

Jaharuddin Vs. Mohammed Lukman

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Court : Rajasthan

Decided On : Dec-09-1992

Reported in : 1993(1)WLC381; 1992(2)WLN516

Judge : Mipal Chandra Jain, J.

Appeal No. : S.B. Civil Second Appeal No. 145 of 1992

Appellant : Jaharuddin

Respondent : Mohammed Lukman

Judgement :

Mipal Chandra Jain, J.

1. This second appeal has been filed by the defendant against the judgment of the learned Additional District Judge No. 2, Jodhpur dated November 18, 1992 by which he has dismissed the appeal filed against the judgment dated March 10, 1992 of the learned Munsiff, Jodhpur city, decreeing the suit against him for his ejection.

2. The plaintiff-respondent filed a suit for ejection against the defendant on the ground of reasonable and bonafide necessity of the suit shop for the business of his son Mohammed Sadique. After framing necessary issues and recording the evidence of the parties, the learned Munsiff, Jodhpur City decreed the suit and the

appeal filed against it by the defendant/appellant was dismissed as said above.

3. It has been contended by the learned Counsel for the defendant-appellant that the nature of the business which is to be started by the plaintiff's Son Mohammed Sadique in the suit shop was not pleaded in the plaint and this fact alone is sufficient to show that the need set up is not genuine and reasonable. He further contended that the reply to the application moved under Order VI Rule 5, C.P.C. for further and better particulars on this point was not verified as required under Order VI Rule 15, C.P.C. and as such the learned lower Courts seriously erred to take it into consideration.

4. There is no force in these contentions. On the application of the defendant-appellant moved under Order VI Rule 5, C.P.C, the plaintiff-respondent admittedly disclosed that the suit shop is required for his son for starting his business of electric goods, T.V., V.C.R., etc. Order VI Rule 15, C.P.C. requires verification of pleadings only. According to Order VI Rule, 1 CPC, pleading means plaint or written statement. As such the reply containing further and better particulars furnished in compliance with the order passed under Order VI Rule S, C.P.C. did not require verification under Order VI Rule 15, C.P.C. Rule 34, General Rules (Civil), 1986 is also not applicable to such a reply. It may also be mentioned here that the reply containing further and better particulars was duly supported by an affidavit of the plaintiff-respondent. The learned lower Courts did not commit any error or illegality in taking into consideration the said reply. Admittedly, in the reply it is specifically disclosed that the suit shop is required by Mohammed Sadique for starting business of electric goods, T.V., V.C.R., etc.

5. It was next contended by the learned Counsel for the defendant-appellant that the learned lower Courts seriously erred to hold that the plaintiff's need for the suit shop for his son Mohammed Sadique is reasonable and bonafide in the absence of the Statement of Mohammed Sadique himself and an adverse inference should have been drawn by them on account of his non-appearance in the witness-box as he was the most material witness. He relied upon *Nanalal Goverdhan Lai v. Smt. Samrath Bai* : AIR1981 Bom1 . There is also no force in this contention. It is not in dispute that Mohammed Sadique is (he son and a member of the plaintiff's family.

Section 13(1)(h), Rajasthan Premises (Control of Rent & Eviction) Act, 1950 requires that a suit for ejectment may be decreed if the suit premises are required reasonably and bonafide by the landlord for the use or occupation of himself or his family. It would be too much to say that the reasonable and bonafide necessity could be proved by the production of Mohammed Sadique only. Evidence Act does not require that a fact can be proved by a particular witness. Moreover, it has been held in *Moda Munchi Ramappa v. Mulha Umru Bhalappa* AIR 1963, that sufficiency or adequacy of evidence to support a finding of fact cannot be a ground for interference in second appeal. In *Nana Lal v. Smt. Samrath Bai* : AIR1981 Bom1 , the plaintiff himself did not appeared in the witness-box. Such is not the case here. The plaintiff Mohammed Lukman has appeared as P.W. 1.

6. It was next contended by learned Counsel for the defendant-appellant that the learned lower Courts have not properly appreciated the evidence on record and findings recorded on the reasonable and bonafide necessity in favour of the plaintiff-respondent are not correct. There is no force in these contentions also. It has been held in *State of U.P. v. Ram Chandra* : (1977)ILLJ200SC , that even gross error cannot be upset in second appeal, it has been held in *Mithulal v. Radhelal* : [1975]1SCR127 , that findings on the point of reasonable and bonafide necessity are findings of fact and cannot be interfered in second appeal Reference of *Bhairav Chand Nardas v. Ranadhiv Chand Dutta* : AIR 1988 SC396 and *Pal Singh v. Surendra Singh* : [1989]1SCR67 may also be made here.

7. It was lastly contended by learned Counsel for the defendant-appellant that the defendant-appellant may be given two years' time for vacating the suit shop as in these days it is very difficult to get a shop on rent and his well-established business would be ruined if he is forced to vacate the suit shop within a short time. The judgment of the trial Court shows that the suit was filed in the year 1988 and it was decreed on 10.03.92. The appeal was decided on 18.11.92. This early disposal of the suit and appeal could be possible only due to the cooperation of the learned Counsel for the defendant-appellant, Shri R.K. Thanvi, Advocate. No useful purpose would be served in issuing notice to the plaintiff-respondent for this purpose. This request of the learned Counsel for the defendant-appellant deserves to be accepted.

8. Consequently, the appeal is summarily dismissed. The defendant-appellant is given time upto December 31, 1994 for vacating the suit shop and for giving its actual and physical possession to the plaintiff-respondent provided within two months from today he remits by Money Order the entire amount of mesne profits upto December 31, 1994 and costs of both the lower courts and furnishes an usual undertaking to the effect that he would not part with the possession of the suit shop during this period.

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