

Tarachand Vs. Pyar Chand

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Court : Rajasthan

Decided On : Nov-26-1992

Reported in : 1992WLN(UC)239

Judge : B.R. Arora, J.

Appeal No. : S.B. Civil Second Appeal No. 71 of 1991

Appellant : Tarachand

Respondent : Pyar Chand

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. This appeals directed against the Judgment and decree dated 27th Feb. 1991 passed by the learned Additional District Judge, Rajsamand, by which the learned Addl. District Judge dismissed the appeal filed by the plaintiff and maintained the decree and Judgment dated 9th Feb. 1988 passed by the learned Munsif & Judicial Magistrate, First Class, Rajsamand.

2. Plaintiff Pyar Chand filed a suit for eviction and arrears of rent with respect to a house situated In The town of Kankroli. the house in question was taken on rent for a monthly rent of Rs. 125/- per month vide rent note dated 18th May 1982 but

the rent was not paid and defendant committed default in the payment of monthly rent. The defendant contested the suit. In the written statement an objection was taken that the house in question belongs to him and he mortgaged the same for a consideration of Rs. 2500/- with the plaintiff but the plaintiff got the sale deed executed in his favour when objection was taken by him, and agreement was written and compromise arrived at, that plaintiff will redeem the house to him if the payment of the loan be made within two years. When the defendant paid the amount of Rs. 2,500/- to the plaintiff and asked him to execute the sale deed in his favour but he refused to do so and instituted the present suit. On the basis of the pleadings of the parties, six issues were framed. Both the parties led their evidence. Learned trial court after appreciation of the evidence produced by both the parties came to the conclusion that the defendant committed a default in making the payment of monthly rent, and, he, therefore, decreed the plaintiffs suit for the eviction as well as for the arrears of rent.

3. Dis-satisfied with the decree and judgment dated 9th Feb. 1988 passed by the learned Munsif & Judicial Magistrate, Rajasmand, the defendant preferred an appeal before the learned Additional District Judge, Rajsamand, which was dismissed by the learned Additional District Judge, Rajsamand, vide its decree and judgment dated 27th Feb. 1991. The learned Additional District Judge also affirmed the findings of the trial Court that defendant committed default in the payment of monthly rent.

4. I have heard the learned Counsel for the parties and perused the judgment and decree passed by the Courts below. Both the Courts below, gave concurrent finding that the appellant was a defaulter and has committed defaults in the payment of monthly rent. It is a statutory duty of the tenant to pay monthly rent by the 15th of each month if he wants to get the protection available to him under the Act but if he fails to discharge his duty his rights vanishes away and the plaintiff is entitled to get the decree for eviction. The defendant cannot be allowed to refuse to make payment on the ground that he never sold the house and the document executed by him was only a mortgage with right of redemption. Whether the document/transaction in question is mortgage or a sale; that matter will be decided by the trial court in a proper suit if so filed by the defendant. So far as the present

case is concerned, the suit was based on a rent note and that was executed by the defendant and was admitted in the written statement. The finding arrived at by the learned lower Court are purely findings of fact and no substantial question of law arises in this appeal. The appeal filed by the appellant, therefore, deserves to be dismissed. But, however, in the facts and circumstances of the case, I think it proper to grant one year's time to the defendant appellant to hand-over the vacant possession of the suit property provided the appellant furnishes an under taking before the trial Court to the effect that he will not induct any other person in the suit property and will handover the possession of the suit property to the land lord on or before 31st Dec. 1993, and will pay arrears of mense profit if any within a period of one month from today and shall continue to pay rent by the 15th of each month. If the undertaking is not submitted within one month from today or the arrears of mense profit if any is not paid within a period of 2 months from today or the monthly rent is not paid by the 15th of each month then the decree-holder will be entitled to get the decree executed even before 31st Dec. 1993.

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