

Rajesh Kumar Vs. Kailash Chand

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Court : Rajasthan

Decided On : May-24-2001

Reported in : 2001WLC(Raj)UC624

Judge : Mohd. Yamin, J.

Acts : Code of Civil Procedure (CPC) - Order 6, Rule 17

Appeal No. : S.B. Civil Revision Petition No. 961 of 1998

Appellant : Rajesh Kumar

Respondent : Kailash Chand

Advocate for Def. : Ashok Gaur, Adv.

Advocate for Pet/Ap. : B.L. Mandhana, Adv.

Disposition : Revision petition dismissed

Judgement :

Yamin, J.

1. By impugned order dated 4.7.1998, the learned Civil Judge, Alwar allowed application under Order 6 Rule 17 CPC against which this revision petition has been preferred.

2. I have heard learned counsel for both the parties.

3. Suit was filed against petitioner in relation to a suit property which is a business premises on the ground of personal bona fide necessity to evict him, The suit was resisted by the petitioner-defendant on various grounds. The plaintiff filed an application under Order 6 Rule 17 CPC and sought permission to add para No.4 in the plaint to the effect that U.I.T., Alwar allotted a plot for shop on 21.7.1994 in newly established steel market and therefore, defendant no more stands in need of the suit shop. This application has been allowed by the learned trial Court and hence this revision.

4. It has been contended by the learned counsel for the petitioner that as per provision of Section 13(1)(i) of Rajasthan Premises (Control of Rent & Eviction) Act, 1950, the provisions applies only to residence and not to the business premises. It has also been submitted that it was a frivolous pleading and the petitioner would have got it struck off had it been initially averred as per provisions of Order 6 Rule 16 CPC. He submitted that 10 years time was taken to lead evidence and that such an amendment which is frivolous should not have been allowed.

5. On the other hand, learned counsel for the respondent repelled these arguments and submitted that the suit was not based on the ground mentioned in Sec, 13(1)(i) of Rajasthan Premises (Control of Rent & Eviction) Act but on the ground of personal bona fide need. He submitted that issue No. 4 exists which relates to the comparative hardship and when alternative accommodation is available to the tenant by allotment of a plot of land by U.I.T. the amendment was very much relevant. It does not change the nature of the suit nor does it create a new ground for eviction, as suit is not based on this ground.

6. I have considered the rival contentions. According to provisions of Order 6 Rule 17 CPC the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. There is no denial of the allotment of plot by the petitioner for the purpose of construction of a

shop in the Loha Mandi. This was not taken as a ground for eviction by the plaintiff but the question of alternative accommodation is to be decided by the trial Court. The Supreme Court in Raghu Thilak D. John v. S: Rayappan and Ors. (1) has discussed the provisions of Order 6 Rule 17 CPC and has reiterated that Court should not adopt a hypertechnical approach while dealing with the application under Order 6 Rule 17 CPC and liberal approach should be the general rule.

7. Admittedly, the suit is based on personal and bona fide ground and there is no denial by the defendant-petitioner of the allotment of plot of land for construction of shop. There is an Issue about the hardship about which the amendment is very relevant. There appears to be no jurisdictional error in allowing the application under Order 6 Rule 17 CPC by the trial Court, therefore, there is no force in this revision petition and it is hereby dismissed. No order as to costs.

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