

Narain Vs. Pratima Shantinathji

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Court : Rajasthan

Decided On : May-08-1985

Reported in : 1985WLN(UC)355

Judge : Guman Mal Lodha, J.

Appeal No. : S.B. Civil Second Appeal No. 480 of 1975

Appellant : Narain

Respondent : Pratima Shantinathji

Disposition : Appeal dismissed

Judgement :

Guman Mal Lodha, J.

1. This is a defendant's appeal against the judgment of Additional District Judge, Jhalawar.
2. The suit of the plaintiffs was based on default. According to the plaintiffs the defendant did not pay rent amounting to Rs. 27.50 and, therefore, ejectment was claimed. Notice was served on February 18, 1970. The defendant contested the suit.

3. The trial Court after recording the evidence dismissed the plaintiff's suit on the ground that tenancy was yearly and not monthly and the notice was invalid being not given in the name of the temple Shri Shantinathji.

4. The first appellate Court decreed the suit in favour of the plaintiff's reversing the finding of the trial court.

5. An application was made under Order 22, Rules 10 and 11 CPC by Mrs. Kamla Jain alleging that on August 16, 1975 the disputed shop has been purchased by the applicants Rakhabh Chand, Shanti Kumar and Ors. This application was filed before this Court on August 3, 1983 and my brother Justice Bhargava ordered that this application be decided at the time of final hearing of the case.

6. Mr. Purohit's objection is that the applicants, who are purchasers, cannot be joined as parties. However, according to Order 22, Rule 10 CPC in case of assignment during the pendency of the suit, the suit may be continued by or against the person who or upon whom such interest has come or devolved.

7. In the first appellate Court an objection was raised by the defendant that since there has been assignment, the suit should be dismissed. On October 10, 1975 this application was dismissed and the defendant's prayer was rejected on the basis of Order 22, Rule 10 CPC.

8. I am of the opinion that as provided by Order 22, Rule 10 CPC in case of assignment and such transfers pending the suit, the suit can be continued by or against the person who or upon whom such interest has come or devolved.

9. No provision to the contrary has been shown by Mr. Purohit on account of which the suit or appeal is liable to be dismissed on such a transfer.

10. Consequently the application under Order 22, Rule 10 CPC dated March 8, 1983 is accepted and applicants Rakhab Chand, Shanti Kumar, Mohan Singh, Bahadur Singh and Kamal Kumar are allowed to be treated as respondents in this appeal stepping in the shoes of the plaintiff from whom they have got the property.

11. Now coming to the merits of the first appellate Court has held that if a lease is not for agricultural or manufacturing purposes as laid down under Section 106 of the Transfer of Property Act, then it should be considered as lease from month to month. Again according to Section 107 of the Transfer of Property Act, a lease of immovable property from year to year can be made only by a registered instrument.

12. In view of the above, the lease in the present case was monthly only, as there is no document to the contrary and it has not been shown that the lease was for agricultural or manufacturing purposes.

13. In this view of matter the notice given by the plaintiff under Section 106 of the Transfer of Property Act was valid. From the judgment of the first appellate Court it appears that no other point was argued by either of parties and the decree for eviction was granted.

14. Obviously there is no error of law in judgment of the first appellate court and consequently the appeal is dismissed without any order as to costs.