

Smt. Mohni Devi Vs. Ghanshyam Das

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Court : Rajasthan

Decided On : Nov-30-1998

Reported in : 1999WLC(Raj)UC211; 1999(1)WLN221

Judge : D.C. Dalela, J.

Appeal No. : SB Civil Second Appeal No. 119/98

Appellant : Smt. Mohni Devi

Respondent : Ghanshyam Das

Disposition : Appeal dismissed

Judgement :

D.C. Dalela, J.

1. Heard.

2. The plaintiff-respondent filed a suit for eviction, relating to the suit-shop, against the defendant-appellants on the ground of default in payment of rent and personal & bonafide necessity. The learned trial court decided the issue of default against the plaintiff, but decreed the suit for eviction, on the ground of personal & bona fide necessity of the plaintiff. The matter was carried in appeal. The learned first appellate court dismissed the appeal and upheld the decree of the learned trial court. Feeling aggrieved thereby this second appeal has been preferred by the

defendant-appellants.

3. Both the courts below after appreciating the evidence 61 material on record, have decided the issue regarding personal & bonafide necessity in favour of the plaintiff. There is concurrent finding of both the courts below that there is personal & bona fide requirement of the suit-premises by the landlord-plaintiff-respondent. The question relating to personal & bona fide requirement of the plaintiff does not give rise to any substantial question of law. In the case of Ram Prasad Rajak v. Nand Kumar & Bros and Anr. : AIR 1998 SC2730 . Hon'ble The Supreme Court has held that bonajide requirement of the appellant does not give rise to any substantial question of law. In the case of Sheel Chand v. Prakash Chand : AIR 1998 SC3063 the question, formulated as to whether the finding relating to bona fide requirement of landlord of the courts below is vitiated due to irrelevant consideration and not under law has been held by Hon'ble The Supreme Court to be 'not even a question of law let alone a substantial question of law.'

4. It is well-settled in law that under Section 100, CPC, a finding of fact of the lower appellate court cannot be reversed on facts merely because another view is possible. No interference with the finding of fact, can be effected on the ground of erroneous appreciation of evidence by the courts below. In this connection the decisions of Hon'ble The Supreme Court, reported in : [1998]3SCR1183 & : (1995)6SCC580 may be referred to.

5. In my opinion, the concurrent finding of both the courts below, regarding the bona fide requirement of the suit-premises by the plaintiff-respondent, does not call for any interference because the findings of facts recorded by the two courts below are based on appreciation of evidence, and there is no prosperity of illegality therein.

6. The learned Counsel for the appellants, pointed out that before the learned first appellate court, the defendant- appellants moved an application under Order 41, Rule 27, CPC, which was not decided by the learned first appellate court and as such, the decision of the learned first appellate court, is vitiated on this ground alone. But a perusal of the file of the learned first appellate court, shows that on 09.8.97, the appellants moved an application under Order 41, Rule 27, CPC, to

which, the respondent stated that he has no objection. Thereafter, the learned first appellate court recorded that the cards which were sought to be produced on record would be taken into consideration, while deciding the appeal. Thus, from the proceedings dated 09.8.97, it is clear that the learned first appellate court had decided and allowed the appellants' application under Order 41, Rule 27, CPC. Therefore, the argument of the learned Counsel for the appellants that the learned first appellate court did not decide the application of the appellants, under Order 41, Rule 27, CPC, is not tenable.

7. The cards which were sought to be produced on record by the application under Order 41, Rule 27, CPC, are the marriage invitation cards in which, Mrs. & Mr. Radhey Shyam Sonkhiya have issued the invitation in connection with the marriage of their grand daughter and grandson, who are the children of plaintiff-respondent Ghanshyam. In these cards, the names of certain firms have been mentioned. The learned Counsel for the appellants, contends that this goes to show that the plaintiff-respondent has got other firms and establishments and that therefore, his requirement of the suit-premises, cannot be bona fide, But, the contention of the learned Counsel for the appellants, is not tenable at all because the firms or establishments mentioned in the invitation cards, as belonging to the plaintiff- respondent is not proved merely on the basis of the invitation cards in question, because the invitation cards have been issued by the father of the plaintiff-respondent. In my opinion the marriage invitation cards are of no consequence so far as the bonafide & personal requirement of the plaintiff-respondent, is concerned. Both the courts below, after due appreciation of evidence and material on record have given concurrent finding that there is personal & bona fide requirement of the suit-premises by the plaintiff-respondent, and this concurrent finding of fact does not call for any interference, merely on the basis of marriage invitation cards.

8. Upon consideration of the submissions, made by both the sides at Bar, I find no substantial question of law, emerging in this second appeal and it is, therefore, dismissed.

9. The learned Counsel for the defendant-appellants has in the end sought reasonable time to vacate the suit-premises. I think that the ends of justice would be met in the case, if six months time is given to the defendant-appellants to vacate the suit- premises. Accordingly, it is directed that the defendant- appellants shall vacate the suit-premises and hand its vacant possession over to the plaintiff-respondent, within six months from today, subject to furnishing of the usual undertaking by the appellants, before the trial court within two weeks.

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