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Court : Rajasthan

Decided On : Mar-02-1988

Reported in : 1988(1)WLN677

Judge : Milap Chandra, J.

Appeal No. : S.B. Civil Revision Petition No. 716 of 1982

Appellant : Narsingh Dass

Respondent : Jeth Mal

Disposition : Petition dismissed

Judgement :

Milap Chandra, J.

1. The plaintiff-non-petitioner filed a suit for ejectment against the defendant-petitioner on the ground of reasonable and bonafide necessity in respect of a shop measuring 6' X 4' situated at Nagaur. The defendant resisted it. After recording the evidence of the parties, it was decreed. The defendant filed Appeal No. 8 of 1981 in the court of the Additional District Judge, Nagaur. Subsequently, an application was moved by him before the learned Additional District Judge that an issue regarding partial eviction be framed as provided in the proviso of Sub-section (2) of Section 14 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950

(here in after to be called 'the Act') and be remitted to the learned trial court for recording its finding thereon, the plaintiff seriously opposed it. After hearing the parties, the learned Additional District Judge dismissed the application by his order under revision.

2. It has been contended by the learned counsel for the defendant-petitioner that the learned Additional District Judge has failed to exercise the jurisdiction vested in him in rejecting the application, the said proviso mandates the court to consider the question of partial eviction and the learned lower appellate court committed a material irregularity in the exercise of its jurisdiction in observing that partial eviction is not possible. He also contended that the learned appellate Court has relied upon the decision of this Court dated May 12, 1987 given in Ram Chandra v. Ram Gopal which has subsequently been reviewed by the same Hon'ble Judge. He lastly contended that the partial eviction of the suit shop is possible as it is open from two sides. He relied upon Rahman v. Ram Chand : [1978]2SCR380 ; Radha Kishan v. Narain Das 1983 (2) RCJ 472 (Raj); Seema Sandesh and Ors v. Smt. Gian Kaur 1982 (2) RCJ 37 (Raj); Bhagwan Singh v. Achal Singh 1982 C RCJ 383 (Raj); Abdul Hafiz Khan v. Jethu Ram; 1981 WLN (UC) 401 and Anand Prakash v. Abdul Kayoom and Ors. 1982 (1) RCJ 821 (Raj).

3. In reply, the learned counsel for the plaintiff-non-petitioner contended that it is not correct to urge that the suit shop is open from two sides, it is a very small shop, it is not divisible and neither the plaintiff nor the defendant would be able to carry out his business in a part of it even if it is divided. He further contended that the defendant has not at all pleaded and proved that the plaintiff can carry out his proposed business of photo-frames in a part of it. He lastly contended that this business requires sufficient space He relied upon Harnam Das v. Sanwal Ram 1982 RCR (2) 735 (Raj)- Prem Tent House v. Prakash Chand Jain 1983 RLR 438 (Raj); and Rajendra Singh v. Suresh Chandra 1984 (2) RCR 471 (Raj).

4. It is the admitted case of the parties that the dimensions of the suit shop are 6' X 4' and decree for ejectment has been granted in favour of the plaintiff on the ground that it is reasonably and bona-fide required by him to set up his business of photo frames. It is stated in the revision petition that it is open from two sides. This

fact has seriously been controverted by the learned counsel for the plaintiff and he pointed out that as per description given in the plaint it is open from one side only and this fact has not been denied by the defendant in his written-statement. The learned counsel for the defendant could not controvert it. It is thus clear that the suit shop is open from one side only. Admittedly, the suit shop is not required by the plaintiff to set up the business of brokerage or jewellery or to open a betel-leaf shop requiring very little space. It is required for photo-frame business, requiring adequate space for displaying various varities and different sizes of photo-frames and their parts to attract customers. The suit shop is not situated at Bara Bazar, Calcutta or Kalba Devi Road, Bombay or Chandani Chowk Delhi where business is also carried out in little space due to great scarcity of accommodation. It is situated in Nagaur City.

5. The proviso given below Sub-section (2) of Section 14 of the Act runs as under:

That the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only.

The word 'satisfied' is understood to mean free from anxiety, doubt, perplexity, suspense or uncertainty. It is synonymous with 'convince beyond a reasonable doubt.' Satisfaction for the purpose of judicial determination depends on sufficiency of facts placed before the Court. No doubt the satisfaction is of the Court resting on the judicial discretion vested in it. It is essentially objective in its character, i.e., depending on the facts and material before the court rather than subjective and resting upon it caprice or predilection. The question of partial eviction is not a pure question of law. It is a question of fact. Its adjudication requires necessary pleadings and evidence. Admittedly, necessary facts have not been pleaded and proved by the defendant. As such no issue was framed and finding recorded by the learned trial court. No explanation for this omission has been offered. However, the defendant could move an application for the amendment of his written-statement and also for framing an issue on the point of partial eviction during the trial of the suit as he did before the learned Additional District Judge, Nagaur. Nothing has been shown as to what prevented him from

raising such a plea in his written-statement or from moving such an application before the learned trial court. The said proviso does not require the court to manufacture evidence to decide the point of partial eviction. It is duty of the party to plead his case and produce necessary evidence to prove it. It is also well settled law that no amount of evidence can be looked into upon a plea which has not been put forward. It may also be mentioned here that it is not stated in the revision petition itself that no hardship would be caused to the plaintiff by passing decree in respect of a part of the suit shop.

6. Great reliance has been placed by the learned counsel for the defendant-petitioner on Rahman v. Ram Chand : [1978]2SCR380 . In this reported case, the failure of the courts of facts in recording a finding as contemplated in the proviso to the explanation to Section 11(1)(b) of the Jammu & Kashmir Houses and Shops Rent Control Act, 1966 was under consideration. This proviso runs as under:

Provided that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the house or shop and allowing the tenant to continue occupation of the rest, and the tenant agrees of such occupation the Court shall pass a decree accordingly.

7. It has been observed in Harnam Das v. Sanwal Ram 1982(2) RCR 735 (Raj) at page 737 para 5, as follows:

5. It may be pointed out that no argument was advanced in either of the two courts below on the aforesaid question nor any plea was taken on behalf of the defendants that the reasonable requirement of the plaintiff would be substantially satisfied by evicting the tenants from only a part of the premises. Neither any issue was framed nor any evidence was led on this question by the defendants. More over, any such question of partial eviction could not have been raised in the present case as the subject-matter of suit is only a single shop. The decision of their Lordships of the Supreme Court in Rahman Jeo Wangnoo's case (supra) can only be applicable where there are number of apartments in the rented premises in question and where the reasonable requirement of the landlord may to substantially satisfied by evicting the tenant from only some of them, thus eviction from only a part of the premises would have been enough. In those circumstances,

the mandate of the law requires the decision of the question of partial eviction because the requirement of the landlord may be satisfied if only a few of the apartments are vacated by the tenant and are handed-over to the landlord. But when the rented premises consists of a single shop or a single room or apartment, the question of partial eviction cannot arise, as either the tenant could be not evicted from that shop or room or he could not be evicted therefrom and it is not possible to evict him from a part of the shop or room, when the subject-matter of tenancy is one single shop or a single apartment. In my humble view, the decision of their Lordships or the Supreme Court is not applicable to the case of a single shop or a single appartment, like the present case. No other point was argued before me.

8. It has been observed in Rajendra Singh v. Suresh Chandra 1984 (2) RCR 471 Raj. at page 472 para 4, as follows:

4. As regards the pleadings of partial eviction, looking to the nature of business which the plaintiff wants to establish and looking to the nature of premises and its dimensions, the question of consideration of partial eviction does not arise.

9. It may be mentioned here that in Rahman v. Ram Chand AIR 1978 SC 513, Seema Sandesh and Ors. v. Smt. Gian Kaur, 1982 (2) RCJ 86; Bhawani Singh v. Achal Singh, 1982(2) RCJ 383; and Abdual Hafiz Khan v. Jethu Ram, 1981 WLN (UC) 401 the premises involved therein were not similar to suit shop measuring 6' X 4' only. In Smt. Chandra Devi v. Third Additional District Judge, Nainital 1984(2) Allahabad Rent Cases 651, the suit premises consisted of three shops and despite it, partial eviction was not allowed. The learned Additional District Judge, Nagaur has relied upon the judgment of this Court given in Ramchandra v. Ramgopal on May 12, 1987 It is not correct that this decision has been set aside on review. It has simply been re-called on the ground that one of the respondents was not duly served.

10. Thus there is no force in the revision petition. It deserves to be dismissed with costs. The revision petition is, accordingly dismissed with costs.

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