

MohinuddIn Vs. Smt. Sushila

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Court : Rajasthan

Decided On : Aug-27-2004

Reported in : RLW2005(1)Raj410; 2005(1)WLC382

Judge : Sunil Kumar Garg, J.

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

Appeal No. : S.B. Civil Second Appeal No. 277 of 2003

Appellant : Mohinuddin

Respondent : Smt. Sushila

Advocate for Def. : M.D. Boob, Adv.

Advocate for Pet/Ap. : J.R. Patel, Adv.

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Garg, J.

1. Heard at admission stage.

2. This second appeal has been filed by the appellant-defendant against the judgment and decree dated 4.9.2003 passed by the learned Addl. District Judge No. 1, Jodhpur in Civil Appeal No. 22/2001 by which the appeal of the appellant-defendant was dismissed and the judgment and decree dated 16.10.2000 passed by the learned Addl. Civil Judge (JD) No. 3, Jodhpur in civil original suit No. 6/2000 decreeing the suit filed by the plaintiff-respondent against appellant-defendant for eviction from shops in question, were upheld.

3. In this second appeal, the findings recorded by both the courts below on issue No. 7, which reads as follows, have been challenged:-

'Whether the need of the plaintiff's son Ramesh (PW2) for the shops in question for doing business, which was bonafide and reasonable, can be satisfied by making partial eviction of the shops in question or not.'

4. It arises in the following circumstances:-

The plaintiff-respondent filed a suit for eviction of the defendant-appellant from the shops in question situated in front of Sir Pratap School, Bhabhoot Bhawan, jodhpur, which were taken by the defendant-appellant on monthly rent of Rs. 200/- on various grounds and one of the grounds was that the shops in question were required by the plaintiff-respondent bonafidely and reasonably for doing the business of television, fridge and other electrical articles by her son Ramesh (PW 2) and in that plaint, it was also stated that partial eviction of the shops in question was not possible.

The suit of the plaintiff-respondent was contested by the defendant-appellant by filing a written statement and the need of the plaintiff's son Ramesh, PW2 for the shops in question was denied and it was further submitted that in case decree of eviction from the shops in question was passed, greater hardship would be caused to the defendant-appellant in comparison to the plaintiff-respondent. Hence, it was prayed that the suit be dismissed.

On the pleadings of the parties, as many as eight issues were framed and issue No. 5 pertained to the fact whether the need of the plaintiff's son Ramesh, PW2 for

the shops in question was bona fide and reasonable one or not and issue No. 6 dealt with the comparative hardship and issue No. 7, as stated above, was meant for partial eviction of the shops in question.

Thereafter, both the parties led evidence in support of their respective case.

After hearing both the parties and after considering the entire materials and evidence available on record, the learned Addl. Civil Judge (JD) No. 3, Jodhpur through judgment and decree dated 16.10.2000 decreed the suit of the plaintiff-respondent for eviction of the defendant-appellant from the shops in question holding inter-alia:-

(i) That need of the plaintiff-respondent's son ramesh, PW2 for the shops in question for doing business was found bonafide and reasonable one and thus, issue No. 5 was decided in favour of the plaintiffrespondent and against the defendant-appellant.

(ii) That in case decree of eviction was not passed, greater hardship would be caused to the plaintiff-respondent in comparison to the defendant-appellant and thus, issue No. 6 was also decided in favour of the plaintiff-respondent and against the defendant-appellant.

(iii) That on issue No. 7 pertaining to partial eviction, the learned Addl. Civil Judge in para 28 of the judgment observed that since the plaintiff-respondent Sushila, PW 1 and her son Ramesh, PW 2 had stated in their evidence that partial eviction of the shops in question was not possible and they required both shops for doing business and furthermore, in reply, there was no statement from the side of defendant-appellant, therefore, he decided issue No. 7 pertaining to partial eviction, also in favour of the plaintiff-respondent.

Aggrieved from the said judgment and decree dated 16.10.2000 passed by the learned Addl. Civil Judge (JD) No. 3 Jodhpur, the defendant-appellant preferred first appeal before the learned District Judge, Jodhpur, which was later on transferred to the Court of Addl. District Judge No. 1, Jodhpur, who through impugned judgment and decree dated 4.9.2003 dismissed the appeal of the

defendant-appellant and affirmed the judgment and decree dated 16.10.2000 passed by the learned Addl. Civil Judge (JD) No. 3, Jodhpur.

It may be stated here that before the learned Addl. District Judge No. 1, Jodhpur, mainly issue No. 7 pertaining to partial eviction was agitated by the learned counsel appearing for the defendant-appellant and he also filed an application for remanding the matter to the Court of Addl. Civil Judge (JD) No. 3, Jodhpur for deciding the issue No. 7 pertaining to partial eviction afresh, but that application was also rejected by the learned First Appellate Court holding inter-alia:-

(i) That there was no dispute on the point that in tenancy, there were two shops and as per the report of the Commissioner appointed by the learned First Appellate Court, size of both shops in question was 21 feet x 8 feet and 12.2 feet x 8.3 inch and both shops in question were joint by one gate from inside, but from outside, there were two shutters before each shop.

(ii) That learned First Appellate Court came to the conclusion that if the door, which was between the two shops in question is closed, a division of the shops in question can be made, but the learned First Appellate Court also came to the conclusion that the learned Addl. Civil Judge had not given any finding on that point and therefore, that point was considered by it in detail and after elaborate discussion of the entire materials and evidence available on record, the learned First Appellate Court Came to the conclusion that partial eviction was not possible, looking to the size of the shops in question and since the plaintiff-respondent had categorically come with the plea that partial eviction of the shops in question was not possible and there was evidence on that point and she has further stated that in case partial eviction of the shops in question was made, her need for the shops in question would not be satisfied and on the contrary, there was no evidence on the part of the defendant-appellant. Thus, the learned First Appellate Court rejected the application of the defendant-appellant for remanding the case on issue No. 7 pertaining to partial eviction as according to it, it would not serve any purpose as need of the plaintiff respondent was not only found bonafide and reasonable, but greater hardship would be caused to the plaintiff respondent if the decree for eviction was not passed and further, partial eviction was not possible

looking to the size of the shops in question and bonafide and reasonable need of the plaintiff respondent. Thus, the learned First Appellate Court has also decided the issue No. 7 in favour of the plaintiff respondent.

Aggrieved from the said judgment and decree dated 4.9.2003 passed by the learned counsel Addl. District Judge No. 1, Jodhpur, the appellant-defendant has preferred this second appeal.

5. In this second appeal, the learned counsel for appearing for the appellant-defendant has mainly challenged the findings recorded by both the courts below on issue No. 7 pertaining to partial eviction. He has submitted;-

(i) That the findings recorded by both the courts below on issue No. 7, which relates to partial eviction, on the basis of statements of the plaintiff-respondent Sushila, PW1 and her son Ramesh, PW2 are wholly erroneous and perverse one as they had nowhere stated that partial eviction was not possible.

(ii) That the findings that once the court had come to the conclusion that need of the plaintiff for the shops in question was bonafide and reasonable and after that, question of partial eviction does not arise, are also erroneous one.

6. On the other hand, the learned counsel appearing for the plaintiff-respondent has supported the judgments and decrees passed by both the courts below. He has further submitted that defendant-appellant Mohinuddin, DW1 has admitted in his cross- examination that in case there was division of the shops in question, that would not be sufficient for running of his business. Therefore, when this being the position, the prayer for partial eviction of the shops in question had come to an end. hence, no interference is called for with the concurrent findings of facts recorded by both the courts below as they are based on correct appreciation of evidence and materials available on record and this second appeal deserves to be dismissed.

7. I have heard the learned counsel for the appellant-defendant and the learned counsel for the respondent-plaintiff and gone through the entire materials available on record.

8. Before proceeding further, it may be stated here that learned Addl. Civil Judge (JD) No. 3, Jodhpur has decided issue No. 7 pertaining to partial eviction in favour of the plaintiff-respondent as the plaintiff-respondent-Sushila, PW1 and her son Ramesh, PW2 had categorically stated that partial eviction of the shops in question was not possible and in case partial eviction was made, their need for the shops in question would not be satisfied and furthermore, in reply, there was no statement from the side of defendant-appellant and similarly, the learned First Appellate Court has also come to the conclusion that though division of the shops in question could be made, but, looking to the size of the shops in question and that need of the plaintiff- respondent for the shops in question was found reasonable and bonafide one and if division of the shops in question was made, that would not satisfy the need of the plaintiff-respondent and in case decree for eviction was not passed, greater hardship would be caused to the plaintiff respondent in comparison to the defendant-appellant, the learned First Appellate Court came to the conclusion that partial eviction was not possible and thus, it also decided issue No. 7 in favour of the plaintiff respondent.

9. The question for consideration is whether the above findings of both the courts below on issue No. 7 pertaining to partial eviction can be said to be erroneous and perverse one as alleged by the learned counsel for the defendant-appellant or not.

10. Before proceeding further, legal position in respect of partial eviction as is found in Section 14 (2) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as 'the Act of 1950') has to be seen. For convenience, Section 14(2) of the Act of 1950 is quoted here:-

' 14. Restriction on eviction:-

(1).....

(2) No decree for eviction on the ground set forth in clause (h) of sub-section (1) of Section 13 shall be passed if the court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available to the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only.'

11. It maybe stated here that sub-section (2) and (3) of Section 14 of the Act of 1950 are concerned with the restrictions imposed on the ground mentioned is Section 13(1)(h) of the Act of 1950 i.e. reasonable bona fide requirement of the landlord.

12. Since there is a specific provision in Section 14(2) of the Act of 1950 for partial eviction in Rajasthan, therefore, if the Court is satisfied on the basis of balance of comparative hardship and evidence, a decree for partial eviction can be passed.

13. It may further be stated here that a decree for partial eviction can be refused if greater hardship would be caused to the plaintiff than to the tenant, in this case, issue No. 6 which relates to comparative hardship was decided by both courts below in favour of the plaintiff respondent holding that need of the plaintiff-respondent for the shops in question could be satisfied only if both shops in question were made available to her.

14. It may further be stated here that the provisions of Section 14(2) of the Act of 1950 are mandatory and it is for the court to consider whether partial eviction will meet the requirement of the landlord and for that, it is not necessary that the plea of partial eviction should be raised in the written statement. It can be raised for the first time before appellate court.

15. So far as the present case is concerned, it may be stated here that the plaintiff-respondent had categorically come with the plea in the plaint that in case partial eviction of the shops in question was done, their need would not be satisfied.

16. Similarly, the finding on question that no hardship would be caused either to the tenant or to the landlord, in respect of the part of the premises, is necessary before decreeing the suit for ejectment and in the present case, there is specific finding of both courts below on issue No. 6 which pertains to comparative hardship in favour of the plaintiff-respondent.

17. It may be stated here that the question of partial eviction is always based on the facts and circumstances of each individual case and no authority can be considered as a precedent or binding authority.

18. It may further be stated here that the question of partial eviction is not a pure question of law, but a question of fact. Since it is a question of fact, its adjudication requires necessary pleadings and evidence. Since the question of partial eviction is a statutory requirement as provided under Section 14(2) of the Act of 1950, therefore, if no issue was framed, defendant tenant cannot be precluded from raising this question. However, in the present case, as already stated above, pleadings are there and issue had already been framed.

19. Thus, if the above principles are applied to the facts of the present case, it can be said that there are concurrent findings of facts recorded by both the courts below on the point that though shops in question could be divided into two, as held by the learned First Appellate Court, but still division of the shops in question was not possible, as if the division was made, the need of the plaintiff respondent for the shops in question, which was found to be, bonafide and reasonable would not be satisfied. The learned First Appellate Court has discussed this aspect in detail and for that, it has also appointed Commissioner to observe the size of both shops in question and after elaborate discussion of the entire materials and evidence available on record, the learned First Appellate Court rejected the application of the defendant-appellate for remanding the matter on point of partial eviction as according to it, it would not serve any purpose as need of the plaintiff respondent for the shops in question was not only bona fide and reasonable, but greater hardship would be caused to the plaintiff respondent in case decree for eviction was not passed and furthermore, on point of partial eviction, it came to the conclusion that it was not possible looking to the size of the shops in question and bona fide and reasonable need of the plaintiff-respondent for the shops in question.

20. Not only this, when the defendant appellant Mohinuddin, DW 1 has himself admitted in his cross examination that in case there was division of the shops in question, his need would not be satisfied meaning thereby case of partial eviction

comes to an end automatically from 'the statement of appellant-defendant himself. From this point of view also, if the case of partial eviction was not found proved by the court below, it cannot be said that they have committed any error on facts as well as on law.

21. Thus, it cannot be said that the concurrent findings of facts recorded by both the courts below on issues No. 5,6, and 7 including partial eviction are erroneous or perverse or based on no evidence or are in disregard of evidence and it also cannot be said that both courts below have wrongly discarded the legal evidence or have based their judgments on mere surmises and conjectures.

22. For the reasons stated above, no interference is called for with the concurrent findings of facts recorded by both the courts below as they are based on correct appreciation of materials and evidence available on record and they do not suffer from any basic infirmity or illegality and further, no substantial question of law arises in this second appeal to disturb the concurrent findings of facts recorded by both the courts below and thus, the same is liable to be dismissed.

Accordingly, this second appeal filed by the appellant- defendant is dismissed. However, the appellant-defendant is granted six months' time from today to vacate the shops in question.

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