

Ravi Kumar Vs. Gauri Shankar and ors.

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Court : Rajasthan

Decided On : Nov-14-2005

Reported in : RLW2006(1)Raj327; 2006(1)WLC142

Judge : Shiv Kumar Sharma, J.

Acts : Code of Civil Procedure (CPC) - Sections 100 and 100(5)

Appeal No. : S.B. Civil Second Appeal No. 96 of 1992

Appellant : Ravi Kumar

Respondent : Gauri Shankar and ors.

Advocate for Def. : S.R. Surana, Adv.

Advocate for Pet/Ap. : J.P. Goyal, adv.

Disposition : Appeal dismissed

Judgement :

Shiv Kumar Sharma, J.

1. Suit for eviction instituted by respondent landlord for short 'landlord' in regard to shop in question on the ground of reasonable and bonafide necessity was dismissed by learned Additional Civil Judge No. 2 Jr.Div. Jaipur City. Learned Additional District Judge No. 6, Jaipur city, however allowed the appeal of the

landlord and reversed the findings of learned Additional Civil Judge. It was held that requirement of the landlord was reasonable and bonafide. Against the decree and judgment of learned first appellate court that the instant second appeal has been preferred by the tenant.

2. At the time of admission of appeal following substantial question of law was formulated by this Court:

Whether the finding of fact recorded by the learned first appellate court, without discussing the evidence in the respect that the appellant requires the property in dispute for bonafide purpose is perverse?

3. Having heard the rival submission and on scanning the impugned judgment I noticed that evidence adduced by the landlord in regard to reasonable and bonafide necessity and comparative hardship was considered elaborately by the learned first appellate court. After discussing the evidence learned first appellate court came to the conclusion that tenanted shop was required by landlord for the purpose of running Kirana business. It was also observed that the tenant who carries motor-part business in the shop was allotted land in Transport Nagar Jaipur. Point in regard to partial eviction of the shop was also considered in para 17 of the judgment by the learned first appellate court. I do not find any perversity in the impugned judgment of the learned first appellate court. In *Kondiba Dagadu Kadam v. Savitribai Sopan Gurjar* 1993 SCC 722 : RLW 20001 SC 89, the Hon'ble Supreme Court indicated thus:

It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so.

In the instant case learned first appellate court has given satisfactory reasons in placing reliance on the witnesses examined by the landlord, I do not deem it

appropriate to investigate the grounds on which the findings were arrived at.

4. Even though substantial question in regard to partial eviction was not formulated at the time of admission of instant appeal, I permitted learned Counsel for the tenant to raise the question in view of the proviso appended to Sub-section 5 of Section 100 CPC. In *Santosh Hazari v. Purshottam Tiwari* : [2001]251ITR84(SC) , it was held that the power of High Court to hear an appeal on any other substantial question of law, not formulated by it, is not taken away, subject to the term conditions being satisfied i the High Court feels satisfied that the case involves such question and ii the High Court records for its satisfaction. In the facts and circumstances of the case, I am satisfied that following substantial question of law also arises:

Whether need of the landlord is satisfied if decree of partial eviction of the shop in question is passed?

5. I have heard learned Counsel for the tenant on this question and gave proper opportunity to learned Counsel for the landlord to meet the point.

6. In order to adjudge whether partial eviction would meet the ends of justice, I have no consider that if the tenant is dislodged from only a part of the shop, would if satisfy the proved requirement of the landlord. A look at the material on record demonstrates that neither the point in regard to partial eviction was raised in pleadings no evidence was adduced. Notwithstanding learned first appellate court casually considered this point in para 17 of the judgment.

7. The principles in regard to partial eviction of the tenanted premises has been laid down by their Lordships of the Supreme Court in *Badri Narayan Chunilal Bhutada v. Govindram Ramgopal Mundada* : [2003]1SCR329 thus:

It is expected of the parties to raise necessary pleadings and the court to frame an issue based on the pleadings so as to enable parties to adduce evidence and bring on record such relevant material as would enable the court forming an opinion on the issue as to comparative hardship and consistently with such finding whether a partial eviction would meet the ends of justice. Even if no issue has

been framed, the court may discharge its duty by taking into consideration such material as may be available on record.

8. Bearing this principle in mind, I scanned the material on record but I did not find any material that could establish the point that the proved requirement of the landlord in respect of the tenant shop could be satisfied by dislodging the tenant from only a part of the shop. Learned Counsel for the tenant prayed for time to file affidavits to show that partial eviction of shop would meet the needs of justice, but I find myself unable to accede this request in view of the fact that the instant appeal is pending for the last 13 years. Even otherwise learned Counsel could not explain the laches on the part of the tenant in not bringing the required material during the period of 13 years. In view of the fact that the suit was instituted by the landlord way back in 1985 and the tenant has been in possession of the shop after paying use and occupation charges in the sum of Rs. 120/- one hundred and twenty per month only. I do not feel inclined to grant further time to the tenant to vacate the shop.

9. For these reasons, the appeal being devoid of merit stands dismissed and interim order passed during the pendency of appeal is vacated. These shall be no order as to costs.