

State of Rajasthan Vs. Nirmal Devi

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Court : Rajasthan

Decided On : Apr-04-2000

Reported in : 2000(3)WLN147

Judge : Rajesh Balia, J.

Appeal No. : S.B. Civil Second Appeal No. 155 of 1993

Appellant : State of Rajasthan

Respondent : Nirmal Devi

Disposition : Appeal Dismissed

Judgement :

Rajesh Balia, J.

1. This is second appeal filed by the State against the judgment and decree passed by the Addl. District & Sessions Judge Raisingh Nagar on 9.7.1993 reversing the judgment and decree passed by the Judicial Magistrate First Class, Raisingh Nagar on 10.10.1991. As it will be noticed presently that the controversy now appears to be of academic importance and does not need to be addressed on merit, though it appears that the Courts below have proceeded on erroneous construction of the plaint by treating it to be a suit for eviction under Rajasthan Premises Control Act. The plaintiff alleging himself to be owner of the suit property

asserted that the defendant appellant is in possession of the land unauthorisedly. If he is paying rent to Shyam Lal, he is not authorised to receive the rent, she being owner of the property is entitled of possession and rent. It was nowhere alleged in the plaint that respondent State was her tenant or that after that the respondent has entered in the premises, she has accepted the status of respondent as rent by accepting the rent from them. On the contrary assertion is that no rent is being paid to her, but is paid to some one who is not authorised by her. However, suit has been valued as suit between the landlords and tenant for possession by paying the court fees on arrears of rent for three years and on the annual rent reserved for the relief of possession. The respondent State in the written statement did not deny claim of ownership of the plaintiff but asserted that they have been put in possession by Shyamlal brother of the husband of plaintiff and are paying rent to Shyamlal. Therefore no relationship of Landlord and tenant exist between the parties. The entire evidence led by the plaintiff is primarily to prove the title of plaintiff Nirmla Devi. The witnesses of the plaintiff including said Shyamlal who is receiving rent accepted the ownership of Nirmla Devi over the property. The plaint was for possession of the property on the basis of title and reference to payment of rent to Shyamlal was only with a view to avoid the payment of proper court fees on the valuation of the property of which the possession was sought. The court below have not read the plaint in proper perspective to find out true nature of the suit and set the things right.

2. The trial court has reached rightly its conclusion about non-existence of relationship of landlord-tenants between plaintiff and respondent State but did not examine the question of ownership and dismissed the suit. The lower appellate court took the view that plaintiff being owner of the property he was entitled to recover the possession from the State and ought not have been taken vague plea to deprive true owner of his right to secure possession. In coming to that conclusion the lower appellate court was failed to notice that no issue about title was framed.

3. This appeal was presented before this Court on 31st July, 1993. However, the possession of the property was taken in execution of the decree under appeal on 14.9.1993. Thereafter no serious attempt has been made by the appellant to get

the case even admitted and decided early to show any urgency or need for restitution of possession which has already been lost to the appellant. Ultimately the appeal has been admitted on 12.4.1996 after about more than two and half years of filing of the appeal. Even now in the aforesaid scenario it is apparent from the pleadings from the parties, the appellant does not claim any title adverse to the plaintiff and plaintiff has been able to prove her ownership and initial of occupation of the property by present appellant without their permission. If the suit were to be treated as such for possession on the basis of title and title of the plaintiff having not been denied, it was bound to succeed.

4. Even, if suit is considered to be suit for eviction on the ground of tenancy, Shyamlal having entered witness box admitted to be receiving rent on behalf of plaintiff Shyamlal is alleged by the defendant-appellant to be landlord. When the person alleged to be landlord admits to be receiving rent on behalf of plaintiff owner, there is no reason to discard this testimony. The decree for possession is liable to be sustained on this ground also.

5. In these circumstances I am not inclined to interfere in this appeal.

6. However, as the decree is found to be sustainable on the basis of title of the plaintiff and not on the basis of landlord's relationship, on the basis of averments made in the plaint, it is only requirement of law that plaintiff pays a proper Court fees. Therefore this appeal is dismissed. The trial court is directed to determine the court fees payable by treating this to be suit based on title, by valuing the suit on the basis of market value of the property as on the date of suit after giving an opportunity of hearing to the plaintiff and the State and recover the amount of court fees from the plaintiff in accordance with law.

7. In the facts and circumstance the cost of the litigation is made easy throughout.