

M.C. Sindhi Vs. Hemndass

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Court : Rajasthan

Decided On : Feb-13-1995

Reported in : 1995(2)WLC126; 1995(1)WLN388

Judge : R.S. Kejriwal, J.

Appeal No. : S.B. Civil Second Appeal No. 420 of 1994

Appellant : M.C. Sindhi

Respondent : Hemndass

Disposition : Appeal dismissed

Judgement :

R.S. Kejriwal, J.

1. The suit for eviction on the ground of personal bonafide and reasonable necessity of the disputed shop has been decreed by the learned Additional District Judges No. 3, Kota, vide his judgment and decree dated 28.10.1994. This decree has been challenged in this Second Appeal. The only submission of the counsel for the appellant is that question of partial eviction was not decided by the lower courts. Under these circumstances the case be remitted to the lower court by framing additional issues, regarding partial eviction. In Support of his arguments, counsel for the appellant placed reliance on a judgment of Apex Court passed in

Krishna Murari Prasad v. Mitar Singh reported in : AIR 1994 SC489 .

2. Counsel for the plaintiff respondent submits that the aforesaid judgment is not applicable to the facts of the present case. The said judgment was delivered under the Bihar Building (Lease, Rent and Eviction) Control Act (1982), herein after referred to as the ('Bihar -Act'). The phraseology under the Rajasthan Act and Bihar Act is different. Further more the High Court in the aforesaid case of Kirshna Murari (Supra), rejected the plea of partial eviction on the ground that the premises consists of one shop which can not be divided. Under these circumstances the Apex Court allowed the appeal of the tenant and directed the trial court to examine the matter in the light of the requirement of proviso to clause (c) of sub-section (1) of S. 11 of the Bihar Act. he submits that in the present case the dimension of the disputed shop is 10 x 10 and in case it is divided into two portions the plaintiff respondent would suffer hardship. He can not do his business of 'Cut Piece¹ in a shop of 5 x 10'.

3. I have heard counsel for the parties and gone through the aforesaid judgment of the Apex Court.

4. The proviso to clause (c) of sub-section (1) of Section 11 of the Bihar Act lays down that where the court thinks that the landlord's reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only and allowing the tenant to continue the occupation of the rest of the premises and the tenant agrees to such occupation, the Court shall pass a decree accordingly. Whereas, Sub-para 2 of Sub- section (2) of Section 14 of the Rajasthan Act provides that 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. In the present case, the size of the shop is only 10' x 10' and in case the said shop is divided in two parts, it would cause hardship to the plaintiff-respondent. It would be difficult for him to carry on the business of 'Cut-piece' in a shop measuring 5' X 10'. Under these circumstances, I am satisfied that in case the decree of partial eviction is passed, it. would cause hardship to the plaintiff.

5. No other point has been argued by counsel for the appellant.

6. No substantial question of law is involved in this appeal and as such the same is dismissed with no order as to costs.

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