

Yash Deva Vs. Mayo College

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Court : Rajasthan

Decided On : Oct-18-1974

Reported in : 1974WLN903

Judge : C.M. Lodha, J.

Appeal No. : S.B. Civil Second Appeal No. 300 of 1973

Appellant : Yash Deva

Respondent : Mayo College

Judgement :

C.M. Ladha, J.

1. This is a defendant-tenant's second appeal arising out of a Suit for ejectment from bungalow No. B 6 situated in the campus of the Mayo College Ajmer and also for arrears of rent and future rent/mesne profits as also for water charges.

2. The plaintiff, Secretary, Mayo College, General Council, Ajmer, filed the suit on 4th September, 1967 alleging that by resolution No. 14 dated 25th February, 1967 the General Council had decided to start a Preparatory School, and also to take steps to get the Staff quarters at Alwar Gate Ajmer, vacated from the present occupants for the said purpose. It was alleged that the bungalow No. B-6, which was in occupation of the defendant, as tenant of the plaintiff, was reasonably and

bona fide required for educational purposes by the plaintiff. Besides the agreed rent at the rate of Rs. 75/- per month, water charges at the rate of Rs. 8/- per month were also claimed. So far as the claim for rent is concerned, there is no dispute. The two points of dispute between the parties are:

(1) that the premises are not required reasonably and bonafide by the plaintiff and in any case, under the law, the plaintiff is not entitled to get a decree for ejectment; and

(2) that the plaintiff is not entitled to get any decree for water charges.

After recording the evidence produced by the parties, the learned Munsiff, Ajmer City (East), Ajmer, by his judgment dated 13th April, 1971 decreed the plaintiff's suit and the appeal filed by the defendant was dismissed by the Additional Civil Judge, Ajmer. Hence, this second appeal.

3. So far as the water charges at the rate of Rs. 8/- per month are concerned, learned Counsel for the respondents submitted that looking to the petty amount, he would not oppose the appellant's request for setting aside the decree for water charges at the rate of Rs. 8/- per month.

4. The question of requirement of the premises in question by the landlord has been argued on behalf of the appellant, mainly from two points of view. It has been urged in the first instance that the plaintiff has been failed to establish reasonable and bonafide requirement for the premises in question and then it has been argued that the requirement pleaded by the plaintiff does not fall within the four corners of Section 13(1) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950, which will hereinafter referred to as the Act; and, therefore, no decree for ejectment can be passed.

5. At this stage, I may deal with the application filed by the appellant under Order 41 Rule 27, C.P.C. dated 27th January, 1974, wherein it has been prayed that the respondent may be directed to admit or deny the facts stated in the Memorandum of Appeal, and in case of denial of any of the facts stated therein, the appellant may be permitted to adduce evidence to establish the facts alleged. In my opinion,

this application hits no merit. It does not satisfy any of the requirements of Order 41 Rule 27 of the Code of Civil Procedure and the prayer made therein is of a very unusual type. It is not open to any of the parties at the stage of second appeal, to make fresh allegations of fact in the Memo of Appeal, and call upon the opposite party to admit or deny the same. In this connection, I may also state that the appellant has filed three affidavits making some fresh allegations of fact, and the respondents have also submitted counter-affidavits in reply. I do not feel inclined to admit these affidavits in evidence at this stage, and would confine myself only to the evidence which was produced by the parties in the trial Court.

6. Learned Counsel for the appellant has urged that in the notice of ejectment; Ex A/1, dated 26th August, 1965 the plaintiff called upon the defendant to pay increased rent for the premises in question, and after two years having not succeeded in persuading the defendant to pay increased rent, the plaintiff hit upon the plan of making out a case for the necessity of the premises in question for Preparatory School and served another notice dated 25th July, 1967 (Ex 4) calling upon the defendant to vacate the premises in question. In this connection, it has also been submitted that Resolution No 4 dated 25th February, 1967 (Ex 2) is highly vague, and has been manoeuvred and manipulated to make out a case of need for the College. It has also been argued that there is no provision for running a Preparatory School for boys below 9 years in the prospectus of the Mayo College, Ajmer and that the Memorandum of Association, which was registered under the Societies Registration Act had not been amended or altered so as to make provision for running a Preparatory School for boys below 9 years. It is submitted that the scheme, Ex.3, for running of a Preparatory School has also been framed after filing of the suit. Lastly, it is argued that the oral evidence led by the plaintiff does not establish the alleged need for the premises in question. It is contended that the need, if any had disappeared during the pendency of this litigation. In support of his contention, learned Counsel has placed reliance on *Neta Ram and Ors. v. Jiwanlal and Anr.* : AIR 1963 SC499, *Bhagwandas v. L. Pyarelal* : AIR1955 All19; *Shah Bhoj Raj Mivrajji Oil Mills and Gining Factory v. Subhash Chandra Yograj Sinha* : [1962]2SCR159; and *Govind Ram v. Abdul Wahab* 1963 RLW 453.

7. It is true that in the notice Ex. A/1 of 1965 the plaintiff has called upon the defendant to pay enhanced rent from 1st October 1965 at the rate of Rs. 12.50 per month. However from the fact alone it cannot be referred, unless there are strong circumstances pointing to the contrary that in 1967 the authorities concerned manoeuvred and manipulated the scheme...for, the, sole Purpose of causing the defendant. There is no denying the fact that the Resolution dated 20th February, 1967 (Ex.2) was passed by the General Council of the Mayo College, Ajmer. The resolution was pleaded in para No. 2 of the plaint. The defendant pleaded Want of knowledge and put the plaintiff to proof and pledged in the alternative that even if such resolution had been passed, it was against the interest of the college. PW 1 Nand Kishore who is the Estate Officer of the M.C.A., has stated that M.C. Aj. General Council is registered body and that the Resolution, has been passed by the General Council for Starting a Preparatory School, P.W. 2 Shantilal brought the original minute book of the Mayo College, General Council, Ajmer, and stated that Resolution No. 14 dated 25th February, 1967 was contained in it, and the same had been signed by Bhim Singh and JTAM Gibson, with whose signatures he is acquainted. No evidence has been led by the defendant on this point. It must, therefore, be, accepted that the resolution Ex. 2 is (sic) document.

8. Another argument of the learned Counsel for the appellant that starting of a Preparatory School for boys below the age of 9 years fell outside the Aims of the institution as contained in the prospectus, is also untenable inasmuch as, there is no prohibition even in the prospectus regarding running a Preparatory School, What has been mentioned regarding the aims, in the Prospectus of Mayo College, Ajmer, of July, 1968 is:

The aim is to. provide a thorough general education from the age of 9 to 17 years.

In the first place the aims, as mentioned in the prospectus do not constitute the objects of the Society and, therefore, there was no question for getting the Memorandum of Association amended under provision of the Societies Registration Act. The object of the institution was obviously to provide educational facilities and, therefore, if in scheme, as framed in pursuance, of the resolution, it was mentioned that boys to the Preparatory school would be admitted from the age of

6 years onwards upto 10, it cannot be said that the society namely, the plaintiff, had committed any illegality. Be that as it may, so far as the defendant is concerned, it is not his concern, how far the society has kept up or transgressed the aims and objects with which it was formed. All that the is concerned is whether the requirement pleaded by the plaintiff is, genuine, reasonable and bona fide. I am, therefore, of the opinion that passing the resolution for starting a Preparatory School and framing a scheme in pursuance of it cannot be said to be beyond the scope of the aims and objects, of the plaintiff society.

9. Now, it may be noted that the allegation in the plaint is that premises in the defendant's occupation are required reasonably and bona fide by the plaintiff for educational purposes and for providing residential accommodation to the student and the staff of the Preparatory School. The Resolution Ex. 2 provides that the Principal be directed to draw at once a scheme for a new Preparatory School which would use the existing Staff Quarters near Alwar Gate as dormitories, messes, class rooms and for housing the Preparatory, School itself. In the scheme Ex. 3 prepared in pursuance of the resolution de details of the Preparatory School had been worked out and it is provided there* in that in the various classes proposed to be started for Preparatory School, boys of the age group from 6 to 10 years have been included. In the prospectus, under the head 'Aims' it has been mentioned that the aim was to provide thorough general education from the age of 9 to 17 years. An argument is sought to be raised for the first time in this Court without laying any foundation for the same and without there being any material in support of it that there was no necessity for providing education to boy above nine years in the Preparatory School. If the authorities concerned while preparing the scheme thought it fit of making a particular group of students to be taught in the Preparatory Section of the school, it cannot be said that the scheme is fake, or that the accommodation, as pleaded by the plaintiff, would not be required on account of this grouping.

10. Leraned Counsel for the appellant took pains in reading the scheme in detail and picking holes in it here and there as if the scheme itself was subject to examination from the point of view of its feasibility or otherwise. Great amphases was laid on the allocation of bungalows for particular purposes as mentioned in the

scheme and it was pointed out the bungalow No. B-6, which is at present in occupation of the defendant would not at all be required. In the first place, I must confess that I have not been able to appreciate how, if the scheme is put into execution, the group of bungalows under B-3 to B 10 would not be required at all. For bungalow No B 6, it is mentioned that it would be required to provide dormitories for 15 boys with attached dressing rooms and bath rooms and one set of each bungalow for a single member of the staff. The scheme has been prepared by the Principal and another responsible person of the Institute and if the defendant thought that it was a bogus affair, I fail to understand, why no cross-examination was directed on the point. It appears to me that the argument that the requirement of the bungalow No. B-6 for Preparatory School is a bogus one, it, being raised for the first time here in second appeal, and has no substance.

11. All other consideration apart, it passes my comprehension why two responsible authorities of the institution, namely JTM Cibson, Principal of the College, and SL Sehgal, Burear, should have conspired for no personal gain to themselves to prepare an altogether faked scheme for no other purpose except to (urn out the defendant. At one stage, I understood the learned Counsel to argue that even though the Preparatory School has been started, there is no requirement of the bungalow in question for that the purpose. I am afraid, there is no scope for such an argument.

12. Learned Counsel also strenuously urged that the requirement pleaded and proved by the plaintiff is usefully vague, inasmuch as all sorts of purposes had been pleaded. I have scrutinised the record from this point of view. In the plaint it has been mentioned in para No 3 that the premises in question are required for educational purposes and for providing residential accommodation to the students and the staff of the Preparatory School, In the notice Ex 4, it is mentioned that the Mayo College, Ajmer, is starting a Preparatory School and the Staff quarters near Alwar Gate are to be used as class- rooms, dormitories, messes and residences of the staff of the Preparatory School. So far as these two documents are concerned, I do not see any discrepancy between the two As regards the oral evidence, it is stated by Nand Kishore that the bungalow in question and other staff quarters are sought to be vacated in order to implement the scheme framed for Preparatory

School No cross-examination worth the name has been directed to this witness to show that the requirement stated by him in his examination-in-chief is a mere pretext. I also do not find substance in the learned Counsel's contention that the requirement pleaded is vague. It would not be fair to expect the plaintiff to pin himself down to only a particular use of the bungalow in question namely, for holding classes or for using it for housing a teacher or for using it only for a dormitory so forth and so on. What is of importance is that the premises in question are required for educational purpose and for the purposes of providing residential accommodation to the students and at off of the Preparatory School. In my opinion, it was not necessary for the plaintiff to plead that the bungalow in question will only be put to particular use and to no other use. Such a thing, in the first place, is impossible and at any rate the purpose pleaded, in my opinion, cannot be said to be vague or fake.

13. I may here point out that both the lower Courts after taking into consideration the evidence produced by the parties arrived at the finding that the plaintiff society needed the bungalow in question for educational purposes in general and for starting a Preparatory School in particular. It cannot be said that this finding is based on no evidence or is based on misreading of evidence or that it is a finding which no reasonable person could come to. So also the finding that the requirement is reasonable and bonafide cannot be said to be preverse. It has been observed by their Lordships of the Supreme Court in *Mattula v. Radhey Lal* : [1975]1SCR127 that whether the requirement exists and whether it is bonafide are both questions of fact and they cannot be interfered with by the High Court in second appeal unless it is shown that in reaching them a mistake of law was committed by the first appellate Court or it was based on no evidence or was such as no reasonable man could reach, I, therefore, find myself unable to reverse these findings arrived at by the Courts below.

14. Learned Counsel also argued that at any rate the alleged requirement had been met with during the pendency of this litigation and, therefore, the decree for ejection must be set aside. In this connection, learned Counsel laid much emphasis on the observations made in *Bhagwandas's case* : AIR1955 All19 and in *Shih Bhojraj's case* : [1962]2SCR159 . I have carefully gone through these rulings,

and am of opinion that they have no application to the present case. There is nothing on the record to show that during the pendency of the suit, even without the defendant's bungalow being put at the disposal of the plaintiff, the requirement has been met. Larned Counsel emphatically urged that an inference should be drawn against the plaintiff because the Preparatory School has already been started from 1-1 1970. Assuming it to be so merely because the school had been started during the pendency of this litigation, it cannot be said that the requirement has been met. Apart from that, no such argument was raised either in the trial Court or in the first appellate Court. The argument is completely devoid of substance.

15 I may now turn to the other important point canvassed on behalf of the appellant, namely, that the ground relied upon by the plaintiff does not fall under any of the clauses of Section 13 of the Act. This argument was not raised in any of the Courts below but since it is a purely legal point, the appellant is entitled to urge the same at this stage. To fortify his submission Larned Counsel referred to the provisions of Ac's of other States to show that wherever the legislature intended to provide for the premises belonging to an institution and/or a society for the purpose like the one in question, it has made specific provision. On the other hand, Larned Counsel for the respondents also took me through the Acts of a few other States to support his argument that the case was covered by Section 13(1)(h)(i) to (ii):

To decide the controversy, it may be useful to reproduce the relevant portion of Section 13:

Eviction of tenant : (1) Notwithstanding anything contained in any law or contract, no Court shall pass any decree, or make any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefore to the full extent allowable by this Act, unless it is satisfied....

(h) that the premises are required reasonably and bonafide by the landlord:

(i) for the use or occupation of himself or his family, or

(ii) for the use or occupation of any person for whose benefit the premises are held.

16. It is true that in some Acts there is a specific provision for trustees of a public, charitable and educational trusts or religious charitable and educational or other public institutions. But, in my opinion, existence of such provisions in other Acts cannot be of much assistance in interpreting the provisions of the Rajasthan Act. Some legislatures have thought it proper to make a separate and specific provision for public charitable trusts or public institutions but that does not mean that because there is no specific provision in the Rajasthan Act, it must, therefore, be necessarily inferred that the legislature had no intention to give the benefit of such a provision to a charitable educational or public institution at all. In my view the correct method of approaching the problem would be to interpret the relevant provisions with reference to the meaning of the terms used therein after giving natural and harmonious interpretation to them. At this stage, I may point out that the words used in Section 13(h)(ii) are 'for the use and occupation of any person for whose benefit the premises are held.' Now, in the present case, we will have to take the plaintiff Secretary, Mayo College, Ajmer as landlord. This position admits of no argument and in fact none has been advanced to assail it. The Secretary is, therefore, entitled to ask for eviction of the tenant provided he succeeds in showing that the premises are required for use or occupation of any person for whose benefit the premises are held. The second question, therefore, which naturally arises is - whether the College can come under the definition of the word 'person'. 'Person' has not been defined in the Rajasthan Act, but it has been defined in the General Clauses Act, 1897. Section 3(42) of the General Clauses Act defines 'Person' as follows:

'person' shall include any company or association or body of individuals, whether incorporated or not.

Thus, according to this definition, I have no doubt that the Mayo College is a person, and if the Secretary of the Mayo College, Ajmer, requires reasonably and bona fide the premises in question for use or occupation by the Mayo College, Ajmer, it cannot be said that the case would not be covered by Section 13(1)(h)(ii).

17. There is yet another aspect of the matter, term ('landlord' has been defined in Section 3(iii) of the Rajasthan Act as 'any person who for the time being is receiving or is entitled to receive the rent of any premises, whether on his own account or as an agent. 'I do not see any difficulty in treating the Mayo College, Ajmer itself as a landlord in the sense that the building is owned by it and the affairs of the College are only being managed through its Secretary. The requirement by the College would f; 11 even under Clause (h)(i) of Section 13(1). Thus, the second contention raised by the learned Counsel also cannot be accepted.

18. The net result of the foregoing discussion is that so far as the appeal from the decree for ejectment is concerned, it is disallowed, But so far as the decree for water charges at the rate of Rs. 8/- per month is concerned, it is allowed, and the decree for arrears of rent is reduced to Rs. 75/- p.m. from 1-9-1969 till the delivery of possession. The appellant will pay the respondents costs of this appeal.

19. Learned Counsel for the appellant prays for certifying the case a fit one for appeal to Division Bench. The prayer is refused.