

Uda Ram Vs. Pyare Lal

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Court : Rajasthan

Decided On : Jul-11-2002

Reported in : RLW2003(4)Raj2342; 2003(1)WLC687

Judge : Sunil Kumar Garg, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13(1)

Appeal No. : S.B. Civil Second Appeal No. 15 of 1991

Appellant : Uda Ram

Respondent : Pyare Lal

Advocate for Def. : N.K. Vyas, Adv.

Advocate for Pet/Ap. : B.L. Purohit, Adv.

Disposition : Appeal dismissed

Judgement :

Garg, J.

1. This second appeal has been filed by the plaintiff-appellant against the judgment and decree dated 21.11.1990 passed by the learned Additional District Judge, Bikaner in Civil Appeal No. 70/85 by which he dismissed the appeal of the

plaintiff-appellant and affirmed the judgment and decree dated 19.9.19984 passed the learned Addl. Munsiff No. 1 Bikaner in original civil suit No. 103/77 (367/74) by which the suit of the plaintiff-appellant for eviction of the defendant - respondent from the suit premises (shop) on the ground of reasonable & bonafide necessity as envisaged under Section 13(1)(h) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as 'the Act of 1950'), was dismissed.

2. It arises in the following circumstances:

The plaintiff-appellant filed the suit on 18.11.1974, later-on the plaint was amended on 15.11.1976 through which para 4(A) was added and, thereafter, the plaint was further amended on 30.3.1983 by which another para 4(B) was added, inter-alia stating that there is a shop of the plaintiff-appellant situated in Guru Nank Market, Bikaner, the details of which are mentioned in para no. 1 of the plaint and the area of the shop as stated by the plaintiff-appellant himself in his statement recorded as PW 1 on 24.5.1986 is 5 foot length, 3-3-1/2 foot width and 8 feet height. The shop in question was given by the plaintiff appellant to the defendant respondent on monthly rent of Rs. 40/- and later on, the rent was increased from Rs. 40 to Rs. 45/- and then to Rs. 50/- per month.

The case of the plaintiff-appellant as put forward in the original plaint dated 18.11.1974 for reasonable and bonafide necessity was that at present the plaintiff appellant was doing nothing and he wanted to sell shoes and market in which the shop in question was situated is famous for selling shoes and therefore, the shop in question was needed by the plaintiff-appellant and his family members reasonably and bonafidely and eviction of the defendant-respondent form the shop in question was sought by the plaintiff-appellant on the ground of reasonable and bonafide necessary as envisaged under Section 13 (1)(h) of the Act of 1950.

Through amendment dated 15.11.1976, the plaintiff-appellant added para 4(A) in the plaint stating that the defendant-respondent used to deal in the business of Manihari and the shops of Manihari were situated in the Manihari Market and the defendant-respondent could easily search out the shop in that market and, therefore, in case the shop in question was not vacated by the defendant-respondent, the plaintiff-appellant would be put to more hardship than the tenant-

defendant-respondent.

Through amendment dated 30.3.1983, the plaintiff-appellant further added para 4(B) in the plaint stating that the father of the defendant-respondent died on 3.9.1982 and since defendant-respondent was refugee and in rehabilitation, one shop bearing No. 20B situated in Guru Nank Market, Bikaner was allotted to the father of the defendant-respondent and after the death of the father of the defendant-respondent, that shop fell in the share of the defendant-respondent and he became owner of that shop and, thus, since the defendant-respondent has got alternative accommodation, therefore, from this point of view also, the need to the plaintiff-appellant was more severe. Hence, suit for eviction of the defendant-respondent from the shop in question.

The suit of the plaintiff-appellant was contested by the defendant-respondent by filing a written statement on 28.5.1975, which was amended on 24.1.1977 and on 15.4.1983 and the case of the plaintiff-appellant for reasonable and bonafide necessity was denied by the defendant-respondent. It was further asserted by the defendant-respondent that the market where the disputed shop is situated is famous for Manihari shops and not for the purpose of selling shoes. It was further asserted by the defendant-respondent that the plaintiff-appellant also had got many agricultural land and he cultivates land and by that he earns money and therefore, to say that the shop in question was needed by the plaintiff-appellant for doing business of shoes is wholly incorrect. So far as the averment that the father of the defendant-respondent got one shop bearing No. 20B many years back in concerned, it was asserted by the defendant-respondent that the said shop was sold by his father during his life time and, therefore, if he is evicted from the shop in question, he would be put to more hardship than the plaintiff-appellant. Hence, it was prayed that the suit of the plaintiff-appellant be dismissed.

On the pleadings of the parties, the learned Addl. Munsiff No. 1, Bikaner framed the following issues on 18.3.1977:-

1- vk;k fooknkLin ifjlj dh oknh dks Lo;aHkwgsrq ;qfD;qDr o ln~Hkkoukiw.kZ vko';drk gS

2- vk;koknh rgyukRed dfBukbzZ ds vk/kkj ij Hkhcsn[kyh dh fMh izklr djus dk vf/kdkjh gS

3- vk;k izfrokn dh fdjk;snkjh leklr dj nh xbZ

4- vuqrks'k

Thereafter, on 8.2.1986, one more issue was added as issue No. 5, which is quoted below:-

5- vk;k vkaf'kd cs[n[kyh ls oknh dh vko;'drkvksadh iwfrZ gks ldrh gS o D;k vkaf'kd cs[n[kyh laHko gS

Thereafter, both parties led evidence in support of their respective cases.

It may be stated here that in this case, the plaintiff-appellant was examined as PW 1 thrice first on 10.5.1978, later-on, on 29.9.1983 and then on 24.9.1986. The defendant-respondent was also examined as DW1 twice on 25.1.1982 and 13.3.1984.

After recording evidence of both the parties and after hearing both the parties, the learned Addl. Munsiff No. 1, Bikaner through his judgment and decree dated 19.9.1984 dismissed the suit of the plaintiff-appellant. The learned Addl. Munsiff No. 1, Bikaner decided the issue No. 1 against the plaintiff-appellant holding inter-alia:-

(1) That the plaintiff-appellant had agricultural land.

(2) That the plaintiff-appellant also earns money by playing his bus operated through Roadways on contract basis.

(3) That why the shop in question is needed, there is no concrete evidence of the plaintiff-appellant and at the most, the plaintiff-appellant had only desire for opening that shop of shoes, but it is not sufficient for coming to the conclusion that the shop in question was required by the plaintiff-appellant reasonably and bonafidely.

The issue No. 2 with regard to comparative hardship was also decided by the learned Addl. Munsiff No. 1, Bikaner against the plaintiff-appellant holding inter-alia that in case the decree of eviction was passed in favour of the plaintiff-appellant, greater hardship would be caused to the defendant-respondent.

Aggrieved from the said judgment and decree dated 19.9.1984 passed by the learned Addl. Munsiff No. 1, Bikaner, the plaintiff-appellant preferred a first appeal before the learned District Judge, Bikaner, which was later on transferred to the Court of Addl. District Judge, Bikaner and the learned Addl. District Judge, Bikaner through order dated 8.2.1986 framed a new issue as issue No. 5 with regard to partial eviction and on the issue, he remanded the case to the learned Addl. Munsiff No. 1, Bikaner with a direction to decide that issue of partial eviction after taking evidence of both parties.

Thereafter, the learned Addl. Munsiff No. 1, Bikaner through order dated 30.7.1986, decided the issue No. 5 with regard to partial eviction in the manner that since the shop in question is a very small one, therefore, decree of partial eviction cannot be passed.

Thereafter, the learned Addl. District Judge, Bikaner through judgment and decree dated 21.11.1990 dismissed the appeal of the plaintiff-appellant and affirmed the judgment and decree dated 19.9.1984 passed by the learned Addl. Munsiff No. 1 Bikaner holding inter-alia:-

(1) That while dismissing the appeal of the plaintiff-appellant, he placed reliance on two decision of this Court; (1) in Radhavallabh v. Damodardas (1) and (2) Bhagirath v. Ram Prasad and Anr. (2).

(2) That from the statement of plaintiff-appellant recorded as PW1, it has not been established that the shop in question was required by the plaintiff-appellant reasonably and bonafidely.

(3) That the plaintiff-appellant in his statement recorded as PW1 has stated that alongwith him, his son Bhanwarlal would also sit in the shop, but PW1 plaintiff-appellant admitted that Bhanwarlal was not his son, but his brother's son and his

statement that the had taken Bhanwarlal in adoption was not accepted as no adoption deed was produced.

(4) That at the time when the suit was filed by the plaintiff- appellant and when the statements of witnesses were recorded, he was MLA and, thereafter, when he was not MLA, he ought to have amended his plaint before decision of the suit by the Court.

(5) That the plaintiff-appellant in his statement recorded as PW 1 has stated that he had a bus bearing No. R.S.B. 6341 in the name of his wife, which was being operated by Roadways on contract basis and now that Bus was not being operated by Roadways, but this fact should have also been amended in plaint.

Aggrieved from the said judgment and decree dated 21.11.1990 passed by the learned Addl. District Judge, Bikaner, this second appeal has been filed by the plaintiff-appellant.

3. This Court while admitting this second appeal framed the following substantial question of law on 5.8.1991:-

'Whether the judgment of the First Appellate Court stands vitiated on account of mis-reading of the evidence?'

4. The learned counsel appearing for the plaintiff-appellant made the following submissions:-

(1) That by placing reliance on the decisions of this Court in the case of Radhavallabh (supra) and bhagirath (supra), the learned First Appellate Court has committed an error and on this ground, alone, the impugned judgment of the learned First Appellate Court should be set aside.

(2) That the learned First Appellate Court proceeded on wrong assumption and examined the need of the plaintiff-appellant by applying the facts wrongly, as the case was examined taking into consideration the need of the plaintiff-appellant's son Bhanwarlal and not of the plaintiff-appellant himself and from this point of view also, the findings of the learned First Appellate Court are perverse.

(3) That the findings of the learned First Appellate Court in respect of agricultural land and bus are also perverse in the manner that after ceasing to be MLA, the plaintiff-appellant was doing nothing and therefore, his need for the shop in question should have been adjudged as reasonable and bonafide and in not doing so, both the courts below committed error and misread the evidence.

Hence, It was prayed that this second appeal be allowed and the judgments and decrees of both the courts below be set aside and the suit of the plaintiff-appellant for eviction of the defendant-respondent from the suit premises on the ground of reasonable and bonafide necessity as envisaged under Section 13(1)(h) of the Act of 1950 be decreed.

5. On the other hand, the learned counsel appearing for the defendant-respondent supported the judgments and decree of both the courts below and he has further submitted that since there are concurrent findings of fact recorded by the courts below, they should not be disturbed in second appeal.

6. I have heard the learned counsel appearing for the plaintiff-appellant and the learned counsel appearing for the defendant-respondent and gone through the record of the case.

7. Before proceeding further, first it is to be seen whether in second appeal, concurrent findings of fact can be reversed or not or whether there is a total ban that in second appeal concurrent findings of fact can never be disturbed?

8. A decision of a Court must, in law, be based on the evidence, oral and documentary, legally adduced in the case. A Court will, therefore, be committing an error of law.-

(1) if it bases its decision on no evidence at all, or by wrongly discarding evidence and on mere surmises and conjectures;

(2) if it bases its decision on irrelevant and inadmissible evidence as such evidence is no legal evidence;

(3) if it misreads the evidence, i.e. assumes certain evidence to exist where there is non or vice versa;

(4) if it disregards or fails to consider material evidence in arriving at the conclusion.'

9. If any of the circumstances just mentioned above is found in the judgment of the first appellate court, even in second appeal, concurrent findings of first can be touched and reversed.

10. Thus, it can be concluded that a finding of fact is conclusive in second appeal unless it is arrived at by committing an error of law or of procedure. If there is misreading of evidence by the first appellate Court then in second appeal, finding of fact can be reversed.

11. Now it is to be seen whether there is misreading of evidence in this case by the learned first Appellate court or not.

12. While deciding this aspect, the law laid down by the Hon'ble Supreme Court in *Veerayee Ammal v. Seenii Ammal* (3), that the High Court cannot assume jurisdiction to interfere in second appeal just because another view is possible on appreciation of evidence has to be kept in mind.

13. Before examining this aspect, the legal aspect with respect to reasonable and bonafide requirement has to be seen.

14. In order to prove a reasonable and bonafide requirement of the premises as a ground of eviction, the landlord must prove the following three elements which must co-exist to sustain the landlord's suit for possession of the premises:-

(1) The landlord require the premises for his own use as owner:

(2) His requirement is reasonable and bonafide for himself or for family.

(3) Non availability of an accommodation in the city or town for that purpose.

15. The question involved has three components (1) whether the plaintiff has a necessity; (2) whether it is bonafide; and (3) whether it is reasonable. The first one whether the plaintiff has a necessity for the suit premises is primarily a question of fact. Likewise whether it is bonafide is also largely a question of fact, but whether the necessity is reasonable will undoubtedly attract well known legal principles for judging objectively whether the necessity is reasonable or otherwise. In the second appeal the Court has to give due regards to the findings of the courts of fact regarding the first and second component, but regarding the third one namely, for judging the reasonableness of the necessity the matter has to be judged in the light of well known principles.

16. But the essential idea basic to all such case is that the need of the landlord should be genuine and honest, conceived in good faith; and that further, the Court must also consider it reasonable to gratify that need. Landlord's desire for possession however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a 'requirement' in law must have the objective element of a 'need'. It must also be such that the Court considers it reasonable and therefore, eligible to be gratified. In doing so, the court considers it reasonable and therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or withheld down.

17. Apart from the above, the law laid down by the Hon'ble Supreme Court in *Raghunath G. Panale (dead) by LRs. v. Chaganlal Sundarji and Co.* (4), on which reliance has been placed by the learned counsel for the plaintiff-appellant also, in respect of reasonable and bonafide requirement has to be seen. In that case, the Hon'ble Supreme Court observed:-

'The word 'reasonable', in our view, connotes that the requirement or need is not fanciful or unreasonable. It cannot be a mere desire. The word 'requirement' coupled with the word reasonable means that it must be something more than a mere desire but need not certainly be a compelling or absolute or dire necessity. *Aitken v. Shaw*, 1933 SLT 21; *Neville v. Hordy*, (1921 (90) LJ Ch.158. A reasonable and bonafide requirement is something in between a mere desire or

wish on one hand and a compelling or dire or absolute necessity at the other end. It may be a need in presenti or within reasonable proximity in the future. The use of the word 'bonafide' is an additional requirement under Section 13(1)(g) and it means that the requirement must also be honest and not be tainted with any oblique motive.'

18. Keeping the above legal principles in mind, it is being, examined whether there is misreading of evidence by the learned First Appellate Court or not.

19. As pointed out earlier, the learned first Appellate Court has placed reliance on two decision of this Court in the case of Radhavallabh (supra), this Court held that nephew is not a member of the landlord's family and since is the present case, there is a statement of the landlord-plaintiff-appellant (PW1) that he would like to work in the shop alongwith his son Bhanwarlal, but since he has admitted in cross-examination that the so-called Bhanwarlal is not his son and the fact that he was taken in adoption has not been established and, therefore, this aspect of the case of the plaintiff-appellant was not accepted by the learned first appellate Court.

20. In my considered opinion, after going through the impugned judgment of the learned First Appellate Court, it cannot be said that the learned First Appellate Court has examined the case only keeping in mind the need of the plaintiff-appellant's so- called so Bhanwarlal, but on the contrary, it appears that the learned first Appellate Court has examined the case of the plaintiff-appellant after taking into consideration whether the need of the plaintiff-appellant for the shop in question was reasonable and bonafide. The case of the plaintiff-appellant or not and since adoption, has not been proved, therefore, Bhanwarlal cannot be regarded as son of the plaintiff-appellant. The statement of the plaintiff-appellant recorded as PW 1 that he wanted to do business in the disputed shop alongwith his son Bhanwarlal was not found correct by the learned First Appellate Court,. In doing so, the learned First Appellate Court has not committed any error or illegality as to fact that Bhanwarlal was the son of plaintiff-appellant has not been established.

21. Apart from this, in the plaint, the specific case of the plaintiff-appellant was that the need of the shop in question was for himself and his family members, but in his

statement recorded as PW1 on 10.5.1978, he has categorically stated that he alongwith his son Bhanwarlal would sit in the shop for the purpose of selling shoes, but in cross-examination, he has admitted that Bhanwarlal is not his son, but he has taken that Bhanwarlal in adoption, but the fact that Bhanwarlal was his son has not been established by the plaintiff-appellant and that is why, the learned First Appellate Court considered this aspect and came to the conclusion that Bhanwarlal was not the son of the plaintiff-appellant and, therefore, the need of Bhanwarlal is irrelevant at all and cannot be considered and, therefore, the need of the plaintiff appellant was considered by the learned First Appellate Court and the learned First Appellate Court came to the conclusion that even the need of the plaintiff-appellant for the shop in question cannot be said to be reasonable and bonafide. This aspect further goes to show that actually there was no need of the plaintiff-appellant for the shop in question or if there was any need, that cannot be termed as reasonable and bonafide because it is not clear for whom the shop in question was required by the plaintiff-appellant, whether he would himself sit or his nephew Bhanwarlal would sit, who has not been examined in Court.

22. Thus, in my considered opinion, the learned First Appellate Court has not committed any error or illegality in placing reliance on the judgment of this Court in Radhavallabh's case (supra) and it cannot be said that the learned First Appellate Court has misread the evidence.

23. The learned First Appellate court further came to the conclusion that the need of the plaintiff-appellant for the shop in question was nothing but a mere desire to start the business of selling shoes in the shop in question and that need was not found reasonable and bonafide by the learned first Appellate Court and in coming to that conclusion, the learned First Appellate Court has placed reliance on the decision of this Court in the case of Bhagirath (supra) where it was held that mere desire of landlord to start business of cloth and restaurant was not sufficient to prove his bonafide need. In my considered opinion, the learned First Appellate Court has not committed any error and illegality in placing reliance on the decision of this Court in Bhagirath's case (supra).

24. Apart from this, there is no dispute in this case on the point that the plaintiff-appellant was MLA when the suit was, filed by him and after filing of the suit, he was not MLA and there is clear admission by the plaintiff-appellant that he had bus bearing No. R.S.B. 6341 and he also had agricultural land allotted to him by the Government and, therefore, in these circumstances, if the courts below have come to the conclusion that the plaintiff-appellant's need was nothing but a mere desire, they have committed no error and illegality in doing so and it cannot be said that they have misread the evidence.

25. Furthermore, since the plaintiff has to prove that his need was not only bonafide but reasonable also and therefore, from this point of view also, it cannot be said that the courts below have misread the evidence.

26. Besides this, if a person, who has been MLA and having agricultural land and also having a bus says that he would now do the business of selling shoes in a very small shop, his need for opening the shop of selling shoes cannot be regarded as reasonable and bonafide. The foundation of the case of the plaintiff-appellant does not travel beyond desire and, therefore, on such foundation pillars of reasonable and bonafide necessity cannot be installed.

27. Moreover, the finding of the courts below on greater hardship are also liable to be confirmed, as the defendant- respondent has clearly ruled out that another shop which was given to his father on rehabilitation was sold by his father during his life time and, therefore, the defendant-respondent had no other shop of his own and thus, if both the courts below have come to the conclusion that in case decree of eviction is passed, greater hardship would be caused to the defendant-respondent, they have committed no error and illegality in doing so.

28. Thus, having gone through the impugned judgment of the learned first Appellate Court, it cannot be said that the learned First Appellate Court has misread the evidence in the manner that it assumes certain evidence to exist where there was none. It also cannot be said that by placing the reliance on the two judgments of this Court in Radhavallabh's case (supra) and Bhagirath's case (supra), the learned First Appellate Court has committed error and misread the evidence pr law on the point in issue, the judgment of the learned First Appellate

Court is based on correct appreciation of evidence led by the parties.

29. Thus, it is held that the findings of fact recorded by both the courts below are based on correct appreciation of evidence led by the parties and are based on legal evidence, it cannot be said that the findings of the courts below are based on a misconception of the real point in controversy and are inconsistent with the other findings. It also cannot be said that material facts and evidence have been ignored by the courts below in arriving at the conclusion of fact. Thus, the findings of fact recorded by both the courts below should not be disturbed in this second appeal.

30. No doubt in Radhavallabh's case (supra) at part 19, on which reliance has been placed by the learned counsel for the plaintiff-appellant, this Court held that where the court takes an erroneous view of the law, its findings can be set aside, but as already stated above, this has not happened in the present case and therefore, para 19 of the judgment of this Court in Radhavallabh's case (supra) would not be helpful to the learned counsel for the plaintiff-appellant.

31. For the reasons stated above, all the submissions raised by the learned counsel for the plaintiff-appellant fail and the substantial question framed by this Court on 5.8.1991 is answered in the following manner:-

Substantial Question

Answer

Whether the judgment of the First Appellate Court stands vitiated on account of mis-reading of the evidence?

This substantial question is answered in the manner that the learned first Appellate Court has not misread the evidence and thus, it cannot be said that the judgment of the First Appellate Court is vitiated.

32. The result of the above discussion is that the judgments and decrees of the Courts below are liable to be confirmed and this second appeal is liable to be dismissed.

Accordingly, this second appeal filed by the plaintiff appellant is dismissed after confirming the judgments and decrees of both the courts below. No order as to costs.

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