

Niranjanlal Vs. Madan Mohan

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Court : Rajasthan

Decided On : May-22-2000

Reported in : 2000(4)WLC85; 2001(1)WLN510

Judge : Arun Madan, J.

Appeal No. : S.B. Civil Revision Petition No. 1604 of 1998

Appellant : Niranjanlal

Respondent : Madan Mohan

Advocate for Pet/Ap. : Shri. Gopi Chand Garg, Shri. D.D. Patodia

Disposition : Petition allowed

Judgement :

Arun Madan, J.

1. This revision petition arises out of order dated 7.11.1998 of the Additional Civil Judge (JD) Alwar whereby the petitioner's (defendant's) application under Order 6 Rule 17 CPC seeking amendment in written statement was declined.

2. The respondent (plaintiff) filed a suit seeking eviction of the defendant from the rented premises on the grounds of:- (a) default in payment of rent & (b) subletting. The description of the suit shop as given in para 1 of the plaint is exactly the same

as described in the rent note dated 12.7.1969 executed between the landlord and tenant. The defendant in para 1 of written statement admitted that he had taken the suit shop with Verandah in front of it on rent and that he had executed the rent note dated 12.7.1969. Admittedly there is no dispute as regards the rented shop. The dispute appears to have been confined only to the question as regards the change allegedly made in nature of the rented premises by the plaintiff in the verandah in front of a stair case & 'gali', which according to the defendant is a part of the rented premises but as per the plaintiff was not let out to the defendant. The case of the plaintiff is that since it was not a part of the rented premises as described in the rent note dated 12.7.1969 executed between the parties and hence he has every right to bring forth any change whatsoever at his discretion being the landlord. This fact has been vehemently disputed by the defendant on the ground that the verandah in front of the stair case is a part of the rented premises and during the pendency of the suit, the landlord (plaintiff) by taking law into his hands has constructed a brick wall (Pardi) resulting in blocking the way to stairs and 'gali' which was 'shamlati' (commonly used) before the change allegedly made by the landlord.

3. Shri Gopi Chand Garg learned Counsel for the petitioner contended that the trial Court has misread and misconstrued the description of the rented premises by observing in the impugned order that by way of the amendment, the defendant has sought demolition of the aforesaid construction which had been allegedly raised by the plaintiff respondent during the pendency of eviction proceedings which cannot be permitted in the interest of justice since that would amount to the change in the nature of the suit which is for eviction of the tenant on the aforesaid grounds under the Rajasthan Premises (Control of Rent & Eviction) Act, 1950, and on this ground alone, the defendant's application seeking amendment in written statement has been rejected by the trial Court. Shri Garg, however, while refuting the aforesaid finding recorded on the trial Court, has contended that the permission sought by way of aforesaid amendment would not in any manner result in change as regards the nature of the suit nor it would alter the cause of action of the plaintiff since the plaintiff had unauthorisedly carried out the aforesaid changes in the suit premises having a direct bearing on the tenancy. He relied upon the decisions in (1) N.K. Jain v. Kanhaiyalal 1990 (1) RLR 41, & (2) Niyajuddin v. Jugal Kishore 1995 (1)

4. The trial Court has further observed that the suit has been pending since 27.5.1997 for defendant's evidence and several chances have been given to conclude the defendant's evidence and at this stage the application for amendment was moved before it resulting in delay of the proceedings.

5. Shri D.D. Patodia learned Counsel for the plaintiff respondent contended that in whatever manner the defendant seeks to amend the written statement as regards the dispute raised by him for the alleged construction made by the plaintiff during the pendency of the suit have already been pleaded by the defendant in his written statement by raising his objections and by way of the impugned amendment, the defendant in fact seeks to make counter claim and pray for mandatory injunction for demolition of the construction inasmuch as the construction which had been made over the premises by the plaintiff was already in existence though made prior to the filing of the written statement and hence the amendment is not necessary. He has further contended that the premises where the construction was allegedly made by the plaintiff was not at all let out to the defendant and, therefore, the alleged construction would neither alter nor affect the character of the proceedings which are under the Rent Control Law and cannot be allowed by way of the impugned amendment as it would result in miscarriage of justice. Shri Patodia also contended that for the prayer made in the amendment application the defendant had already moved an application under Section 12 of the Rent Control Act before the A.D.M. who had dismissed the same for non-prosecution, against which an appeal was preferred to the appellate authority which in turn allowed the appeal and remanded the matter for adjudication afresh in accordance with law, which is pending.

6. I have heard the learned Counsel for the parties and perused the copies of the plaint, written statement, rent note, application seeking amendment in written statement and its reply filed by the plaintiff etc. The defendant sought to add following paras to his written statement by way of amendment:

fd ;g fdd rjQ nf{k.k ds vc thuk fdjk;sukes ds vuqlkj ugh gS vkSj thuk dks jksddj vkxs
cjkenk es nhokj [kM+h djds cjkenk es jks'kunku] eksjh jksdrs gq, ,d iq[rk nqdku

dk;e dh gS tks nkok nk;j djus ds ckn oknh us nqdku cjkenes es cukdj d`R; fd; gS A

5-d ;g fd izfroknh us f[kYkkQ dkuwu tcju izfroknh ds ikl fdjk;s'kqnk nqdku dk thuk jksddj thus ds lkeus cjenk nf{k.k Hkkx nqdku es ifjorZu dj fn;k gS vkSj oknh us nkSjku nkok gnwn vjck bl izdkj cny nh gS vkSj bl izdkj nqdku [kkyh djkus dk vf/kdkj ugh gS A nkok dkfcy [kkfjt g SA

5-[k ;g fd oknh us izfroknh dks fdjk;s'kqnk nqdku ds cjenk dk 150@& fdjk;k izklr dj ykHk izklr dj jgk gS ftlds fy, izfroknh dkm.Vj Dyse is'k djuk pkgrrk gS ftldh btktr nh tkos A pwafd oknh us nqdku ds ckgj cjkenes ds nf{k.k Hkkx dks nqdku cukdj cgknqj flag uke ds O;fDr dks 150@& :0 izfr ekgokj ij nh gS ftldsk 5&6 lky gks pqds gS blfy, oknh us tks fdjk;k cgknqj flag ls izklr fd;k Fkk A og izfroknh ds fdjk;s es ,Mt LV dj 'ks'k 75@& ekgokj izfroknh oknh ls izklr djus dk vf/kdkj gS tks fnyk;k tkos vkSj bl nqdku dks rqMok;k tkos rFkk fdjk;k nsrs le; tks cjkenes dh fLFkfr Fkh og dk;e djokbZ tkos A

16d ;g fd oknh us nkSjku nkok nqdku dh gn~nw vjck cnyh gS mldk nkok [kkfjt fd;k tkos A

16[k ;g fd oknh us izfroknh dks ekg ebZ 1995 ls nf{k.k Hkkx es fuekZ.k nqdku ds fdjk;s dh jde 150@& izfrekg ekgokj es ls 75@& ekfld izfroknh dks fdjk;k dkVdj fnykbZ tkos 'ks'k 75@& ekfld dh nj ls ekg ebZ 1995 ls rkQSlyk nkok ;k tc rd nqdku fookfnr dks oknh uk gVkos rc rd izfroknh dks fnyk;k tkos A

7. In original written statement in reply to the plaint, the defendant has pleaded in paras 1 and 2 at pages 3 & 4 as under:

vkSj fQj eq> izfroknh ds gdwd fdjk;snkjh o tk;nkn tjs fdjk;snkjh es uqdlku igaqpkrs gq, vkSj de djrs gq, rFkk cxSj uxj lq/kkj U;kl ,oa uxj ifj'kn vyoj dh dksbZ eatwjh fy;s rFkk ekuuh; vnkyr lkgc ds gqDe dh ijokg fd;s cxSj rFkk dkuwu dks viuh gkFk es ysrs gq, rkjh[k 23-3-1986 rsbl rhu fN;klh rd b ZV dh inhZ dh nhokj o vUnj dkjhj o etnwj yxkdj [kqn [kM+s gksdj cuok nh vkSj 'kVj Hkh rjQ iwoZ dks yxk fn;k gS vkSj bl izdkj vc gekjs fdjk;s'kqnk nqdku ds nf{k.k es ctk; is'k cjenk ds thuk o xyh 'kkeykrh gksus ds ctk; mDr nhokj gks xbZ gS rFkk xyh 'kkeykrh vkSj gekjh fdjk;s'kqnk nqdku ds chp es ,d ubZ nqdku cukdj ubZ vkenuh gekjs gh fdjk;s'kqnk

tnwg es ls mDr nhokj [kM+h djds o 'kVj yxkdj oknh iSnk djuk pkgrk gS vkSj bl izdkj gn~nw vckZ cny fn;k gS rFkk cjenk 5 xq.kk 10 QqV txg nf{k.k ?ksjdj gekjs dCts es etkger iSnk djds cStk dk;Zokgh dh gS ftlds fy, izfroknh us dk;Zokgh lkgc flVh eftLVsV egksn; vyoj ds U;k;ky; es nk;j dh ftldh vihy rk0 21-4-1986bDdhl pkj fN;klh dks Lohdkj gksdj fu.kZ; gsrq lkgc flVh eftLVsV vyoj ds tsjs rtchc gS A

2-;g fd pj.k la[k;k nks vthZnkok ftl izdkj c;ku fd;k x;k gS xyr gS Lohdkj ugh A fdjk;kukek rkjh[k 12-7-1969 12 tqykbZ 1969 dks mDr izdkj ls xSj dkuwuh gS vkSj fipsgRrj :i;k ,Dlflo gS rFkk nhokj 'kVj oxSjk dks gVk;k tkdj iwoZor flfFkfr dk;e fd;k tkuk cxtZ bUlqQ t:jh g SA izfroknh us tSlS mij ntZ fd;k gS mlh iz;kstu ds fy, nqdku dke es ys jgs gS vkSj nqdku dks fdLh dks lcysV ugh fd;k gS vkSj izfroknh Loa; dkjksckj djrk gS

8. In order to appreciate the matter in its true perspective, the ratio of decisions as referred to by Shri Garg are herein briefly stated. In N.K. Jain's case (supra), the trial Court rejected application for amendment of written statement after considering merits of the case. This Court held that the trial court should not have gone into merits of case without allowing amendment application and accordingly the order of the trial Court was set aside in revision petition by observing that normally case should have been remanded but looking to the fact that eviction suit on ground of personal necessity is pending since more than five years amendment application was allowed in revision petition. In Niyazuddin v. Jugal Kishore (supra), the amendment in written statement was sought after closure of plaintiffs evidence. This Court observed that the amendment sought for was not such as to change nature of case nor otherwise barred under any statutory provision and therefore, the trial Court committed gross error in rejecting the same.

9. Having examined the ratio of aforesaid decisions (supra) and keeping in view the principles of law laid down in the decisions cited by Shri Garg and the averments made in original written statement referred to above so also the nature and character of proceedings pending in civil suit for the eviction under the Rent Control Law, but without expressing any final opinion on merits of case least it may prejudice rights of either of the parties to the case, I am of the considered view that interest of justice demands that out of the amendment sought for by the petitioner,

the following paras 5 (ka) and 16(ka) should be allowed to be added by way of amendment in written statement as that would neither prejudice the rights of parties in any way nor would it tantamount to any change as regards the nature and character of the eviction suit:

5d ;g fd izfroknh us f[kykQ dkuwu tcju izfroknh ds ikl fdjk;s'kqnk nqdku dh thuk jksddj thus ds lkeus cjenk ds nf{k.k Hkkx nqdku es ifjorZu dj fn;k gS vkSj oknh us nkSjku nkok gnwn vjck bl izdkj cny nh gS vkSj bl izdkj nqdku [kkyh djkus dk vf/kdkjh ugh gS Ankok dkfcys [kkfjt g SA

16d ;g fd oknh us nkSjku nkok nqdku dh gnwnk vjck cnyh gS mldk nkok [kkfjt fd;k tkos A

10. The relief as regards the amendment other than allowed by this Court (quoted above) is declined for the reason that counter claim in a suit for eviction pending between the parties under the Rent Control Law should not be permitted since that would not only prolong litigation but would also alter nature of the suit for eviction. As regards relief sought for demolition of construction alleged to have been raised by the plaintiff (landlord), it cannot be permitted in eviction proceedings as the same can be sought by way filing a suit for mandatory injunction for which the petitioner has alternative remedy available to him by having recourse to the same in accordance with law.

11. As a result of the above discussion, this revision petition is allowed. The impugned order dated 7.11.1998 of the trial Court is set aside. However, the amendment application of the defendant petitioner is allowed in part to the extent indicated above. As the eviction proceedings are pending since 1987 and are at the stage of defendant's evidence, the trial Court is directed to concluded the proceedings in eviction suit at the earliest but not later than six months from the receipt of the certified copy of this order. There would be no order as to costs.