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Hari Ram Vs. Hitesh Chandra

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Court : Rajasthan

Decided On : May-26-1992

Reported in : 1992(1)WLN379

Judge : N.K. Jain, J.

Appeal No. : S.B. Civil Regular Second Appeal No. 96 of 1989

Appellant : Hari Ram

Respondent : Hitesh Chandra

Advocate for Def. : Mr. Maheshwari

Advocate for Pet/Ap. : Mr. M.C. Bhoot, Mr. R.C. Maheshwari

Disposition : Appeal dismissed

Judgement :

N.K. Jain, J.

1. This is defendant's second appeal against the judgment and decree dt. 27.2.1989 passed by learned District Judge, Udaipur whereby he has reversed the judgment and decree dt. 17.12.86 passed by learned Munsif and Judicial Magistrate, 1st Class Udaipur (North) in civil original case No. 112/81.

2. Brief facts of the case are that the plaintiff respondent had filed a suit on 11.8.78 for eviction of the shop with the allegation that the suit shop situated in Juni Ret Ka Chowk, Udaipur (described in para 1 of the plaint) was let out to the defendant-appellant on 1.7.1973 at the rate of Rs. 100/- per month. It was alleged that he was carrying on his business in partnership but he wanted to start his own business in general merchandise and detergent washing powder in this shop. It was urged that he has another shop, which is on rent but the same is not appropriate for business as it is situated in street. It was further alleged that he has no other alternative suitable accommodation and thus his need for the shop is reasonable and bonafide. The plaintiff also claimed that the defendant has sublet the suit shop to one Hasanand. He has also claimed rent of 16 months. It was alleged that the defendant has alternative plot and has other suitable shop. The plaintiff has also alleged that on the ground of his personal necessity a notice also served for terminating the tenancy on 21.7.78 on the. defendant but neither he vacated the shop nor paid the rent rather a wrong reply was given by the defendant. The defendant resisted the suit. The defendant has stated that the shop was let out in 1957 @ Rs. 10/- thereafter the rent was increased from time to time. In the year 1968, the rent was increased to Rs. 55/-per month and then Rs. 100/- Per month. A new rent note was executed in the year 1973. Therefore, the suit is filed with oblique motive to increase the rent. It has also been stated that in earlier notice dt. 21.7.77, he claimed that the suit shop is required for his brother Jagdish Chandra but later on he changed the necessity for himself. It has also been stated that the defendant is already carrying on his business with his uncle. It was alleged that during the trial, plaintiff got one shop vacated from Sadhuram but the same was given to his own brother Dinesh Chandra in December, 1977. It was also stated that one shop of the plaintiff was with one Manmohan Kumavat, watch mechanic on rent @ Rs. 50/- which was later on increased. It was further alleged that Manmohan sat his relative Rakilal on the shop who joined hands with the plaintiff and the plaintiff gave the same shop to him on rent @ Rs. 150/- per month, in this regard on the basis of FIR filed by Manmohan, criminal cases are pending against the plaintiff and Rakilal. He has denied the claim of the plaint that rent is due and on refusal the rent was deposited in court Under Section 1 9A of the Rajasthan Premises [Control of Rent and Eviction) Act, 1 950. It was also alleged

that Hasanand is working from the beginning with the defendant. The defendant has urged that he has nothing to do with the shop of Shyamlal, which is closed for 15 years. On the pleadings of the parties, the learned trial court framed as many as six issues on 22.8.80. Necessary amendments in written statements were made on 30.8.82 and on 25.11.82. An additional issue No. 5A was framed on 20.9.82. The plaintiff has examined PW 1 Hitesh Chand, PW 2 Ratanlal, PW 3 Purshotamlal, PW 4 Bhanwarlal and the defendant has examined himself as DW 1, DW 2 Sadhuram, DW 3 Ramesh Chandra, DW 4 Lekhraj and DW 8 Shyamlal. Both the parties produced documents. The plaintiff moved an application under Order 13 Rule 2 CPC on 5.3.1981 for producing partnership deed [Ex.3) as their partnership deed was disolved w.e.f. 31.3.1986. Objections were made that the document (Ex.3) is same one. But the learned trial court allowed it on the cost of Rs. 50/- vide order dt. 4.1.1984. During the pendency, after closing the evidence, an application under Order 18 Rule 11A CPC was filed. This application was resisted by the defendant. The same has been allowed on 18.4.1 984 on the cost of Rs. 100/-. The petitioner has re-examined himself and also examined one Shri Bhanwar Singh, so the defendant moved an application on 20.3.85, for permission to lead evidence on rebuttal but the same was dismissed by learned Munsif and Judicial Magistrate vide order dt 1.4.85. The defendant again moved an application under Order 6 Rule 1 7 CPC on 3.8.85, for amendment in para 6 of the written statement to add a plea of standard rent but the same was dismissed on 6.9.85 on the cost of Rs. 25/-. The learned trial court after considering material on record dismissed the suit on 17.4.1986. On appeal, the learned Appellate Court allowed the appeal on the ground of reasonable and bonafide necessity and six months time was granted to vacate the premises on 27.2.89. Hence, this second appeal.

3. Mr. M.C. Bhoot, learned Counsel for the appellant has submitted that the learned Appellate Court has erred in reversing the finding of the learned trial court without considering the reasons given by the learned trial court. He has submitted that the learned Trial Court has erred in dismissing the two applications; application for amendment in written statement incorporating the plea of standard rent and not allowed to lead evidence in rebuttal particularly when he has allowed the plaintiff's application under Order 13 R. CPC and also permitted to lead

evidence under Order 18 Rule 17 CPC. He has further submitted that the learned court below has not considered the point of partial eviction. He has placed reliance on Keshulal v. Ram Dayal 10 ILR-1256 and Shiv Bhagwan Viday Shanker v. Jhakarmal and Ors. WLN(UC)-1981-121.

4. Mr. R.C. Maheshwari, learned Counsel for the plaintiff- respondent has submitted that it is absolutely wrong to say that the learned Appellate Court has not considered all the points in detail which were considered by the learned trial court. He has submitted that the learned Appellate Court has fully considered the material which was considered by the learned trial court and thereafter found reasonable and bonafide necessity as well as comparative hardship in favour of the plaintiff. He has also submitted that the court has rightly dismissed the application as they were not filed at appropriate time and filed after belated stage. Mr. Maheshwari has submitted that point of partial eviction was not argued nor it was possible in this case. Mr. Maheshwari, learned Counsel for the respondent has submitted that the conduct of the appellant is not of such a nature to grant him any relief. He has submitted that vide impugned judgment dt. 27.2.89, the appellant was granted six months time to vacate the premises. He filed appeal on 17.5.89 but kept pending in defect whereas the respondent filed first caveat on 7.3.89 and second caveat on 7.8.89. The case was listed in the court on 22.8.89 and it was ordered to be listed on 25.8.89 for final disposal. He has submitted that on this conduct also he is not entitled for any indulgence rather his entire conduct is abuse of the process of the court.

5. This appeal is pending admission since 17.5.89. As agreed by the counsel for the parties this case is finally heard. I have heard learned Counsel for the parties and perused the judgments and the relevant case law.

6. First of all I deal with the first objection raised by the learned Counsel for the appellant with regard to not allowing the amendments in written statement and not allowing the evidence in rebuttal by the learned trial court. It can be said at the very out set that this point was never argued before the first Appellate Court and it seems that he has waived it and now cannot be allowed to raise this point.

7. Mr. Bhoot has relied on Section 105 CPC, which reads as under:

105 Other orders- (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the cases, may be set forth as a ground of objection in the memorandum of appeal.

(2) No appeal shall like from any order passed in appeal under this section, party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

8. Section 105 CPC says that where the learned trial court has passed any order i.e. interlocutory order against which no appeal lie during the pendency of the appeal, the aggrieved party could have filed revision against such order. Both the applications were disposed of by detailed order on merits, but the party has not filed any revision etc. against the orders dt. 1.4.85 and 6.9.85. I have perused the judgment of first appellate court and do not find pressing on these points. As such now he cannot argue these points in second appeal as the provisions of Section 105 CPC do not apply in second appeal and the contention of Mr. Bhoot has no force and is rejected.

9. Now, I proceed to deal with the contentions on the merits of the case.

10. So far as the principle enunciated in the cases that mere desire is not enough, the element of need must be shown genuinely and proved and further there should be application of mind in deciding the issue, which should be determined by the objective test, has not been disputed.

11. It is also not disputed that the learned Appellate Court should not interfere with the findings arrived at by the learned Trial Court but the Appellate Court can reappreciate the evidence, if it is erroneous or misreading of evidence. To my mind it is also not necessary to repeat the evidence while considering each and every issue. What is required for the Appellate Court is to consider the record objectively while concurring orreversing the finding of the learned trial court. If the Appellate Court proceeded to reverse the finding of the trial court without paying attention to those material and vital aspect of the case which had to be considered

in determining the point at issue its decision is not in accordance with law and cannot be sustained in second appeal but where the Appellate Court finds it erroneous after considering material and evidence on record issue wise may reverse the finding of the trial court, if it thinks fit.

12. In the instant case, PW 1 Hitesh has stated that the disputed shop is needed for himself for business as the shop where he is sitting belongs to his uncle. He has also stated that he is doing business in partnership with his uncle and he expressed his desire to do business separately. The learned trial Court while considering issue No. 1 and 5A observed that as the plaintiff is doing business with his uncle in partnership and he has given the shop vacated by Sadhuram to his brother and thus there exists no reasonable and bonafide necessity in favour of the plaintiff. On the other hand, the learned Appellate Court has observed that the plaintiff cannot be made to do business with his uncle for the whole life and the defendant has no right to ask the respondent to continue business in partnership. As regards the shop vacated by Sadhuram is concerned, the learned Appellate Court has observed that it was not vacated as Sadhuram made default in paying the rent, But after eviction, the plaintiff gave the same to his brother cannot be made a ground on the basis of which it can be said that he has no bonafide necessity. On the contrary, the learned Appellate Court has also observed that if the defendant can give his shop to Hasanand, the alleged sister's son (nephew) then how can he check the plaintiff from giving the shop vacated by Sadhuram to his real brothers. In that suit the parties settled their dispute, further the suit was not for bonafide need of the plaintiff which is clear from Ex. A-11 and Ex.A 12 on record. Thus, it cannot be said that the learned Appellate Court has wrongly drawn the inference of that suit and the appellant cannot derive any benefit out of it, rather in this suit, the learned Appellate Court after considering evidence and material on record has come to the conclusion that the plaintiff has reasonable and bonafide necessity to get the shop vacated and set aside the findings recorded by the learned trial court on issue No. 1 and 5A. Under such circumstances, the learned Counsel for the appellant has not been able to make out a case from material and evidence on record which requires any interference in second appeal.

13. PW 1 Hitesh has stated that he will face greater hardship as the one shop given on rent is situated in 'Gali' and the other is situated at corner, so they are not appropriate for his business. He has also stated that the disputed shop is the only shop which is suitable for his business. The learned Appellate Court while considering issue No. 5 has observed that when issue No. 5A relating to reasonable and bonafide necessity is decided in favour' of the plaintiff, the former issue framed in regard to comparative hardship has to be decided in his favour, as undoubtedly the plaintiff is the owner of the suit shop and was doing business with his uncle in partnership which may come to an end at any time, in that situation he will face greater hardship in comparison to the defendant particularly when the defendant has not been able to establish that the plaintiff has another alternative suitable accommodation.

14. Of course, in a rent ejectment suit when a decree for ejectment is to be passed then every tenant will have to face hardships but that does not mean that ejectment decree should not be passed in any case. The Court has to consider and compare hardship of landlord and the tenant. In this case the appellate court found greater hardship in favour of the plaintiff. The matter would have been different if the Appellate Court without considering the material and vital aspect of the case which was considered by the trial court did not consider them all, in the instant case, as stated above, the learned Appellate Court was fully aware of this principle and considered the finding of the learned trial court objectively and not narrated the evidence in detail as suggested by the learned Counsel for the appellant but on this basis alone the findings arrived at by the learned Appellate Court cannot be said to be perverse.

15. So far as the contention of Mr. Bhoot regarding point of partial eviction is concerned, undoubtedly, it is incumbent upon the courts below to consider this point but in the instant case merely on the basis of statement of PW 1 Hitesh that disputed shop consists of two shops measuring of '5 x 5' each and particularly when there is no pleading or issue or evidence of the parties relating to the point of partial eviction and this point was not argued before the Appellate Court. Furthermore, the shop was initially given on rent in the order 1 957 as per the defendant, and the suit relates to eviction from a shop which cannot be partitioned

as it is a single shop measuring 10' 5 1/2 ft. as per statement of the plaintiff and there is no rebuttal. In view of Narsingh Das v. Jethmal RLR 1988(1) 656 the argument is not acceptable and further in view of Raj Kumar v. Mohar Chand RLR 1990(2) 731 and Brij Mohan v. Hangun Das S.B. Civil S. appeal No. 139/91 decided on 1 7.8.92, it cannot be said that in the present case the point of partial eviction will serve any purpose. On this Court also the learned Counsel for the appellant has not been able to make out a case.

16. As discussed above, it cannot be said that the learned first Appellate Court has erred in reversing the decision of the learned trial court.

No other point has been argued before me.

17. Under these circumstances, no substantial question of law arises in this appeal.

18. In view of the aforesaid discussion, I am of the view that this second appeal must be rejected. Hence, this second appeal is rejected with no order, as to costs.

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