

Mitthu Lal Vs. Kundan Lal

Mitthu Lal Vs. Kundan Lal

SooperKanoon Citation : sooperkanoon.com/760078

Court : Rajasthan

Decided On : Jul-08-1997

Reported in : AIR1998Raj159; 1997(3)WLC353

Judge : Arun Madan, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13(1)

Appeal No. : Civil Regular Second Appeal No. 340/1996

Appellant : Mitthu Lal

Respondent : Kundan Lal

Advocate for Def. : S.R. Surana, Adv.

Advocate for Pet/Ap. : Ashok Mehta, Adv.

Disposition : Appeal dismissed

Judgement :

Arun Madan, J.

1. This second appeal has been preferred before this Court by the defendant-appellant who is a tenant in the suit property, situated at Ramlila Nohara Marg, Lalan Gali, Diggi Mohalla, Beawar, bearing Municipal No. 6/335 (old) block No. 1,

new Municipal No. 5 which was earlier in the joint ownership of Ghadisiram alias Ghanshyam Dass Agrawal and Ramlal son of Gadhsiram residents of Jaipur and the said property was constructed in 5 blocks, one out of which is in ownership of present respondents, against the judgment and decree dated 8-7-1996 passed in first appeal No. 58/88 by Addl. District Judge. Beawar against the judgment and decree dated 24-5-1988 passed by Munsiff, Beawar in civil suit No. 46/82 whereby the said appellate court had reversed the judgment and decree of the trial Court. The said property was purchased by the plaintiff-respondent on 21-1-1979 by a registered sale deed and in the meanwhile the appellant who was already inducted as a tenant by the erstwhile owner of the said property continued as a tenant in the aforesaid room and continued his tenancy by attornment by the second owner, i.e. the respondent herein.

2. The facts which are relevant for the purposes of deciding this appeal briefly stated are that a suit for eviction of the tenant-appellant from the suit premises in question was filed by respondent-landlord on 24-2-1982 on the ground of default in payment of rent and personal bona fide necessity of the owner landlord under Sections 13(1)(a) and 13(1)(h) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, (for short 'the Act of 1950'). On the pleadings of the parties the trial Court framed the following issues :--

1. Whether the defendant had committed default in payment of rent for the period 23-1-1979 till the date of filing of the suit, i.e., 24-2-1982 and if so to what effect ?
2. Whether the need of the plaintiff to occupy the suit premises is bona fide and genuine for his own occupation and that of his family and if so whose comparative hardship will be greater ?
3. Whether the suit of the plaintiff was filed within the prescribed period of limitation of 5 years reckoned w.e.f. 2-1-1978, i.e. the date when the appellant had gained entry in the suit premises on his induction as a tenant by the erstwhile owner as per Section 14(3) of the Act of 1950?
4. To what relief the plaintiff is entitled ?

3. The appellant-tenant contested the suit by filing his written statement before the trial Court on the grounds inter alia that (a) all the arrears of rent as claimed by the landlord for the period in dispute stood fully paid and that he had deposited in the court the rental dues up to 31-10-1983. He had further stated that he had already been given the benefit of first default as contemplated by the provisions of Section 19A of the Act of 1950(b) with regard to the plea of bona fide requirement of the suit premises of the landlord, it was contended by the appellant before the trial Court that he had no requirement to occupy the suit premises. He had stated that the appellant was in Government service as Executive Engineer posted at Bikaner and because of his said posting he was entitled to allotment of official accommodation and for this reason he had no bona fide requirement or necessity to occupy the suit premises at Beawar.

4. The defendant-appellant however, had disputed this fact that the plaintiff's wife was not living at Beawar though in his evidence before the trial Court he had admitted this fact that his wife and daughter were living at Beawar. They keep on coming to Beawar and staying in their ancestral house. He has further stated that there is enough accommodation in the disputed premises with lot of open land and the roofs are lying vacant where the plaintiff can raise modern construction according to his requirement. Besides this in the neighborhood in Sarafan Mohalla the plaintiff and his father have very large property and the said premises are lying vacant. He has further stated that if the plaintiff wants he can live permanently and conveniently in the alternative accommodation. However, in evidence recorded by the trial Court appellant has specifically failed to establish this fact that the said alternative accommodation about which he is referring to form nucleus of the joint HUF property and it is not personal or self-acquired property of the respondent-landlord. In view of this no inference can be drawn that the said alternative accommodation can be inferred to be the separate or self-acquired property in occupation of the respondent-landlord. The only evidence which has come on the record and which has been positively established is that the respondent-landlord has only the suit property in his ownership, i.e., the property in block No. 1. As regards to the above which too is in tenancy and occupation of four tenants including the appellant herein and the eviction suits against the said tenants are still pending and out of which two suits have been decreed, which is subject matter

of S.B. C.S.A. No. 458/1996 in the matter of Satya Narain v. Kundanlul Agarwal.

5. The tenancy was oral between the parties inasmuch as no rent note or lease-deed was executed. The mode of payment of rent has been in cash and during the course of hearing it has been stated by the learned counsel for the appellant that he had tendered the rent at the agreed rate by money-order but the counter-foils of the money-orders were not tendered in evidence by the appellant though parties have not disputed that the rent for the disputed period stood paid. Hence the only question with which I am presently concerned in deciding this appeal is the question of bona fide and personal necessity of the owner-landlord to occupy the suit premises in question and also the question of comparative hardship of the parties which is ancillary to the said ground of eviction.

6. The plaintiff in support of his case had examined three witnesses, namely. Kundanlal PW 1. Vinod Kumar PW 2 and Motilal PW 3. while the defendant-appellant had examined Mitthulal DW 1, Satya Narain DW 2. Moolchand DW 3 and Kami Prasad DW 4.

7. I have examined the evidence led by the parties on the record and have also gone through the statements of the said witnesses recorded by the trial Court. Prima facie I am of the view that the learned trial Court had not objectively considered the bona fide need of the landlord-owner to occupy the suit premises in question and the impugned order of the trial Court is based on conjectures and surmises. It is the settled law that the bona fide need of the owner to occupy the suit premises has to be carefully analysed and objectively considered by the trial court, which, in my view has not been done in the instant case. I am further of the opinion that in view of the obvious fallacy on the record of the trial Court the impugned order passed by the said Court was rightly reversed in appeal by the judgment of the appellate Court dated 8-7-1996. Learned trial Court had been swayed by the factum of the respondent being in Government service at Bikaner and having his visits at Beawar and probably for this reason learned trial Court was of the view that since the posting of the landlord is at Bikaner he may not be in bona fide need to occupy the suit premises. It has failed to take note of the salient fact that the said landlord had submitted the plan with the Municipal Council

at Beawar for its due sanction for the purpose of demolishing the old construction at site with a view to re-construct the Name by raising a new construction and for which the building plan was duly sanctioned by the Municipal Council, Beawar on 27-1-1993 as per the sanction plan on the record, This sanction was, however, subject to re-validation as per the municipal rules. If the construction is not raised within the specified period and in that event the landlord has opportunity to approach the municipal authorities again to get the sanctioned plan re-validated or renewed as and when he proposes to raise construction thereon.

8. In order to satisfy myself with regard to the bona fide need of the respondent-owner to occupy the suit premises in question by raising a new construction thereon, I have examined the statement of the plaintiff as PW 1 as well as other relevant evidence on the record led by the parties and in my view the appellate Court has rightly reversed the finding of the trial Court as on the question of bona fide need of the respondent-landlord to occupy the suit premises and the trial Court erroneously having not taken note of material aspects of the case had earlier dismissed the suit. In his deposition before the trial Court the plaintiff has very specifically stated that in all probabilities he wants to occupy the suit premises as soon as the same is vacated and I find no reason to take contrary view of the matter particularly when it is the settled law that the landlord is the best Judge to decide his bona fide need which of course has to be objectively analysed and thereafter suit can be decreed on the ground of personal bona fide need if there is cogent and consistent evidence on the record led by the owner in the case.

9. During the course of hearing learned counsel for the respondent-landlord has stated at the bar that the respondent has every intention to occupy the suit premises and during the tenure of his service he, even keeps on going and visiting Beawar which is his home town in view of the fact that his very close relatives are living at Benwar and he keeps on visiting Beawar even with his wife and daughter aged 12 years. In my view the bona fide necessity of the landlord cannot be doubted or diminished for the reason merely because he has his posting nearly from his home town, he has no chances of getting back and settled at his home town station which is Beawar in the instant case. In the statement of the plaintiff recorded by the Trial Court it has come on the record that the premises

as soon as the same is vacated and he will be permanently settling down at Beawar after his retirement from service.

10. With reputed to the comparative hardship it is very materiut before passing the decree of eviction, the trial Court has to examine the same before decaying the suit In the in stant case there is positive evidence on the record to the effect that the landlord has no other alternative accommodation available to him except the suit premises us on the date of filing of the suit and it is separate and self acquired property und it does not form part of the acquired property of the joint Hindu family nucleus of his brothers and relatives. The said property was pure based by a registered sale deed on 21-1-1979 as referred to above and since then it is in lawful on worship of the respondent owner.

11. During the coarse of hearing learned counsel fur the appellant has vehemently contended at the bar that the learned trial Court had rightly dismissal the suit of the plaintiff, since he was not in bona fide need to occupy the suit premise mainly in view of the fact that he is posted at Bikaner and he is not permanently available at Beawan along with his family to occupy the suit premisrs. He has further stated that the respondent-landlord had other ulternative accommodation available to him in Beawar though this fact has not been established by cogent evidence on the record. In my view there is obvious fallacy in this argument advanced by the learned caused fur the appellant for the reason that the appellant has been successfully able to challenge the finding of the appellate Court with regard to this aspect that the respondent landlord has in fact other alternative accommodation available to him as on the date of filing of the eviction suit inasmuch as the properties which have been referred to by the appellant by way of alternative accommodation or joint family properties in ownership and occupation of the respondent's brother and relatives and with regard to the property which is subject-matter of the present suit, at least two eviction suits against the tenants are still pending and have not yet been decreed and decided by the trial Court except the property which is subject-matter of the present suit in which the decree of eviction has been passed by the learned Addl. District Judge, Beawar in Suit No. 458/1996. Hence from the material on the record it cannot be inferred that the respondent-landlord has any other alternative accommodation available to him to

occupy as on the date of filing of the eviction suit nor he has any other alternative accommodation available to him as that of today at Beawar. Hence on the question of comparative hardship of the parties, I am of the view that the comparative hardship of the respondent-landlord is much greater compared to that of the appellant who is running the business as a milk vendor and for purposes of storing and selling the milk in the aforesaid premises and with regard to his comparative hardship the learned counsel for the appellant has not been successfully able to assail the findings of the appellate Court in this regard. 12. During the course of hearing learned counsel for the appellant has contended at the bar that the respondent-landlord was not entitled to succeed for the reason that in case he intended to demolish the old construction and thereafter reconstruct the property by raising a new construction over the existing site, he should have filed a suit by taking proper grounds as available to him i.e. by invoking aid of the provisions of Section 13(1)(k) of the Act which provides as under:--

'Section 13(1)(k)--That the landlord requires the premises in order to carry out any building work :--

(i) at the instance of the (State Government) in pursuance of an improvement scheme of development of scheme : or

(ii) because the premises have become unsafe or unfit for human habitation; or

(iii) upon the requisition of a local authority.'

13. With regard to this contention I am of the view that it was not at all necessary for the respondent-landlord to have also taken the aid of Section 13(1)(k) of the Act by pleading the said ground in the eviction suit for the reason of his having already taken the ground of his reasonable bona fide need to occupy the suit premises in question as contemplated by the provisions of Section 13(1)(h) of the Act and the ingredients of the said provisions having not only been specifically pleaded by the plaintiff in the plaint the same has also been successfully proved in evidence by way of evidence on the record and I am further of the view that it is not necessary that the landlord who has reasonable and bona fide need of the suit

premises should at the first instance also plead that he has to demolish the building and thereafter raise a fresh construction immediately because the said situation cannot be conceived at the very initial stage as to whether the landlord would like to immediately demolish the existing building and thereafter raise a new construction over the same. This depends on several factors including financial status of the parties which is of paramount consideration to be kept in view in this regard. It is quite probable that the landlord will be intending to occupy and stay in the suit premises and raise a new construction at a later stage because it is only after re-validation and after obtaining due sanction from the municipal authorities and subject to the availability of the adequate funds at the disposal of the landlord, the question of re-construction of the existing site would arise.

14. Hence in my view the second aspect of the matter i.e., raising of the new construction after demolishing the old one has already been taken care of by the respondent-landlord by urging the ground of bona fide need to occupy the suit premises as contemplated by Section 13(1)(h) of the Act of 1950.

15. Learned counsel for the respondent relied upon the cases Abdul Hafiz Khan v. Jethu Ram, 1981 WLN (UC) 401, Bharat Petroleum Corp. Ltd. v. Jai Prakash Goyal (1990) 2 Raj LW 628, Maniar Ismail Sab v. Maniar Fakruddin, AIR 1989 SC 1509, Smt. Kiran Devi v. Mangtoo Ram, (1988) 1 WLN 470, Amna Bai v. Mahaveer Singh, (1989) 1 Raj LW 214. Prem Tent House v. Prakash Chand Jain, 1983 Rajasthan LR 438. Bhanwaru v. Jeevani, (1991) 1 Raj LW 105 and Manick Chandra Nandy v. Debdas. Nandy. AIR 1986 SC 446.

16. I have heard learned counsel for the parties at length, examined their rival claims and contentions.

17. I am fortified in my observations from the following judgments of the Apex Court as well as this Court:

In the matter of Pratiya Devi v. T.V. Krishnan, (1996) 5 SCC 353, an eviction petition was filed by the landlord against the tenant on the ground of bona fide requirement and personal necessity of the land against the tenant before the Rent Controller, Delhi under Section 14(1)(c) of the Delhi Rent Control Act, 1958 read

with Section 25B(8) of (he said) Act. The Rent Controller directed the eviction of the tenant on the ground of bona fide and personal necessity of the landlord to occupy the residential premises in question which the landlord had established on the record on the basis of necessary evidence which he had led before the learned Rent Controller. Aggrieved by the order of the Rent Controller directing the eviction of the tenant from the suit premises, the said appellant-tenant preferred revision petition before Delhi High Court under Sub-section (8) of Section 25B of the said Act. The High Court in exercise of its revisional jurisdiction reversed the findings of the learned Rent Controller on the aspect of bona fide necessity of the landlord to occupy the suit premises, by applying the test of availability of alternative accommodation instead of applying the test of legal right to such occupation in adjudging the bona fides of the claim of the landlord under Section 14(1)(e) of the Act. Against the decision of the High Court the landlord came up in appeal by way of Special Leave Petition before the Apex Court. The Apex Court while reversing the decision of the High Court and upholding the judgment of the learned Rent Controller observed as under:--

'The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court was rather solicitous about the age of the appellant and thought that because of her age she needed to be looked after. That was a lookout of the appellant and not of the High Court. The gratuitous advice given by the High Court was uncalled for. There is nothing to show that she had any kind of right whatever to stay in the house of the family friend. On the other hand, she was there merely by sufferance. There is no law which deprives the landlord of the beneficial enjoyment of his property. The High Court was in error in laying down that the test is availability of alternative accommodation and not the legal right to such occupation in adjudging the bona fides of the claim of the landlord under Section 14(1)(e) of the Act. In considering the availability of alternative accommodation, the Court has to consider not merely whether such accommodation is available but also whether the landlord has a legal right to such accommodation. The appellant had established her bona fide personal requirement of the demised premises under Section 14(1)(e) of the Act and her

claim could not be disallowed merely on the ground that she was staying in (as) a guest with a family friend by force of circumstances'.

18. In laying down the above criterion the Apex Court was of the view that although the revisional power conferred on the High Court under Sub-sec. (8) of Section 25B of the Act may not be narrow as the revisional power under Section 115, CPC, 1908, there was no ground on which the legality and propriety of the order of the Rent Controller could be successfully assailed which the Rent Controller had kept in view of objective determination and on proper appreciation of evidence in the light of surrounding circumstances of the case and came to a definite conclusion that the need of the landlord of the demised premises for her residential house was bona fide and that she did not have any alternative accommodation available for that purpose within the ambit of Section 14(1)(c) of the Act and that the High Court should have restrained itself from interfering in the matter by exercising its revisional jurisdiction, since on reappraisal of the evidence it would have come to a contrary conclusion.

19. In the matter of *Vijay Singh v. Vijayalakshmi Ammal*, (1996) 6 SCC 475 : (AIR 1997 SC 47) in an eviction petition filed by the landlords against the tenants on the ground of demolition and re-construction of the building under Section 14(1)(b) of Tamil Nadu Rent Control Act, the tenant had challenged the bona fide requirement of the landlords regarding demolition and re-construction of the suit premises on the ground that the sole object of the same was to get rid of the tenant. Since the building in question was old one and was situated in a very busy locality of the town, the respondents wanted to demolish the entire building in order to reconstruct a new shopping complex for which necessary permission from the municipal authorities had already been obtained and an undertaking had also been given by the respondents that they shall commence the work of demolition and reconstruction within one month and the work shall be completed within the stipulated period of three months subsequently. The Rent Controller taking in view the totality of the circumstances, directed the eviction of the tenant-appellants. Under Section 14(1)(b) of the Act, The said order was upheld by the High Court. In appeal preferred before the Apex Court against the impugned order of High Court the Apex Court declined to interfere in the matter on the ground that all the

relevant factors have been taken into consideration by the Rent Controller and also by the High Court and hence there was no scope for any interference by the Apex Court. It was further observed that no Court can fix any time limit with regard to the age and condition of the building which has to be taken into consideration along with other relevant factors and thereafter a conclusion can be arrived at by the Rent Controller.

20. In the matter of *Mst. Bega Begum v. Abdul Ahad Khan (dead) by L.Rs.*, (1979) 1 SCC 273 : (AIR 1979 SC 272) a suit for eviction was filed against the tenant-appellant on the ground of personal and bona fide necessity of the respondent-landlords under Section 11(i)(h) of J&K.; Houses and Shops Rent Control Act, 1966. Under the said provision landlord may seek eviction of his tenant provided residential house or shop is reasonably required by him either for purposes of building or re-building or for his own occupation or for the occupation of any person for whose benefit the house or shop is held. The words 'reasonable requirements' undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even a genuine need as nothing but a desire. In other words the desire should reflect real bona fide need to be established on the basis of positive evidence on the record and should not be a mere fanciful wish or desire. Applying the above well settled ratio it was held by the Apex Court in an appeal preferred against the decision of J. & K. High Court that the Act strikes just balance between the two and in the said case since the plaintiff had successfully proved their requirement of starting a hotel business which was both, genuine and reasonable and even imperative, because, the scanty income of the plaintiffs was not sufficient to maintain themselves or to afford them a decent or comfortable living. The fact that they wanted to occupy the property for running a hotel would not take their case out of the ambit of personal necessity. The plaintiffs may choose to reside in the house or run a business in the house or use it as a paying guest house and derive income therefrom. In all these cases, though the plaintiffs may not physically reside in the house, the house, in law would nevertheless be deemed to be in their actual occupation.

21. In the matter of Bhanwaru v. Jeevani, (1991) 1 Raj LW 105, it was held by this Court in second appeal that the findings of facts are not open to challenge by way of second appeal. It was further held that either the sufficiency or adequacy of evidence to support the finding of fact is not a ground for interference and peace of erroneous finding of fact is binding on this Court in second appeal.

22. However, in the present appeal the question is not merely of challenge to the findings of fact which have not been correctly appreciated by the trial Court in its true perspective and it is for this reason as already stated above that the appellate Court was very much justified in having reversed the said finding in appeal which in my view deserves to be affirmed in the present appeal.

23. During the course of hearing Shri Surana, learned counsel for the respondent has stated that in the event of the decree of eviction as passed by the first appellate Court being affirmed by this Court, the respondent shall immediately apply for re-validation/renewal of the sanctioned plan dated 27-1-1983 on the record which he had already obtained from the Municipal Council, Beawar for the purposes of carrying out the demolition of the existing structure and for raising a fresh construction thereon. He has further stated that the respondent shall further do needful by applying to the Municipal Council, Beawar in this regard positively within a period of three months from the receipt of certified copy of this order.

24. He has further stated that after the reconstruction of the aforesaid premises the respondent-landlord shall be personally occupying the same for residence of himself and his family.

25. As a result of the above discussions the appeal is dismissed and as a result the judgment and decree dated 8-7-1996 passed by the Addl. District Judge, Beawar in Civil Misc. Appeal No. 50/1988 reversing the judgment and decree passed by the learned trial Court on 24-5-1988 in Civil Suit No. 46/1982 is confirmed.

26. During the course of hearing learned counsel for the appellant has stated at the bar that he should be given some reasonable time to vacate the suit premises in question. Under the Act the decree of eviction becomes operative immediately

on its passing and the tenant has to hand over the vacant and peaceful possession of the tenanted premises within the period of mo months. However, keeping in view the fact that the appellant has been in occupation as a tenant for a long spell of time w.e.f. the year 1978, I deem it appropriate to direct the appellant to handover the vacant and peaceful possession for the suit premises to the landlord within a period of six months from today subject to appellant filing an undertaking in this Court within a period of one month from today that he shall handover vacant peaceful possession of the suit premises to the landlord and shall also pay the agreed tent including arrears of rent, if any, up-to date. The parties are directed to bear their own cost. The summoned record be sent back immediately.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com