

Tharumal Vs. Jodh Ram

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Court : Rajasthan

Decided On : Jul-24-1975

Reported in : 1975WLN(UC)286

Judge : J.P. Jain, J.

Appeal No. : S.B. Civil Second Appeal No. 732 of 1974

Appellant : Tharumal

Respondent : Jodh Ram

Advocate for Def. : Mr. Bhandari

Disposition : Appeal dismissed

Judgement :

J.P. Jain, J.

1. This is a defendant's appeal against whom respondent's suit for eviction, from the suit shop, arrears of rent and mesne profits has been decreed by the Munsif and Judicial Magistrate First Class, Churu, and affirmed by the Additional District Judge, Churu in appeal.

2. There is a shop in the town of Churu and which is partitioned by tin-sheets. The eastern portion of the said shop has been on rent with defendant Tharumal under

rent note Ex. 2 with effect from 9-12-64 on a monthly rent of Re. 50/-. The defendant does his cloth business on that shop. The western portion of the shop has been in the occupation of the landlord Jodhraj on the date of the suit and his son Hukmi Chand is running a tea shop since 16th April, 1968. Jodhraj respondent-appellant by his notice dated 7-10-1968 (Ex. 13) and called upon the tenant to surrender vacant possession of the shop as he required the same reasonably and bonafide for his son Hukmi Chand, because the present shop for running the tea shop is very much insufficient. The defendant through his counsel vide his reply Ex. 16 denied the necessity of the plaintiff and refused to vacate the shop. The plaintiff then instituted the present suit out of which this appeal has arisen on 17-5-69. The ground taken for the defendant's eviction from the suit shop was only personal requirement of the plaintiff for his son Hukmi Chand. The rent due on the date of the suit and mesne profits were also claimed.

3. The defendant Tharumal resisted the suit by his written statement dated 12-8-69. He disputed the claim of the plaintiff that he needed the suit shop for his personal necessity and the said necessity was reasonable and bonafide.

4. The learned trial Munsif tried the case on various issues. He came to the conclusion that the plaintiff needed the suit shop reasonably & bonafide. The defendant preferred an appeal. The learned Additional District Judge also inspected the site at the request of the learned Counsel for the plaintiff on 21-10-74. The learned Judge discussed the evidence of the parties in detail and by his judgment dated 31-10-74 maintained the decree of the trial Judge and dismissed the appeal. This is the subject matter of the appeal in this Court.

5. Learned Counsel for the appellant has challenged the finding of the learned lower Appellate Court mainly on the ground that the conduct and motive of the plaintiff respondent was not considered. He invited my attention to the facts that the western portion of the shop in which Hukmi Chand is running the tea shop was at one time occupied by Mr. Benarsi Lal Jalan & it was got vacated by the plaintiff on the ground that he needed that shop for running a grain shop. In this connection he referred to the certified copy of the judgment (Ex. A/34) dated 11-4-60 in Civil Suit No. 106/1959 between Jodhram and Ors. v. Benarsi Lal. He also

referred to the notice Ex. A/1 given by the plaintiff to the present defendant on 4-11-60 for vacating his shop on the ground that he required that shop for doing his grain business as the one got vacated from Benarsi Lal Jalan was not sufficient. Another notice Ex. 3 dated 16-2-66 & notice Ex. 7 dated 22-4-66 were also referred to in this connection. On this premise it was argued that the plaintiff was bent upon evicting the defendant from his shop even when there was no good reason for seeking his eviction. These facts have been taken notice of by the learned lower appellate Court. However, I have also considered these facts and I find that there is no substance in the contention that the conduct of the plaintiff is sufficient to non-suit him. It is no doubt true that the western portion of the shop now in occupation of the plaintiff's son Hukmi Chand was got vacated vide order of the Senior Civil Judge dated 11-4-60. On 4.11.60 the plaintiff served a notice (Ex. A/1) to the defendant saying that he had not been paying rent according to the terms of the contract and that he has been regularly defaulting to make payment. He also stated in the notice that he got the shop from Benarsi Lal Jalan vacated for his business of grain but that shop was not sufficient for running that business and also for the reason that the verandah in front was not available to him in its entirety as half of it was occupied by the defendant as a part of his shop. The defendant did not vacate the shop. It appears the plaintiff did not start the grain business on the western portion of the shop. But all the same he did not sue the defendant for ejectment. The rent was paid to him and he accepted the rent upto 8-4-63. Thus the notice Ex. A/1 became infructuous. On 16-2-66 the plaintiff gave another notice to the defendant saying that after 8-4-63 he had not paid rent. He had determined the tenancy of the defendant and asked him to surrender possession on the ground of default as according to the plaintiff a sum of Rs. 510/- for 34 months was due to him. In this notice the eviction was not claimed on the ground of personal necessity. In pursuance of this notice the defendant paid the arrears of rent and the plaintiff accepted the same. This brought an end to this notice. Then by his notice Ex. 7 dated 22-4-66 the plaintiff informed the defendant that as the latter had paid the arrears of rent he no longer wanted him to vacate the shop. Thus the notice Ex. A/1, Ex. 3 & Ex. 7 do not at all disclose such a conduct of the plaintiff as to hold that he had an oblique motive to get the defendant's shop vacated. As a matter of fact Ex. 7 discloses the uprightness of

the plaintiff. I am unable to accept the contention of Mr. Dutt that the plaintiff's conduct in having obtained the possession of the shop from Benarsi Lal Jalan and then not starting the grain business is relevant in the present enquiry.

6. Mr. Dutt also referred to the plaintiff's notice Ex. 10 dated 25-9-68 According to him the tea stall was opened on 6-4-66. On 26-9-68 the plaintiff made out a case that he is running in loss for want of space and yet he did not stick to that notice and repeated another notice on 7-10-68 (Ex. 13). The plaintiff has explained in the plaint itself as to why he had to give a second notice on 7-10-68. The notice Ex. 10 was not acknowledged by Tharu Mal but by his son Tilloomal. To avoid future objection a fresh notice Ex. 13 was given and it was received by Thaurumal himself on 10-10-68. This averment finds support by acknowledgements Ex. 12 and Ex. 15 besides the sworn testimony of Hukmi Chand. As regards the plaintiff's claim that he also required the suit shop for running of the tea shop by his son Hukmi Chand, is a matter which finds support from the evidence on record.

7. That apart, the learned lower appellate Court found that there was no ulterior motive on the part of the plaintiff in seeking the eviction of the defendant from the suit shop. Defendant Tharu Mal has not come into witness box. His son Tilloomal P.W. 11 admitted that he has been paying Rs. 15/- per month as rent. The plaintiff asked them to raise the rent. In this view of the matter it is difficult to accept the suggestion that the plaintiff wanted to increase the rent.

8. Another contention raised on behalf of the appellant is that the plaintiff has not been able to prove that his requirement was bonofide even if it is found to be reasonable. I permitted the learned Counsel for the appellant to read the entire evidence before me. He took me through the plaintiff's evidence and Mr. Bhandari learned Counsel for the respondent took me through the defendant's evidence. The inspection note prepared by the learned lower appellate Court on 21-10-74 was also read out. It is not disputed that the learned lower appellate Judge inspected the site in the presence of the counsel representing the parties. The inspection note has been signed by both of them. The facts mentioned in the inspection note have not been disputed That apart, these facts are fully borne out from the evidence on record. From the evidence and the inspection report it is

abundantly clear that one shop has been partitioned into two parts placing iron sheets in between the shop. The shop has a verandah in front three 'KHANS.' The verandah is not partitioned but the defendant has put his Almirah as to divide it and he occupies half of the verandah on his side. In the verandah the plaintiff's son Hukmi Chand has constructed a water tank and he has given it a shape of a plat-form. On the plat-form he keep an Almirah which contains sweets and snacks Near the plat-form he has his 'Bhatti' to prepare tea It is accepted by the defendant Tilloomal himself that there is no space for the customers to sit in the verandah. The appeal Judge says the same thing in his inspection note. In the first 'KHAN' next to verandah there is a stair case leading to the first floor. The stair case is admittedly steep and it has a rope on one side to help one to go up. On the remaining part of the 'KHAN' there are three benches and two tables. Three persons can sit on each bench. This part of the shop is used normally to serve the customers who come to take tea at the restaurant. Some of the defendant's witnesses say that there are chairs. One says there are sofa-sets. It is not accepted, Thus. in the first 'KHAN' 9 persons can be accommodated at a time for service. The second 'KHAN' is very much dark. In the second as well as the third 'KHAN' Hukmi Chand has placed various things for his shop. The empty bottles for Cocacola and Fanta are placed in the said 'KHANS'. That apart there is a freezing machine in the second 'KHAN', big tins of biscuits and various other things are lying there. The learned appeal Judge on inspection found two benches and small table in the second 'KHAN' as well, and as such 6 persons can be accommodated in the second 'KHAN'. But be clearly observed in the memo of inspection that the second and third 'KHAN' are very much dark and it is very difficult for one to sit without proper arrangement of light. The learned Counsel for the appellant argued that the plaintiff's witnesses have been falsified by the observation of the learned Judge in the inspection note I do not agree with this suggestion. The learned judge did not see any customer taking tea in the second 'Khan'. He only saw two benches and one small table lying there. From this it can not be assumed that the customers are also served in the second 'Khan'. The plaintiff's witnesses and Hukmi Chand were not asked to explain about the existence of two benches in the second 'Khan'. It may be that extra benches were kept in the second 'Khan' to be used outside the shop in emergency. On this ground the plaintiff's witnesses

cannot be taken to be lying in this regard. That apart' the learned Judge inspected the first floor. According to some of the defendant's witnesses namely, D.W. 1 Tejuram, DW 8 Issardas, there were arrangements for service of the customers in the first floor. The learned appeal Judge during inspection found no such arrangement and he also noted that the stair-case being steep is very uncomfortable for climbing. Tiloomal admitted that he never visited the first floor, yet he supported these witnesses by saying that Hukmi Chand has made arrangements for 15 to 20 persons in the first floor. All this cannot be believed. The learned Judge also after having considered the facts and circumstances of the case held that the first floor is not suitable for providing extra space for service.

9. There is evidence on record that the tea shop is having brisk business. It consumes 30 to 35 Kg milk every day, and according to Hukmichand' his annual sale is Rs. 30,000/- to 35,000/-. There is also evidence of some of the defendants, namely D.W. 2 Kishan Lal that the shop of Hukmi Chand is doing prosperous business. Tiloomal or any one of the defendant's witnesses had not resented Hukmi Chand's claim as regards his annual sale or consumption of milk every day in the preparation of tea. Radhey Shyam P.W.6 also stated that he also goes to Hukmi Chand's shop to take tea and he had to come back once as there was no space for him to sit and take tea. The learned appeal Judge also took notice of the statement of P.W.8 Issar Das and PW 2 Tejuram when they stated that there was no other tea shop in the vicinity. Tiloomal D.W 1 on his part cannot say as to how many customers take tea at a time at Hukmi Chand's shop. It might be observed here that he sits on his father's shop, which is the suit shop. On these facts the learned appeal Judge came to the conclusion that Hukmi Chand really required the suit shop for running his present business. In my opinion the view taken by the learned Judge finds full support from the evidence on record. On these facts it can very well be concluded that the need of the plaintiff's son Hukmi Chand is not only reasonable but also bonafide.

10. No objection has been taken on behalf of the appellant against the learned lower appeal Judge having inspected the site. As already noticed above the site, has been inspected in presence of the counsel appearing for the parties. The inspection memo was prepared and it has been signed by both the parties and the

report had been made use of only for appreciating the evidence. There is nothing contrary to law in this procedure.

11. This appeal was admitted on a limited ground that the Additional District Judge inspected the site and made use of his observations. At the time of hearing of the appeal this argument was not taken up by the learned Counsel for the appellant. But I heard the learned Counsel for the appellant on all the points that were urged before me in support of their appeal.

12. No other point remains to be discussed.

13. In the result I find no force in this appeal and dismiss the same with costs.

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