

Bhagwati Devi Vs. Ramesh Chand Jitendra Kumar

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Court : Rajasthan

Decided On : Dec-11-2001

Reported in : 2002(2)WLC417; 2003(1)WLN506

Judge : N.P. Gupta, J.

Acts : Rajasthan Premises(Control of Rent and Eviction) Act, 1950 - Sections 13

Appeal No. : S.B. Civil Second Appeal No. 31 of 2001

Appellant : Bhagwati Devi

Respondent : Ramesh Chand Jitendra Kumar

Advocate for Pet/Ap. : Dinesh Maheshwari, Adv.

Disposition : Appeal dismissed

Judgement :

Gupta, J.

1. Heard learned counsel for the appellant.
2. Both the learned Courts below have dismissed the plaintiffs suit for eviction filed on the ground of default in payment of rent and non-user of the premises.

3. Regarding default, it was claimed that the rent is in arrear since 26.1.] 989. The suit has been filed on 21.1.1993.
4. It has been found by the learned Courts below that the rent was tendered by the defendant by Money Order Ex.A/2, Booking Receipt thereof is Ex.A/1, and that was refused by the plaintiff, and thereafter it has been regularly deposited in the Court & Section 19-A.
5. The learned counsel has shown me the originals of the Ex.A/1 and A/2. True it is that on Ex.A/1, the detailed address of the plaintiff is not mentioned, but then it purports to be a receipt for booking a Money Order No. 5295 for a sum of Rs. 750/- on 29.1.1992 as appears from the postal seal of the Post Office. Then regarding Ex.A/2, it is contended that this paper does not bear any seal of the Post Office of destination nor does it bear any endorsement of refusal to receive the Money Order by the addressee.
6. Suffice it to say that the plaintiff, while in the witness box, in his examination-in-chief has not said a word about any default except deposing a sentence to the effect ^blds tuojh 92 ls fdjk;kcdk;k g SA**Then in cross-examination, he has denied the suggestion about the defendant having sent the Money Order and has also denied to have refused to accept it. Then the cross- examination is directed towards the aspect that the plaintiffs husband PW-1 is always available at Home and in the evening reports the events of the day.
7. As against this, the defendant has appeared as DW-1 and has deposed about having sent the rent by Money Order Ex.A/1, Ex.A/2, and thereafter to have deposited the same in the Court, and has proved various documents about deposit in the Court. The defendant was cross-examined on the side of the plaintiff, and it has not been suggested to him that as a matter of fact, he never sent this Money Order or that it was not addressed to the plaintiff, rather the address, on which, the Money Order was sent was asked, which the defendant detailed.
8. This is the only oral evidence on record. In this background, a look at the memo of issues shows that on the question of default, there were two issues framed, being issue No. 1 & 3. Issue No. 1 comprehended the question as to whether the

defendant has committed second default by not paying rent since 26.1.1992. The burden of this issue was placed on the plaintiff. While the issue No. 3 comprehended the question as to whether the plaintiff declined to receive the rent, whereupon, it was deposited in the Court Under Section 19-A by the defendant. The burden of this issue was placed on the defendant.

9. It is clear on record that after the defendant led evidence on issue No. 3 by proving Ex.A/1 to Ex.A/13, no evidence has been led by the plaintiff in rebuttal to disprove or controvert or explain Ex.A/1 and Ex.A/2. It is not for me to catalogue as to what could have been the rebuttal evidence, from the records of the Post Office i.e. the Original Money Order or Postman or the like, but then, the fact remains that the plaintiff has led no evidence in rebuttal.

10. The Money Order was booked in the Post Office as appears from Ex .A/1, and that being an official act of a public servant in receiving the Money Order by way of booking for the addressee, I do not find any error in the findings recorded by the lower appellate Court in para No. 14, more so, in absence of any rebuttal evidence on the side of the plaintiff.

11. The other contention raised was that the finding of the learned Courts below on the question of non-user of the suit premises for the requisite period of time, is bad. The contention was elaborated by contending that the premises is a shop, and it was let out for the purpose of carrying on business, while admittedly, the defendant is carrying on business in Market No. 3, and the suit premises is being used only by way of Godown, and thus, they are not being used for the purpose for which they were let out, and by this, change in the user, the value of the property is diminishing.

12. The learned lower appellate Court has found that the plaintiff has not controverted the defendant's version pleaded in the written statement about the shop having been taken on rent for godown purposes by way of filing rejoinder, and that the burden to prove the contention about the shop lying closed for last six months was on the plaintiff, and since the shop was taken on rent for godown purposes, for which purpose, it is being used, and that there is no independent evidence to show that the shop is lying closed for last six months, the issue has

been decided against the plaintiff.

13. Without going into the question as to whether it was necessary for the plaintiff to controvert the pleading of the defendant by way of filing rejoinder, sufficient it to say that all that has been pleaded by the plaintiff with regard to this ground of eviction, is contained in para 4 of the plaint, which may gainfully be reproduced hereunder:-

^4 ;gfd oknzxZLr ifjlj esa izfroknh dksbZ O;olk; ugha djrk gS loa ;g okn lafLFkxrdjus ds rqjUr iwoZ yxkrkj 06 N% ekg ls vf/kd ds le; rd fcuk fdlh ;qfDr;qDr dkj.kds oknzxZLr ifjlj dk izfroknh us dksbZ mi;ksx ugha fd;k gS] nqdku fujUrj cUn iM+hjgh gS vkSj vkt Hkh cUn iM+h gqbZ gS] bl vk/kkj ij Hkh okfn;k okn xZLr ifjlj dhizfroknh ds fo: fu'dklu dh fMdh izklr djus dh vf/kdkfj.kh g SA**

14. A reading of this para makes it clear that the gravamen of the pleading was that the premises are not being used at all, for any purpose whatever, for the last six months, and it is lying totally closed. This pleading has been denied in corresponding para No. 4 of the written statement, by contending that the premises are not lying closed, rather in view of their location in the back lane, it is being used for storing the defendant's merchandise, as the defendant is a whole seller, and his main shop is in Market No. 3, Bhilwara, where he is carrying on business for last so many years. In this sequence, it is pleaded that it was in view of the paucity of space in the main shop that the suit premises were taken on rent for storing the merchandise, and is being used for the same purpose.

15. In this background, a look at the evidence of the plaintiff would show that all that has been deposed on the plaintiffs side is that the suit shop is lying closed since January 1992, and that no business is carried on, on this shop, nor anybody sits thereon. In cross-examination, the plaintiff has denied the knowledge about the length of time since when the defendant is carrying on business in the Market No. 3, and has also deposed ignorance about the defendant carrying on business in the Market No. 3, even during the time of earlier suit. Of course, he has denied the suggestion about the shop lying closed since beginning, so also about it having been taken on rent for godown purposes. The plaintiff has even denied the suggestion about the suit premises being used for godown purposes.

16. As against this, the defendant has clearly deposed that the shop was taken on rent by him only for godown purpose, and is being used for the same purpose as he is a whole seller. Then in the cross-examination, on suggestion of the plaintiff, he has deposed that there is a written document of tenancy, and therein the purpose of tenancy is mentioned as Godown. It has not been suggested to him that the premises are not being used for any purpose whatever as pleaded in para 4 of the plaint.

17. The ground of non-user, as a ground of eviction, is contained in Section 13(1)(j) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950, which reads as under:-

13(1)(j).--that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.'

18. The gravamen of the provision is that the premises must not have been used for the purpose for which they were let for the requisite period.

19. In the present case, the plaintiff has not come forward with a positive case in the plaint about the purpose for which it was let and the premises being used for any other purpose. On the other hand, the plaintiff has come forward with a positive case of total non user of the suit premises as is clear from the pleading quoted above.

20. It appears that the argument is sought to be based simply on the presumption that since the premises is shop, and it is being used for Godown, it is used contrary to the purpose for which it was let out. Apart from the pleading, even there is no reliable evidence on record to show that the premises were let out for carrying on the business on the premises.

21. In this view of the matter, even after reappraisal of the entire record, I am not inclined to uphold this ground of eviction in favour of the plaintiff.

22. The net result is that, I do not find any force in this appeal and the same is therefore, dismissed summarily.

