facts are first determined and then legal principles have to be applied thereto for drawing the correct inference then the question involved is a mixed question of law and fact. Here there are no legal principles to be applied for determining whether a particular alteration was material or not. It is to be decided as a question of fact only and then the matter is decided by the Court whether the requisite ground for eviction has been made out by the evidence. Learned Counsel further cited 1969 R.C.R. 1917 and 1971 R.C.R.I. These are cases about the bonafide personal necessity of the landlord The language of the relevant Clause (h) in Section 13(1) is 'that the premises are required reasonably & bonafide.' It is the element of reasonableness that will attract legal principles and, therefore, the question arising under Clause (h) of Sub-section (1) of Section 13 of the Act will become a mixed question of law and facts. I have already referred to Brutus's case where also the element of reasonableness has been considered to some extent. It may be a question of law if the view taken by the tribunal is such that no reasonable person can take that view on facts. Here, in Sub-clause (h) of Sub-section (1) of Section 13 of the Act the element of reasonableness regarding bonafide necessity of the landlord is very much there. Cases under that sub-clause are, therefore, clearly on the other side of the line, but a case of material alteration is right in the middle of the domain of

facts. I am, therefore, not inclined to take a line different from that taken by Bhargava J, and am of the view that the question involved here is one of fact. It has not been shown that the approach of the courts below in dealing with the question was erroneous on account of any disregard of a legal principle. As an example this case will come nearer the cases dealt with by Lodha J. and Bhargava J. Therefore, no case is made out for interference with the conclusion concurrently reached by the two courts below.

18. Learned Counsel went to the length of arguing that the tenant had made no construction and he relies on my cited judgment which was about the putting up of a door frame in an opening in a wall and where the tenant had plastered the wall or made the floor pukka when it was kucha. Here the 'chabutra' has been closed on one side and a brick wall had been constructed for fixation of the shutters. Therefore, there was undoubtedly a construction made by the tenant.

19. Lastly, learned Counsel raised the question about the validity of the notice for determination of tenancy. This point was not argued in the court below. No affidavit has been filed of the counsel who appeared there for showing that this point was argued. As such I am not inclined to permit the learned Counsel to raise this question here.

20. The appeal has thus no force and it is accordingly hereby dismissed with costs.

21. Two months time is allowed to the tenant appellant to vacate the premises, but he shall deposit all the arrears of rent to date, if any, and further deposit the rent till he vacates the premises month by month by the 15th of each month.

22. Learned Counsel prayed for leave to appeal under Section 18. of the Rajasthan High Court Ordinance, 1949. Since I have fallen in line with the opinion that was already prevalent in this Court, I am not inclined to grant the leave. The prayer for leave to appeal is, therefore, hereby refused.