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Court : Rajasthan

Decided On : Mar-04-1994

Reported in : 1994(1)WLN489

Judge : Rajesh Balia, J.

Appeal No. : S.B. Civil Regular Second Appeal No. 20 of 1994

Appellant : Jwala Singh

Respondent : Laxmi Lal

Disposition : Appeal dismissed

Judgement :

Rajesh Balia, J.

1. This second appeal is directed against the decree dated September 22, 1993 passed by the Additional Civil Judge No. 2 Udaipur affirming the judgment and decree dated March 1, 1990 passed by the Munsif and Judicial Magistrate (North), Udaipur.

2. The eviction suit of the plaintiff-respondent has been decreed by the two courts below on the ground of second default in payment of rent. The plea of the defendant in his written statement was that he had paid Rs. 1200/- in advance and theretofore, he has not committed any default. The payment was alleged to have

been made to the son of the plaintiff. Both the courts below on the basis of the appreciation of evidence have found that the payment of rent in advance alleged by the defendant has not been proved.

3. Before this Court, the appellant has filed an application under Order 41, Rule 27 CPC for permitting him to lead additional evidence which is in the form of a receipt of Rs. 1200/- allegedly executed by the plaintiff. The ground stated in the application is that this plea that Rs. 1200/- has been paid to the son of the plaintiff Dalpat on the request of the plaintiff and he obtained the receipt thereof was taken in the written statement. In the written statement, it was also pleaded that inspite of best efforts, he could not lay his hand of the said receipt and therefore, it could not be produced.

4. According to the application, the receipt was found in the space of the shelves of the wooden (able lying in the shop in question on October 24, 1993 and soon thereafter, he has moved this application along with this appeal.

5. Learned Counsel appearing for the respondent drew my attention to the statement of defendant Jwala Singh that inspite of taking the plea about existence of such receipt, he in his examination-in-chief as well as in cross-examination has categorically denied having received any such receipt from the plaintiff or his son. On the contrary, he has stated that though he was assured by the plaintiff that receipt for advance rent shall be given later on, but he did not give any such receipt thereafter. In the cross-examination, he has also slated that inspite of demanding several times, receipt of the same was not given to him and since he was assured that receipt will be given later on, he did not give any such notice for the receipt. This statement of the plaintiff has come on record inspite of pleading in detail about the loss of receipt. It may also be noticed that there is variance in plea taken in written statement and the receipt now sought to be produced as to who executed in-plaintiff or plaintiffs son.

6. In view of the aforesaid circumstances, I am of the opinion that that application for seeking leave to permit appellant to lead additional evidence is not justified.

7. Otherwise also, there exist no ground under 0.41 Rs. 27 for which appellant can be permitted to lead additional evidence.

8. The application, is therefore, rejected.

9. It was next contended by the learned Counsel for the appellant that there is misreading of the statements in arriving at the finding against the defendant regarding the payment of Rs. 1200/-. Having perused the statements of the defendants witnesses and other material, in my opinion, there is no such misreading of material facts which could lead to vitiate the finding of the fact of the two courts below.

10. The appeal is, therefore, dismissed with no order as to costs.

11. Lastly, it was submitted by the learned Counsel for the appellant that some time may be granted to vacate the suit premises.

12. Looking to the facts and circumstances of the case, that the appellant is doing business in the suit shop since 1971, it is directed that the decree for eviction shall not be executed against the appellant until December 31, 1994, subject to condition that the appellant gives an undertaking before the trial court within one month from today that the appellant shall deliver the vacant possession of the suit shop on or before December 31, 1994 to the plaintiff-decree holder or his assignee and shall not part with possession of the suit shop in any manner in favour of any person other than the plaintiff-decree holder or his assignee. He shall further pay to the plaintiff or deposit in trial court, the entire amount due under the decree, if already not so paid or deposited, within one month and further continue to pay mesne profit every month at the rate at which rent was payable in respect of the suit shop to the plaintiff-respondent by 10th of each succeeding month.