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Court : Rajasthan

Decided On : Nov-04-1976

Reported in : 1976WLN(UC)466

Judge : Rajindar Sachar, J.

Appeal No. : S.B. Civil Regular Second Appeal No. 315 of 1968

Appellant : Barkat Singh

Respondent : Kuldeep Singh

Disposition : Appeal dismissed

Judgement :

Rajindar Sachar, J.

1. This is a second appeal by the plaintiff appellant against the judgment and decree passed by the Senior Civil Judge, Baran, dated January 31, 1998 whereby he accepted the defendant's appeal and rejected the cross-objection filed by the plaintiff.

2. The suit was filed by the plaintiff on the allegation that the defendant was his subtenant and had not paid arrears of rent from July 1, 1958 to October 31, 1960 and that the plaintiff respondent required the suit premises bonafide for his own need, and praying that a decree for eviction be passed against the defendant.

These pleas were countered by the defendant who maintained that the defendant had been put in possession of the shop by the plaintiff with the specific understanding that he will get the tenancy transferred in the defendant's name from the lane lord but that he changed his mind later on & wanted to resume possession. He also pleaded that he had been paying the rent to the landlord and further that a new tenancy was created in his favour by the landlord from November 1, 1958.

3. The trial Court came to the conclusion that the plaintiff did not require the premises benafide for his own need. It however found that the plaintiff continued to be the tenant of the shop in dispute under the landlord and that the defendant was the subtenant of the plaintiff and was liable to pay Rs. 540, on account of arrears of rent upto the date of institution of the suit, to the plaintiff

4. The defendant filed an appeal, which has been allowed on the finding by the lower appellate court that the tenancy of the plaintiff had been surrendered by him and the defendant was a direct tenant of the landlord. The plaintiff had filed cross-objection for the arrears of rent prior to the period of July 17, 1959. The lower appellate court, by his judgment dated January 31, 1968, allowed the appeal of the defendant, while dismissing the cross-objection of the plaintiff. The plaintiff has come in second appeal to this court.

5. The admitted facts are that the premises in dispute belong to one Messers Nand Ram Bhura Ram. The plaintiff was undoubtedly the tenant of the premises in dispute since 1955 on a monthly rental of Rs. 26/. The plaintiff's case was that as his son Jogindra Singh, who was carrying on business with him, was unwell, he had to keep the shop closed and the defendant was permitted by him to occupy the shop for a period of 2 to 3 months. It was his further case that later on, in spite of asking the defendant to vacate the shop, the latter refused. The plaintiff also claimed that his furniture was in the shop and on July 16, 1952, when he took further furniture to store in the shop, he was prevented by the defendant and that thereafter he took steps to give notice to the defendant to vacate the premises. The defendant's case was that the plaintiff had put him in possession of the premises in dispute on the understanding that he will persuade the landlord to take

the defendant as a tenant and that he had paid Rs. 600/. as 'pagree', to the plaintiff; It was further urged that later on the plaintiff changed his mind and wanted to take forcible possession and there was a dispute between them. He also stated that he vacated the shop on October 27, 1959 and the landlord accepted him as a tenant and put him in possession with effect from November 1, 1959.

6. The lower appellate court has negated the claim of the defendant that Rs. 500/, as 'pagree', was paid to the plaintiff. He has however accepted the version of the defendant that the premises in dispute were vacated by defendant on October 27, 1959 and that the landlord accepted him as tenant with effect from November 1, 1959. He has also held that the plaintiff ceased to be a tenant in the said shop, when the premises were vacated by the defendant on October 27, 1959. Indubitably the finding whether the plaintiff vacated the shop or whether the defendant had become a direct tenant with effect from November 1, 1959, are findings of fact and are immune from challenge in this court in second appeal. The learned counsel for the appellant however says that it is unthinkable that the plaintiff, who was undoubtedly a tenant, should be considered to have relinquished the tenancy and seeks to support it by further assertion that there is nothing on the record in writing indicating any relinquishment of the tenancy by the plaintiff. The lower appellate court, however, has believed the evidence of the defendant who has stated that he had been given possession of the premises in dispute on the understanding that the plaintiff will persuade the landlord to give the shop on tenancy to him, and also that he had obtained the tenancy from November 1, 1959 from the landlord. The lower appellate court has also referred to the evidence of Sharad Kumar one of the landlords, who has also stated that he took possession of the shop in dispute on October 26, 1959 and of the giving of tenancy to the defendant. He also proved the receipt Ex. A.5, which was said to have been executed by his Munim in token of the rent upto that date having been paid by the defendant Kuldeepsingh and further that vacant possession of the shop had been taken by the landlord.

7. Mr. Dave, learned Counsel for the defendant, also pointed out that the version of the plaintiff that he had only permitted permissive possession to the defendant on the shop in dispute, is not credible. The learned counsel submits, that the defendant

was supposed to have been given for 2 to 3 months in Oct 1958 and even though PW 6 Jogendra Singh has admitted that he was unwell only for 2 to 3 months yet there is nothing on record to show that at any time possession was sought to be obtained by the plaintiff from the defendant earlier to when some furniture was said to have been brought to the shop In July, 1959 Mr. Dave suggests that this long inexplicable silence is only consistent with the version of the defendant that the plaintiff who had originally agreed to give up the tenancy was now resiling from it He also counted out that in the notice sent to the defendants only in November, 1959 it has been stated that rent for the last 17 months is due. Mr. Dave pointed out that had it been the case that the plaintiff was retaining the possession of the premises in dispute and was treating defendant as his sub-tenant, it is not understood why for such a long period no claim for rent was made against the defendant. There is no doubt that the rent, so far as the landlord is concerned, has been received by him from defendant Kuldeepsingh Though he issued receipts showing payment through the defendant, it purported to be on behalf of the plaintiff. Mr. Dave also points out that it is evidence that the plaintiff already owns another (shop in the city and therefore was not interested in retaining the premises in dispute, and his whole conduct and silence for about a year and half shows that he had agreed to let the tenancy be taken by the defendant. No doubt, much can be said on either side; but the difficulty in the way of the appellant is that the court of fact has chosen to believe the defendant and Shared Kumar reinforced by receipt Ex. A5 to the effect that possession of the shop was given to the landlord by the defendant in presence of the plaintiff and a new tenancy has arisen between the landlord and the defendant tenant from 1-11-59 and that the plaintiff had not exercised his right of tenancy ever since the possession was given to the defendant. This being a finding of fact, I cannot reopen the finding or reassess the evidence and disturb the finding of fact arrived by the court below, even if I was inclined to take a different view of the evidence.

8. The result is that the judgment and decree of lower appellate court being concluded by the finding of fact, there is no scope for interference, and the appeal is therefore dismissed, but without costs.

9. Mr. Kasllwal prays for leave to appeal to a Division Bench. But as I am dismissing the appeal as being concluded by finding of fact, obviously there is no ground for granting leave to appeal. The leave played for is refused.

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