

Bathool Bai Vs. A.S. Vaidyanathan

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Court : Chennai

Decided On : Jan-28-1966

Reported in : (1966)2MLJ412

Appellant : Bathool Bai

Respondent : A.S. Vaidyanathan

Judgement :

T. Venkatadri, J.

1. This revision petition is preferred by the landlady whose application for eviction of the respondent-tenant on the ground that she required the premises bona fide for her own occupation was dismissed by the appellate authority.

2. The landlady let out the suit premises to the respondent on a monthly rent of Rs. 80 from 1941. It is common ground that the respondent is a doctor by profession and is also incidentally carrying on business in a portion of the premises known as Scientific Pharmacy. It is also common ground that the premises was let out to the respondent only for residential purposes. The landlady has been attempting for some years to get possession of the premises by filing applications for eviction of the tenant but she has not been successful. The landlady was originally living in a rented premises in Royapettah. As her only daughter was at Bombay she vacated the rented premises and went to Bombay in order to undergo a major surgical operation in Bombay. She returned to Madras in

1959 and was temporarily staying with a relation of hers. The old complaint again reappeared and she again went to Bombay for further treatment and finally returned to Madras in the month of January, 1962. It is true that she has another house which is bigger one in Triplicane. That being very spacious and she being alone she does not want to occupy that premises. Further she wants to live in the place where her community people live. In those circumstances, she filed the present application, out of which this revision arises, for eviction of the tenant on the ground that she required the premises bona fide for her own occupation. The learned Rent Controller found that the requirement of the landlady was bona fide and ordered eviction. But on appeal, this finding was reversed, and the application was dismissed. It is again this order of dismissal of her application, the landlady has filed the revision petition.

3. The short question that arises for consideration in this revision petition is whether the application of the landlady is a bona fide one.

4. The word 'bona fide' has been the subject of judicial interpretation. While construing the word 'bonafide' in the Act, it must be borne in mind that it is the duty of the Court to see that the premises are required both reasonably and bona fide. Bona fides may be proved in an ordinary way like any other fact in issue or a relevant fact. There is no such rule of law that 'bona fides', being a subjective matter, can only be proved by the landlord stepping into the witness box. In *Basantlal v. Chakravarty* : AIR1950 Cal249 the Calcutta High Court has occasion to deal with the connotation of the word 'bona fide requirement' of the landlord. It was observed that gross unreasonableness of the landlord might, in proper circumstances, lead the Court to the conclusion that the landlord's requirement was not bona fides, and that how much unreasonableness would be regarded by the Court as evidence of mala fides of the landlord would depend on the facts and circumstances of the case. The requirement of the landlord must be judged as at the date of hearing. In *Harcoute v. Lowe* 35 T.L.R. 255 Lush, J., observed that the only time which it was necessary to consider in order to apply the provisions of the section was the time when the Court was asked to make the order. The landlord must have a genuine present need for the house for his occupation. The term 'require' implies that it is more under the force of his personal circumstances than

under the impulse of a desire that the landlord needs the premises; but the desire is not altogether to be ruled out. Somervell L.J., in *Burman v. Woods* L.R.(1948) 1 K.B. 111 held that the altered circumstances must be taken into consideration in moulding the final decree or order. The fact that the landlady has an accommodation elsewhere is no reason for holding that the landlady does not reasonably require the premises. Bearing the principles laid down in the cases cited, I have to consider whether the application of the landlady is a bona fide one or not. It cannot be denied that the landlady is now living in a rented house. It has been held by Ramachandra Iyer, Officiating Chief Justice, in a recent decision reported in *Abdul Kareem v. C.M. Mohamed* : (1962)1MLJ382 that, when a landlord or landlady lives in a rented premises, it would be enough to satisfy the Court in an application for eviction of the tenant that it is a bona fide requirement of the landlord or landlady.

5. The only contention of the respondent is that he is in occupation of the premises for more than 15 years. He has been using the premises both for residential and non-residential purposes and therefore the landlady cannot seek eviction on the ground of own occupation. He has also contended that the landlady has been aware that he has been carrying on business under the name and style of Scientific Pharmacy, and that therefore the landlady cannot come with an application for eviction on the ground of her own occupation.

6. There is no dispute that the premises was originally let out for residential purposes. A Full Bench of this Court in *Dakshina Moorthy v. Thulja Bai* (1952) 1 M.L.J. 390 have laid down the following considerations for deciding the question whether a building is residential or non-residential:

(1) Where there is an instrument of tenancy specifically and explicitly declaring the purpose of letting as residential or non-residential, no difficulty generally arises. (2) Where there is no such instrument of tenancy, the question will have to be considered on the basis of direct evidence adduced concerning the purpose of the letting, which may be adduced in a case. (3) If no such evidence too is forthcoming, the Court can only look at the evidence concerning the user of the premises by the tenant down to the date of the application for eviction, as

acquiesced in by the landlord. For, such user and such acquiescence afford a safe basis for an inference of agreement between the parties as to the purpose of the letting. (4) Where there is evidence of such user, but there is no evidence of such acquiescence, the structural design, the antecedent user of the building by the landlord as known to the tenant and other surrounding circumstances, if any will also have to enter into the determination of the question Whether the building is or is not residential. (5) Difficulty may sometimes still remain, i.e, even, after applying the tests above indicated, if the building is found let for both kinds of purposes residential and non-residential, no distinction being made between one part as let for one purpose and the other for the other purpose. In such a case what has to be determined as a question of fact is, What Was the real, main and substantial purpose of the letting

Now in the instant case, originally, the premises was let out for residential purposes to the tenant who is a doctor by profession. Being a doctor, incidentally, he has been carrying on business known as Scientific Pharmacy in a small portion of the building. The real, main and substantial purpose of the letting was for residential purposes. Therefore conversion of a portion of the house for a business would not certainly alter the residential character of the building. No doubt, learned Counsel for the respondent-tenant cited the decision in *Dr. Gopal Das Varma v. Dr. Bhardwaj* (1961) 2 S.C.J. 616 where a landlord filed an application for eviction of the tenant on the ground that he required the premises for his own occupation.' The tenant contended that the landlord did not require the premises bonafide for his personal use and that he was using the major part of premises for carrying on his medical profession. Both the appellate authority and the High Court found that the tenant was using the building both for his residence and his professional work since the inception of the tenancy without any objection from the landlord and that the bona fide requirement of landlord was not proved. Here the landlady has at no time given her consent to convert a small portion of the building for non residential purposes. The tenant is no doubt a doctor and he will be carrying on his professional activities, but that does not mean that the building has become non-residential in character, so as to prevent the landlady from applying for eviction on the ground of her bona fide requirement. The evidence of the tenant is very meagre, slender and weak in character. All that he says is that he is an allopathic

practitioner, residing there and running his pharmacy. He does not say what is the extent of the residential portion and non-residential portion and whether the landlady has acquiesced in his running of the pharmacy from the beginning or at least subsequently. On the other hand, the agent of the landlady has categorically stated that the doctor was let in as a tenant only for residential purposes, and that he is running the pharmacy without the landlady's consent. In such circumstances, I fail to see how the principles laid down in the Supreme Court decision would apply to the facts of the present case. She has further given sufficient reasons why she required this building for her occupation. Under these circumstances, I feel that the requirement of the landlady is a bona fide one. The reasoning of the appellate authority that the landlady is a single soul, not permanently residing at Madras and is having other houses is not convincing to me. One cannot expect her to live in her daughter's house at Bombay. Further, she, being a single soul, wants to live in a smaller house and amidst her community people. I therefore find that the reasoning of the appellate authority is not consistent with the provisions of the Act and the rulings of our High Court.

7. In the result, the revision petition is allowed. The parties will bear their own costs throughout.

8. However as the tenant has been living in the premises for more than 15 years he may not find it possible to find alternative accommodation immediately. It is therefore just and equitable that sufficient time should be given to him to find alternative accommodation, and I give him time till 31st July, 1966, The tenant will hand over vacant possession on or before that date.