

Ram Swaroop Vs. Jagdish

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Court : Rajasthan

Decided On : Apr-16-2003

Reported in : RLW2003(4)Raj2733

Judge : Harbans Lal, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 14(2)

Appeal No. : S.B. Civil Second Appeal No. 76 of 2000

Appellant : Ram Swaroop

Respondent : Jagdish

Advocate for Def. : P.C. Jain, Adv.

Advocate for Pet/Ap. : M.M. Ranjan, Adv.

Disposition : Appeal dismissed

Judgement :

Lal, J.

1. This Civil second appeal under Section 100 CPC has been preferred by the defendant-appellant against the judgment and decree of the learned Addl. Distt. Judge No. 2, Alwar in Civil Regular Appeal No. 67/99 rejecting the appeal and

confirming the judgment and decree of eviction of the suit shop passed by the learned Civil Judge (JD), Alwar in COS No. 364/86.

2. The relevant facts are that the plaintiff - respondent instituted a suit against the defendant for his eviction from the suit shop described in para 1 of the plaint on twin grounds of default in payment of rent and reasonable bonafide necessity of the shop for his sons Man Prakash and Hem Chand for starting typing and shorthand institute. The defendant appellant contested the suit by filling written statement denying the averments made in the plaint and pleading that both the sons of the plaintiff were already employed in Government service. The plaintiff then amended his plaint under the orders of the trial court so as to add further plea that he required the shop for starting new business of stationary in the suit shop after his retirement. The trial court framed seven issues stemming from the pleadings of the parties including issue No. 4 pertaining to partial eviction. The plaintiff examined himself as PW-1, Hem Chand PW-2, Radhey Shyam PW-3 and Jagdish PW-4 and defendant examined himself as DW-1, Shri Ram DW-2, Babu Singh DW-3, Om Prakash DW-4 and Mohan Lal DW-5. After hearing the parties, the trial court found that the default in payment of rent as alleged was not proved and accordingly issue No. 1 which pertained to default was decided against the plaintiff but issue No. 2, 3 and 4 which were with regard to reasonable bonafide necessity, comparative hard-ship and partial eviction were decided in favour of the plaintiff and against the defendant. The suit was decreed on 16.10.1998 which decree was affirmed by the first appellate court vide impugned judgment and decree and, therefore, the defendant appellant has filled this second appeal.

3. I have heard learned counsel for the parties on the admission of this appeal.

4. Learned counsel for the appellant has contended that the court below has not decided issue No. 4 which was with regard to partial eviction although same was pressed before it. He was further submitted that Section 14(2) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 which has been inserted w.e.f. 29.9.1975 by an amendment gives a mandate to the court to record its satisfaction that partial eviction would or would not satisfy the need of the plaintiff. In this connection a reference has been made to the case of 'Rahman Jeo Wangnoo v.

Ram Chand and Ors.' (1), which was a case from Jammu & Kashmir and the provision with regard to partial eviction was identical to the aforesaid provision wherein the Hon'ble Apex Court has held that the provision gives a mandate to the court to record its satisfaction that the partial eviction would or would not satisfy the needs of the plaintiff. In the case of 'Riyaz Mohyd. v. Rameshwar' (2), similar view has been taken by this court. He has also submitted that in the case of 'Krishan Murari Prasad v. Mitar Singh' (3), the Hon'ble Apex Court has remitted the matter to the trial court for giving findings on the feasibility on partial eviction. He has, therefore, urged that the substantial question of law as indicated in para (X) of the memo of appeal arises in this appeal and it deserves to be admitted.

5. Learned counsel for the plaintiff respondent has on the other hand vehemently argued that the learned first appellate court having agreed with the view of the trial court on issue No. 4, no detailed discussion was essential and specially in view of the statement of Ram Swaroop DW-1 that the width of the suit shop is only 5-1/2 ft, which if bifurcated into two would be rendered absolutely useless for both the plaintiff and the defendant. He has also argued that both the parties have admitted that partial eviction is not feasible. He has also argued that no partial eviction can even be thought of what to talk of giving effect to it in the case of a single shop of this size.

6. In this connection he has referred to the case of 'Kerala State Coir Corporation Ltd. v. Shri Kewal Krishna Kumar' (4), where after considering various authorities of the Hon'ble Supreme Court as well as of the High Court, it was held that partial eviction and bonafide necessity are not substantial questions of law.

7. In 'Girdhari Lal v. Smt. Kanta and Ors.' (5), it has been held on the basis of various Supreme Court and High Court authorities that partial eviction and bonafide necessity are not substantial questions of law.

8. In 'Prem Tent House v. Prakash Chand Jain' (6), where the premises were of 300 sq.yds, it was held that no partial eviction would be ordered for personal need.

9. In 'M.C. Sindhi v. Hemn Dass' (7), where the suit shop was of the size of 10x10 ft., it was held that there was no case for partial eviction.

10. In 'Hanuman Das and Ors. v. Sanwal Ram' (8), it was held that there was no need to remand the case for finding on partial eviction in a case necessity of a single shop. Similar view has been taken in the case of 'Todar Mal v. Abbas Ali' (9).

11. In 'Raj Kumar and Anr. v. Mehar Chand' (10), it has been held that no finding is necessary by the trial court and the appellate court where partial eviction is not possible.

12. In 'Vishapriya Nagar v. Immamuddin hallor Master' (11), it has been held that there no need to remand the case of single shop even if the lower courts do not give any finding for partial eviction.

13. He has also drawn my pointed attention to para (x) of the plaint wherein it has been categorically pleaded by the parties that his need would not be fulfilled by partial eviction and he requires the complete suit shop and in para (x) of the written statement the defendant has also clearly stated that no decree could be passed in partial or complete eviction of the shop. In his statement as DW-1, Ram Swaroop has clearly stated that he requires complete shop and according to him the width of the suit shop is 5-1/2 ft. and it is of two 'khan'.

14. I have also perused the impugned judgment of the trial court as also the authorities cited at the bar.

15. In my well considered view, no substantial questions of law as suggested in para A to E in para (X) of the memo of appeal arise for decision of this court in this appeal. There is no omission to consider material evidence or misreading of evidence by the courts below and, therefore, this appeal deserves to be dismissed summarily and is hereby dismissed.