

Bhag Chand Vs. Prameshwari Devi and ors.

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Court : Rajasthan

Decided On : Nov-02-2004

Reported in : RLW2005(2)Raj1224; 2005(1)WLC686

Judge : A.C. Goyal, J.

Appeal No. : S.B. Civil Second Appeal No. 460 of 2003

Appellant : Bhag Chand

Respondent : Prameshwari Devi and ors.

Advocate for Def. : K.C. Gupta and; Rinesh Gupta, Advs. for Respondent Nos. 1 to 6

Advocate for Pet/Ap. : M.M. Ranjan, Adv.

Disposition : Appeal dismissed

Judgement :

A.C. Goyal, J.

1. This is the second appeal by the appellant- defendant No. 2 Bhagchand against the judgment and decree dated 20.5.2003 whereby learned Additional District Judge No. 4, Kota affirmed the judgment and decree of eviction dated 23.12.1999 passed by the learned Civil Judge (Junior Division), Kota City (South) Kota.

2. The original landlord Shri Kotumal filed a civil suit in the year 1988 against the two defendants Manoharlal (respondent No. 7 in this appeal) and Bhagchand (appellant) with the averments that the suit shop was let out to the defendant No. 1 Manoharlal on monthly rent of Rs. 300/-. Eviction was sought on the grounds of sub-letting of the shop to the defendant No. 2 Bhagchand, and reasonable and bonafide requirement for plaintiff's son. The defendant No. 1 vide written statement came out with a case that the suit shop was let out to M/s. Manohar Sales Corporation, which was a partnership firm and the defendant No. 1 was one of the partners. Both the grounds of eviction were denied. Similar is the written statement of the defendant No. 2. Thereafter, amended pleadings were also filed.

3. Issues were framed. Evidence was recorded. Learned Civil Judge vide judgment dated 23.12.1999 held that defendant No. 1 is the tenant; that the plaintiff has proved both the grounds of eviction and thus decreed the suit for eviction.

4. The defendant No. 2 Bhagchand filed first appeal. During the pendency of the first appeal the plaintiff-landlord-respondent No. 1, died, hence his legal representatives were brought on record. Learned Additional District Judge, No. 4, Kota vide impugned judgment dated 20.5.2003 having affirmed the findings of the Trial Court on all the issues dismissed this appeal. Hence, this second appeal by the defendant No. 2 Shri Bhagchand.

5. This court framed following substantial question of law;-

' (1) Whether the findings of both the courts below regarding tenancy and sub-letting are perverse?'

6. I have heard learned counsel for the parties. It was contended by Shri Ranjan learned counsel for the appellant that the defendant No. 1 vide reply of notice Exhibit-2 informed the plaintiff that Manohar Sales Corporation is the 'tenant'; that on the basis of Exhibit-A1 and Exhibit-A2 both rent receipts it is clear that Manohar Sales Corporation was the tenant; that Manoharlal and Smt. Sulochana-wife of defendant No. 2 Bhagchand were partners of the firm and Bhagchand carried on business in the suit shop on behalf of his wife; that no suit for eviction was filed

against Manohar Sales Corporation, hence the suit in the present form was not maintainable; that no case of sub-letting is made out on the ground that Bhagchand-husband of one partner Smt. Sulochana is doing business in the suit shop. Reliance is placed upon M/s. Asha Iron Traders v. Ahmed Bhai, RLR 1987(11) 703. Per contra, Mr. Gupta learned counsel appearing for the respondents contended that there is no ground to interfere with- the concurrent findings of the facts arrived at by the two courts below; that suit shop was let out to the defendant No. 1 who subsequently formed a partnership firm consisting of himself and Smt. Sulochana as partners and according to the statement of the defendant Bhagchand himself both the partners are not doing any business in the suit shop and it is the defendant No. 2 Bhagchand who is doing business; that no accounts or any other document to prove the statement of the defendant Bhagchand have been produced; that no objection of non-joinder of Manohar Sales Corporation was taken in the written statements and no firm exists.

7. I have considered the rival submissions. It is settled law that the High Court in second appeal cannot reappreciate the evidence and interfere with the findings of fact reached by the courts below. The lower appellate court is final in so far as findings of facts are concerned. The only limited ground on which the High Court can interfere in second appeal is that the decision of the lower appellate court is contrary to law. If the finding recorded by the courts below is one of law or a mixed law and fact, the High Court can certainly examine its correctness, but if it is purely on the fact, the jurisdiction of the High Court would be barred unless it is shown that there was an error of law in arriving such finding or that it was based on no evidence at all or was arbitrary, unreasonable or perverse. The finding of fact can be said to be perverse if the same is based on no evidence or based on misreading, wrong reading or non-reading of material evidence on record. The question therefore, arises for consideration is as to whether the findings of the two courts below regarding the relationship of landlord and tenant and sub-letting are perverse

8. It is the case of the plaintiff-landlord that suit shop was given on rent to the defendant Manoharlal who later on formed a partnership firm in the name of Manohar Sales Corporation and thereafter he handed over the possession of the

suit shop to the defendant No. 2 Bhagchand without the permission of the plaintiff. Both the defendants vide their separate written statements, while denying the plea of sub-letting pleaded that the shop was let out to Manohar Sales Corporation which was a partnership firm and the defendant No. 1 Manoharlal was one of the partners. P.W.1, the original landlord Kotumal, in his statement deposed that it was the defendant Manoharlal who was the tenant and not Manohar Sales Corporation, subsequently he formed this partnership firm and the defendant No. 2 Bhagchand was never a partner in the said firm. P.W.2 Ramlal an employee of the plaintiff, P.W.3 Laxmandas son of the plaintiff and for whose requirement the eviction was sought and P.W.4 Devendra Singh supported the oral testimony of the plaintiff Kotumal. According to the statement of D.W.1 Bhagchand, Manpharlal and Smt. Sulochana Devi (wife of D.W.1 Bhagchand) were the partners in M/s. Manohar Sales Corporation and he is carrying on business in the suit shop on behalf of his wife. It was admitted by him that the defendant Manoharlal has no concern with the suit shop and business. It is significant to observe that in both the written statements no such facts were pleaded that Smt. Sulochana was also a partner in the said firm, that the defendant No. 2 Bhagchand is carrying on business on behalf of his wife Sulochana. Rather names of other partners were not disclosed in the written statements. The two courts below having considered the material evidence on record rightly held that the suit shop was let out to the defendant No. 1. It was not in dispute that before filing the present suit, the defendant No. 1 had no concern with the suit shop and the business being carried out in the said shop. It is also not disputed that the defendant No. 2 was carrying on the business in the suit shop before filing the present suit for eviction, it is also significant to say that on suggestion given to defendant Bhagchand in his cross-examination, he pleaded ignorance that firm Manohar Sales Corporation was formed after taking the suit shop on rent. No accounts of the partnership firm and no document of any partnership were produced. Neither the defendant No. 1 Manoharlal appeared in the witness box nor the defendant No. 2 Bhagchand examined his wife Smt. Sulochana. Mere rent receipts in the name of Manohar Sales Corporation were not sufficient to hold that Manohar Sales Corporation was the tenant and the conclusion of the two courts below with regard to rent receipts is justified. Even assuming for the sake of arguments that the suit shop was given

on rent to firm Manohar Sales Corporation, both the partners were not in possession of the suit shop and had no control over the business being carried out in this shop at the time of filing the present suit. The judgment of this court delivered in M/s. Asha Iron Traders's case (supra), is not applicable in the instant case as it was held that when the shop was let out to the firm and not to any partner in his personal capacity and if one partner retired from the firm, as such new partners became tenants of the premises and it does not amount to sub-letting. In the instant case no such case has been made out on behalf of the defendants and further both the partners of the firm stand retired and there is no such plea in the written statements that the defendant No. 2 Bhagchand is carrying on business on behalf of one of the partners Smt. Sulochana. No such case is made out that the findings of both the courts below regarding tenancy and sub-letting are based upon no evidence at all or based on misreading, wrong reading or non-reading of material evidence. Thus, this question is decided accordingly against the appellant.

9. Learned counsel for the appellant made one more submission that findings on the issues of reasonable and bonafide requirement and comparative hardship also are perverse as the two courts below did not consider the evidence in a proper manner. On behalf of the respondents it was argued that findings on these issues are concurrent and there is no reason to set aside the same. I have considered the above submissions. As observed hereinabove, such a concurrent finding of fact can be interfered with by the High Court in second appeal only when such findings are perverse. Finding on the question of bonafide requirement of the landlord is an finding of fact. In the instant case, this finding is concurrent and the same is based upon proper appreciation of material evidence on record, hence, the High Court cannot interfere in the second appeal. Thus, in view of the entire discussion made hereinabove this appeal is liable to be dismissed.

10. Consequently, this second appeal is hereby dismissed.