

Mool Chand Vs. Sagar Mal

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Court : Rajasthan

Decided On : May-17-2004

Reported in : RLW2004(4)Raj2558; 2004(3)WLC688

Judge : A.C. Goyal, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13 and 13(1); ;Code of Civil Procedure (CPC) - Order 30, Rule 1

Appeal No. : S.B. Civil First Appeal No. 315 of 2001

Appellant : Mool Chand

Respondent : Sagar Mal

Advocate for Def. : R.K. Agarwal, Adv.

Advocate for Pet/Ap. : J.P. Goyal, Adv.

Disposition : Appeal dismissed

Judgement :

A.C. Goyal, J.

1. The defendant-tenant Sh. Mool Chand has preferred this appeal against the judgment and decree of eviction dated 31.10.2001 passed by learned Additional District Judge, Neem-Ka-Thana; District Sikar. The parties in this appeal would be

referred as arrayed in the plaint.

2. The relevant facts in brief are that the plaintiff-landlord filed a civil suit for arrears of rent and eviction on 30.5.1992 with the averments that suit shop situated in Shrimadhapur was mortgaged by the plaintiff and his father in favour of the defendant Mool Chand and his father for a consideration of Rs. 8,200/- vide registered mortgage deed dated 2.6.1962 with a condition that on payment of the mortgage money, a rent note at the prevalent market rate of rent would be executed by them. The plaintiff wanted to redeem the mortgaged shop by making the payment but the creditors declined to do so. Hence, the plaintiff filed a suit for redemption. Learned Additional District Judge, Neem-ka-Thana passed preliminary decree of redemption on 24.2.1987. In pursuance of this preliminary decree, the plaintiff deposited a sum of Rs. 8,200/- in the bank on 12.3.1987. Thereafter, final decree of redemption was passed on 25.2.1992. The defendant now is occupying the suit shop as a tenant since 12.3.1987.

3. It was further pleaded that though the disputed shop was mortgaged with the defendant and his father, but it was only the defendant who was in possession of the shop and is now occupying the shop as a tenant, it was also pleaded that the plaintiff is entitled to rent @ Rs. 800/- per month from 12.3.1987. The plaintiff sought eviction on the ground of most urgency for carrying on business by his sons.

4. The defendant in his written statement while admitting the facts of mortgage, passing of preliminary and final decree of redemption and his possession in the suit shop as a tenant pleaded that the suit shop was let-out to his father late Sh. Bhoora Mal and the defendant even 60 years prior to the mortgage. Monthly rent of the shop was Rs. 19/- just after the redemption of the mortgage and still the business in the name of firm Bhoora Mal Mool Chand is going on in the suit shop. This Firm Bhoora Mal Mool Chand is the firm of joint Hindu family, therefore, all the legal heirs of late Sh. Bhoora Mal are necessary parties as tenants. While denying the ground of eviction, the liability to pay the rent @ Rs. 800/- per month is also denied.

5. On the basis of the pleadings, following issues were framed:-

- 1- vk;k oknh jguukesa ds vuqlkj fookfnr ifjljdk fdjk;k cktkj nj ls fnukad 12-3-87 ls izklr djus dk vf/kdkjh gS A &oknh;
 - 2- vk;k okn izLrqr djrs le; fookfnr ifjlj dhcktkj nj 800-00 :- ekgokj Fkh &oknh;
 - 3- vk;k oknh dks oknxzLr ifjlj nqdku dhfuth Lo;a ,oa ifjokj ds fy, yM+dksa ds fy, vko';drk gS &oknh;
 - 4- D;k oknxzLr ifjlj [kkyh u gksus dh lwjr esaizfroknh dh rqyuk esa oknh dks vR;kf/kd dfBukbZ gksxh A &oknh;
 - 5- D;k gjlgk; ey ds vU; okfjlkud izdj.k esavko';d i{kdkj gSa] vxj gSa] rks mudk nkos ij D;k izHkko gSa &izfroknh;
 - 6- D;k oknh dks bl izdj.k esa c<+k gqvkdjk;k izklr djus gsrq ekud fdjk;k rS; djkus dk vf/kdkj gS &oknh;
 - 7- D;k Hkwjkey ds lHkh mRrjkf/kdkjh izdj.k esavko';d i{kdkj gSa vxj gSa] rks mldk okn ij D;k izHkko gSa &izfroknh;
 - 8- i{kdkjku fdl lgk;rk ds vf/kdkjh gSa &izfroknh;
 - 9- lgk;rk
 - 10- D;k oknh fookfnr ifjlj ds e esa vkaf'kdfu'dklu ds e esa fMh ikus dk vf/kdkjh gS &oknh;
6. After recording the evidence of the parties, the learned trial Judge vide impugned judgment dated 31.10.2001 decided issues No. 1, 2 & 6 against the plaintiff, issues No. 5 & 7 against the defendant and while deciding the issues No. 3 & 4 in favour of the plaintiff passed a decree of eviction and for arrears of rent @ Rs. 19/- per month from 12.5.1989 with annual interest @ 6% till vacant possession is handed over to the plaintiff. The trial Judge considering the issue No. 10 of partial eviction observed that since issue No. 3 of reasonable and bonafide requirement and issue No. 4 of comparative hardship have been decided in plaintiff's favour, decision on this issue is unnecessary.

7. I have heard learned counsel for the parties. On the basis of the submissions made by learned counsel for the defendant- tenant following points arise for determination.

(i) Whether the suit was not maintainable in absence of all the legal heirs of late Sh. Bhoora Mal?

(ii) Whether the findings of the trial court on reasonable and bonafide requirement as well as comparative hardship are not justified?

(iii) Whether partial eviction is possible?

8. First Point :- Mr. Goyal learned counsel appearing for the defendant contended that the shop was let-out to forefathers of late Sh. Bhoora Mal for doing business of joint Hindu family firm; that the plaintiff in suit for redemption impleaded all the legal heirs of late Sh. Bhoora Mal as defendants and the decree in that redemption suit was passed against the defendant as well as other legal heirs of late Sh. Bhoora Mal, hence it was necessary to impleaded all the legal heirs of late Sh. Bhoora Mal in the eviction suit. He placed reliance upon Kumar Jagdish Chandra Sinha and Ors. v. Mrs. Eileen K. Patricia D'Rozarie, AIR 1995 Supreme Court 515. While dealing with Section 2(4) of the West Bengal Premises Tenancy Act, 1956 it was held that the legal heirs of the deceased-tenant who were continuing in possession with the tenant would succeed as defendant whether the tenancy is statutory or contractual.

9. Mr. Agarwal learned counsel appearing for the plaintiff- respondent submitted that it is the case of the defendant himself that the shop was let-out to firm late Sh. Bhoora Mal Mool Chand-a joint Hindu family firm and at the time when the suit was filed the defendant was Karta of the joint Hindu family, hence other legal heirs of late Sh. Bhoora Mal were not required to be pleaded as the defendants. Reliance is placed upon Amrit Sagar Gupta and Ors. v. Sudesh Behari Lal and Ors., AIR 1970 Supreme Court 5, wherein it was held that the suit by or against the manager of joint Hindu family will be deemed to be one brought by him or against him as representing the family if the circumstances of the case show that he is the manager of the family and the property involved in the suit is family

property. It is not necessary to state in the plaint that he is suing as manager in case of plaintiff or he is being sued as manager where he is the defendant. A Karta can represent the family effectively in a proceeding though he is not named as such. Similar view was taken in *Sarangapani v. K.V. Parthiban and Ors.*, AIR 1992 Madras 203, *Kumaji Sare Mal Firm and partners v. Kalwa Devadattam and Ors.*, AIR 1958 Andhra Pradesh 216, *Vadlamanati Venkatanarayana Rao v. Gottumukkule Venkata Somaraju*, AIR 1937 Madras 610, *T.A. Sankaralingam v. T.N. Mandi and Ors.*, AIR 1975 Madras 206. In *Abdulla Kunjipokkarukutty and Anr. v. Ayyappan Ravunny and Ors.*, AIR 1973 Kerala 192, it was held that under Hindu law normal presumption is that senior most member is manager of joint Hindu family. Similar view was taken in *Varada Bhaktavatsaludu and Anr. v. Damojipurapu Venkatanarasimha Rao and Ors.*, AIR 1940 Madras 530. In *Firm Murlidhar Banwarilal v. Firm Kishorelal Jagannath Prasad and Ors.*, AIR 1960 Raj. 296, it was held that in case of joint Hindu family firm, suit in the name of firm as well as head of family, the provisions of Order 30 Rule 1 C.P.C. have no application and such a defect is one of form and not sufficient to vitiate the suit. Mr. Agarwal referred the pleadings and the evidence of the parties on this point. It was also contended that although the trial court while dealing with issue No. 7 observed that it does not appear to be a case of joint Hindu family but it has been found proved that only the defendant is carrying on business in the suit shop, the suit was found maintainable against him.

10. I have considered the rival submissions and have gone through the pleadings and the evidence. Although, it was not specifically pleaded in the plaint that the suit shop was mortgaged or let-out to a joint Hindu family firm but in para 3 of the written statement it was admitted by the defendant that this shop was let-out to a joint Hindu family firm Bhoora Mal Mool Chand and the business in the name of firm Bhoora Mal Mool Chand-a joint Hindu family firm is going on. In additional para 1 of the written statement, it was further pleaded that about 60 years prior to the date of commencement of the mortgage this shop was on rent with firm Bhoora Mal Mool Chand and it continued on rent with this firm after the redemption of the mortgage. Thus, it is the admitted case of the defendant himself that this shop was on rent with the joint Hindu family firm namely Bhoora Mal Mool Chand, it was mortgaged to this joint Hindu family firm and after redemption of the

mortgage this shop continued in the tenancy of joint Hindu family firm. Further a perusal of the entire evidence of both the parties also clearly goes to show that this shop was given on rent to firm Bhoora Mal Mool Chand-a joint Hindu family firm. PW 1 Sh. Sagar Mal himself stated that the shop was mortgaged in the name of firm Bhoora Mal Mool Chand vide mortgage deed Ex.1. In cross-examination, he admitted this fact that this shop was on rent in the name of firm Bhoora Mal Mool Chand even prior to the mortgage. According to the statement of D.W. 1 defendant Sh. Mool Chand this shop is with him on rent. He next stated that this shop was given on rent by the grand father of the plaintiff to Bhoora Mal, Bhagwan Sahay, Ram Sahay and others. It is significant to say here that nowhere it was the case of the defendant that this shop was given on rent to Bhoora Mal, Bhagwan Sahay, Ram Sahay and others. Rather, the defendant came with a specific case that this shop was on rent with joint Hindu family firm Bhoora Mal Mool Chand. He admitted this fact in his statement that business in the name of firm Bhoora Mal Mool Chand-A joint Hindu family firm is going on. It was also admitted by him that rent note was executed in the name of firm Bhoora Mal Mool Chand which was and is a joint Hindu family firm. It was also admitted by him that mortgage deed was also executed in the name of joint Hindu family firm. according to the statement of D.W. 4 Hanuman Sahay who is brother of the defendant, their father Sh. Bhoora mal died 30-35 years ago. It is also not in dispute that the eldest brother of the defendant Sh. Anandi Lal had also expired before filing he present suit and thus the defendant being the eldest member of joint Hindu family is manager/Karta, although according to the statement of the defendant Mool Chand his younger brother Hanuman Sahay is Karta but there is no evidence to show that D.W. 4 Hanuman Sahay being admittedly five years younger to the defendant according to the statement of the defendant himself is Karta of the family. Even D.W. 4 Sh. Hanuman Sahay did not state that he is the Karta of joint Hindu family. Thus, according to the case of the defendant himself the shop was given on rent to firm Bhoora Mal Mool Chand which was and is a joint Hindu family firm and the defendant being the eldest member of the joint Hindu family was karta and thus the present suit was maintainable against him as Karta of the family as held by the Hon'ble Supreme Court in Amrit Sagar Gupta and Other's case (supra) and it was not necessary for the plaintiff to plead that the defendant is being sued as

manager/Karta. Therefore, the first point is decided against the defendant/appellant.

11. Second Point:- Learned counsel for the defendant-appellant submitted that it was not even pleaded that requirement of the plaintiff for the shop is reasonable and bonafide, hence the findings of the trial court are contrary to the pleadings and it is a case of variance between the pleading and proof. It was also submitted that in para 6 of the plaint requirement for the sons of the plaintiff has been pleaded while the trial court has given the finding about the requirement of the plaintiff and his two grand sons. As per learned counsel for the appellant, the findings of the trial court on the point of requirement as well as comparative hardship are not in consonance with the evidence on the record as according to the evidence of the plaintiff himself his two sons are doing business at Neem-Ka-Thana and third son Jugal Kishore is also doing business at Jaipur and the requirement pleaded was only for plaintiff's sons. It was also argued that the plaintiff himself expressed his desire to the defendant to sell the suit shop but the trial court did not consider this evidence and the trial court further failed to consider Ex.A30-certified copy of the sale deed of one shop in favour of the plaintiff in which the plaintiff's son Jugal Kishore is carrying on business. He also referred two applications-one under Order 41 Rule 27 C.P.C. and the other under Order 6 Rule 17 C.P.C. for amendment in the memo of appeal.

12. Firstly these two applications are taken into consideration. Order 41 Rule 27 C.P.C. Provides that the additional evidence may be allowed in appeal if the Court from whose decree the appeal is preferred has refused to admit the evidence which ought to have been admitted or party establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or the appellate court requires any document to be produced to enable it to pronounce judgment or for any other substantial cause.

13. Vide this application the appellant has submitted three documents which are copy of the telephone bill in the name of Jugal Kishore who is plaintiff's son. This bill is of December, 2001. Second document is copy of the plaint filed by the plaintiff for redemption of the suit and third document is copy of the application of

the plaintiff filed for final decree of redemption. The copies of the plaint as well as the application are not relevant at all to decide this appeal. The copy of the telephone bill is subsequent to the judgment of the trial court so it can be taken into consideration while deciding the appeal on merits. Thus, this application stands disposed of accordingly. Another application is under Order 6 Rule 17 C.P.C. seeking to add additional grounds in memo of appeal. Vide this application the appellant wants to produce the same document as noted hereinabove and further prays that the trial Judge altogether ignored the sale deed Ex.A30 which goes to show that the plaintiff has lost the ground of requirement of the shop. According to learned counsel for the plaintiff-respondent this sale deed has to be considered by this Court in appeal, hence no amendment is necessary in the memo of appeal. This submission made by learned counsel for the respondent-plaintiff appears to be justified. This, this application is also disposed of accordingly and thus no formal amendment in the memo of appeal is required.

14. As per Section 13(1)(h) of the Rajasthan Premises (Control of Rent & Eviction) Act 1950 (in short the Act) it is necessary for the plaintiff-landlord to prove that the premises are required reasonably and bonafide by the landlord for the use of occupation of himself or his family. Sub-section (2) of Section 14 provides that no decree for eviction on the ground set-forth in Clause (h) of Sub-section (1) of Section 13 shall be passed if the court is satisfied that having regard to all the circumstances of the case including the question whether other reasonable accommodation is available to the landlord of the tenant greater hardship would be caused by passing the decree than by refusing to pass it.

15. Learned counsel for the plaintiff contended that requirement of the plaintiff pleaded in para 6 of the plaint is for his 'Ladko' and it means 'boys' and includes even the grand sons. He has referred the legal glossary. But a bare perusal of the contents of para 6 of the plaint goes to show that the plea of requirement is only for the sons.

16. It was next submitted that this is not a case of variance between pleading and proof and the pleadings in the trial courts should not be construed so strictly so as to defeat the ends of justice, reliance was placed upon Ram Narain Arora v. Asha

Rani and Ors., JT 1998 (6) SC 181. In para 11 of this judgment the Hon'ble Supreme Court held as under:-

'There cannot be a pedantic or a dogmatic approach in the matter of analysis of pleadings or of the evidence adduced thereto, it is no doubt true that if the pleadings are clearly set out, it would be easy for the Court to decide the matters. But if the pleadings are lacking or vague and if both parties have understood what was the case pleaded and put forth with reference to requirement of law and placed such material before the court, neither party is prejudiced. If we analysis from this angle, we do not think that the High Court was not justified in interfering with the order made by the Rent Controller.'

17. Before coming to the said submissions, it is necessary to refer the evidence of the parties P.W. 1 Sagar Mal is the plaintiff. According to his statement, he has got three sons, two sons are carrying on business at Neem-Ka-Thana and one son Jugal-Kishore is in private employment at Jaipur and he requires the suit shop for himself and his two grand sons Ganesh Ram and Jitendra Gopal who have no job to carry out. P.W.2 Ganesh is the grand of the plaintiff, according to his statement, he is unemployed and wants to do business and his father is doing service at Jaipur. Both the plaintiff and his grand son Ganesh denied this suggestion that plaintiff's son Jugal Kishore is carrying on his own business at Jaipur in his own shop. The trial court did not find favour with the submissions made on behalf of the defendant that plaintiff's son Jugal Kishore is carrying on business in his own shop at Jaipur. But the trial court did not take into consideration Ex.A30-certified copy of the sale deed executed on 17.2.1999 in favour of the plaintiff. According to this sale deed one room No. 232 on ground floor in Savarda House Building, Khajane Walon Ka Rasta, Jaipur in total area of 129 sq.ft. was sold to the plaintiff. Ex.A2 bill contains the address of this very room (shop) as sold to the plaintiff vide registered sale deed Ex.A30. A copy of the telephone bill for the month of December, 2001 filed in this appeal and marked as annexure-A is in the name of Jugal Kishore who is plaintiff's son and address of the same shop No. 232 is mentioned in this telephone bill. All this documentary evidence goes to show that Jugal Kishore is now doing his own business in this shop at Jaipur. But the trial court rightly came to this conclusion that earlier to purchase of this shop by the

plaintiff, there was no evidence to hold that Jugal Kishore was doing his own business in his own shop at Jaipur. Secondly, this fact that plaintiff's third son Jugal Kishore is doing his own business at Jaipur does not adversely effect the requirement of the plaintiff for himself and his two grand sons. Learned trial court rightly observed that by lapse of time the requirement may get changed on account of subsequent events. It has to be kept in mind that suit for eviction was filed in April 1992 and the impugned judgment was passed in October, 2001 i.e. after a period of more than nine years. Learned counsel for the defendant-appellant on the question of pleadings placed reliance upon some of the judgments. In Phool Chand and Anr. v. Dr. Gulab Chand, 1999 (3) WLC (Raj.) 189, it was held that plaint must contain averments as to non-payment of rent but also that the tenant failed to tender the rent for a period of six months. The Hon'ble Supreme Court in Messrs Trojan & Co. v. RM.N.N Nagappa Chettiar, AIR 1953 Supp. Court 235, held that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Similar view was taken in Kusum Chand and Anr. v. Kanhaiyalal and Anr., AIR 1974 Rajasthan 73, RLW 1973 Raj. 378 and Siddu Venkappa Devadiga v. Smt. Rangu S. Devadiga and Ors., AIR 1977 Supreme Court 890. It was contended by learned counsel for the plaintiff that this is not a case of variance between the pleading and proof and every individual member of landlord's family has right to set-up own independent business and the bonafide requirement of the landlord for his unemployed son cannot be negatived on the grounds that since the litigation began, his son has taken up other employment or work. Reliance is placed upon Ramkubai (Smt.) Deceased by Lrs. and Ors., 1999 (6) Supreme Court Cases 540, It was also contended that delay in disposal of the eviction suit cannot defeat the bonafide requirement of the landlord. Reliance has been placed upon Gaya Prasad v. Pradeep Srivastava, 2001(2) Supreme Court Cases 604, wherein it was held that developments in lives of the landlord and his family cannot be expected to come to a standstill during the pendency of eviction petition, especially in view of tardiness and delays in the legal system and bonafides of the landlord's requirement have to be tested in relation to the date on which the eviction was applied for and the fact that during the years that the matter is pending the landlord's son has got a job or move out of town cannot be used against the

landlord and the Court can take a judicial note of these subsequent developments.

18. I have considered the rival submissions in the light of the judgments cited hereinabove and am of the view that the trial court rightly came to this conclusion that on account of lapse of so much time during the pendency of the suit, subsequent events regarding the requirement of the plaintiff should be taken into consideration and as held by the Hon'ble Supreme Court in Ram Narain Arora's case (supra) it is clear that even if the pleadings are lacking or vague but if both the parties have understood what was the case pleaded and put forth with reference to requirement of law and placed such material before the court neither party is prejudiced, the court should not interfere with the order of the trial court. A bare perusal of the entire evidence produced by both the parties goes to show that both the parties have understood what is the requirement of the plaintiff and thus no prejudice has been caused to the defendant-appellant on the ground of vague pleadings on the point of requirement of the plaintiff and his family. Further mere omission of the words 'reasonable and bonafide' is no ground to hold that the requirement of the plaintiff was not reasonable and bonafide. It is the satisfaction of the Court as to whether the requirement of the plaintiff is reasonable and bonafide or not. A perusal para 6 of the plaint rather goes to show that the plaintiff has shown his dire and urgent need for the suit shop.

19. It was next submitted by learned counsel for the defendant that it was a case of mere desire of the plaintiff and thus the requirement was neither reasonable nor genuine. He placed reliance upon *Rajender Kumar v. Jamna Das Kotewala*, 1990 (2) RCR 281, Supreme Court wherein it has been held that mere wish or desire as opposed to need or requirement does not entitle a landlord to seek eviction. Similar view was taken in *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta*, AIR 1999 Supreme Court 2507, *Babu Lal v. Shripat Lal and Anr.*, RLR 2004(1) 678, RLW 2004(1) Raj. 37 and *Bhagirath v. Ram Prasad and Anr.*, RLR 1987 (I) 88, RLW 1987 Raj. 125. In view of the legal proposition laid down in these judgments it is true that the plaintiff-landlord has to prove his requirement to be reasonable and bonafide and mere desire on the part of the landlord would not be enough to pass a decree of eviction. In the instant case, the trial court having considered the entire evidence of the parties came to this conclusion that the plaintiff himself and

his two grand sons require the shop for their business and this requirement is reasonable and bonafide. A perusal of the statement of the defendant Mool Chand goes to show that he has got a number of other commercial premises at Shrimadhapur and D. W. 4 Hanuman Sahay brother of the defendant also admitted that they have got other commercial premises at Shrimadhapur. The fact that the plaintiff expressed his desire to sell this shop is not reliable at all as there is no evidence as to when the plaintiff expressed his desire and the plaintiff was not cross-examined on this point and therefore, the statement of DW 2 Banshidhar on this point is not reliable at all. It is significant to observe here that the suit shop is in possession of the defendant-tenant for a period of more than 100 years by now as admitted by the defendant himself.

20. Thus, in view of the entire discussion made hereinabove, the findings of the trial court on the issues of reasonable and bonafide requirement and comparative hardship do not call for any interference in this appeal.

21. Third Point :- Section 14(2) of the Act provides that where the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises the Court shall pass the decree in respect of such part only. In view of these provisions it was necessary for the trial court to decide issue No. 10 of partial eviction. But learned counsel for the parties agreed that this Court may decide this point in this appeal. As per para 4 of the plaint the size of the shop is 27 ft in length and 14 ft 8 inch in width. According to the statement of the plaintiff, he along with his grand sons wants to carry on Kirana business in the suit shop. At the cost of repetition, it is stated that the defendant has got more commercial premises at Shrimadhapur and thus keeping in view the size of the shop particularly the width, partial eviction would not serve the purpose of either party. Hence, this point is decided accordingly.

22. In view of the entire discussion made hereinabove, this appeal is liable to be dismissed, hence dismissed with costs.