

Laxminarain Vs. Hastimal

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Court : Rajasthan Jodhpur

Decided On : Aug-21-2012

Appellant : Laxminarain

Respondent : Hastimal

Advocate for Pet/Ap. : Mr. P.R. Choudhary, Mr. N.K. Vyas

Judgement :

S.B. CIVIL FIRST APPEAL NO.19/1989 LAXMI NARAYAN VS. HASTI MAL DATE OF JUDGMENT:

21. t AUGUST

1. 11 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR S.B. CIVIL FIRST APPEAL NO.19/1989 (LAXMI NARAYAN VS. HASTI MAL) JUDGMENT DATE OF JUDGMENT :

21. 08.2012 PRESENT HON'BLE DR. JUSTICE VINEET KOTHARI Mr.N.K. Vyas, for the appellant defendant. Mr. P.R. Choudhary, for the respondent plaintiff.

1. The present first appeal has been filed by the defendant Laxmi Narayan s/o Shri Nathu Ji Jeengar being aggrieved by the judgment and decree of eviction and possession passed by learned Additional District Judge No.1, Jodhpur in Civil Suit No.16/79 Hasti Mal s/o Shri Hari Ram Jeengar vs. Laxmi Narayan s/o Shri Nathu Ji Jeengar dated 17.12.1998 in respect of the suit premises a house, situated at near Pipaliya Mahadev Temple, opposite Ek Minar Maszid, Jodhpur. S.B. CIVIL

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2. 11 2. The facts in brief are like this. The suit property is said to have been purchased by the plaintiff Hasti Mal from the defendant Laxmi Narayan only under the registered sale deed Ex.1 dated 28.02.1968 for the sum of Rs.5,000/- and a shop at the Ground Floor was let out to one Mr. Muzaffar Hussain @ Rs.19/- per month on 29.02.1968 which was handed over back to him on 06.01.1971. The plaintiff Hasti Mal claimed that on the second floor of said house, he constructed another room, which was let out on 28.02.1968 to one Badri Lal Chunni Lal @ Rs.10/- per month, which was also handed over back to him on 26.06.1968. It is also claimed that the suit premises situated at first floor of the house was given on rent by the plaintiff on 29.02.1968 to the defendant Laxmi Narayan @ Rs.16/- per month, since he was his relative being brother-in-law (wife's brother or) for the eviction of which the plaintiff had to file a Civil Suit No.52/72 in the Court of Munsif Magistrate, Jodhpur on 05.10.1971 and on transfer, was renumbered as 83/73 since Laxmi Narayan refused to handover back the vacant possession of the suit premises and the said suit was decreed in favour of the plaintiff Hasti Mal on 08.12.1973 and with the dismissal of S.B. CIVIL FIRST APPEAL NO.19/1989 LAXMI NARAYAN VS. HASTI MAL DATE OF JUDGMENT:

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3. 11 the defendant Laxmi Naryan's appeal by the appellate court on 24.07.1975 in the Execution Case No.28/74, the possession of the suit premises was given back to the plaintiff- decree holder - Hasti Mal through Sale Ameen on 01.11.1976, however, the defendant Laxmi Narayan forcibly took back the possession and entered in the said premises and also of the shop in question and, therefore, the present suit for possession, eviction and mesne profits was filed by the plaintiff Hastimal.

3. The defendant- Laxmi Narayan set up the defence before the trial court that the premises in question was never sold to the plaintiff for Rs.5,000/- and it was only

mortgaged to him with the condition that upon repayment of loan taken by defendant Laxmi Narayan, the same would be handed over back to the defendant Laxmi Narayan and, therefore, the defendant was not a tenant of the plaintiff Hasti Mal and no possession decree could be passed in his favour as Laxmi Narayan himself was the owner of the said suit property.

4. The learned trial court after recording the evidence and taking on record the documentary evidence, decided the various issues in favour of the plaintiff Hasti Mal S.B. CIVIL FIRST APPEAL NO.19/1989 LAXMI NARAYAN VS. HASTI MAL
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4. 11 and decreed the suit vide judgment under appeal on 17.12.1998 and being aggrieved by the same, the defendant Laxmi Narayan has filed the present first appeal before this Court under Section 96 of Civil Procedure Code.

5. Both the parties are close relatives, the appellant defendant Laxmi Narayan being brother-in-law (wife's brother or Sala) of plaintiff - respondent Hasti Mal. Defendant - appellant Laxmi Narayan died earlier on 29.03.2006 and respondent - plaintiff Hasti Mal died on 29.04.1998 and since both have died, their legal representatives are now on record.

6. Mr. N.K. Vyas, learned counsel appearing for the defendant appellant Laxmi Narayan and his legal representatives, reiterated the submissions made before the learned trial court and submitted that the defendant Laxmi Narayan had purchased the property on 27.04.1964 from one Ram Chandra Darji for Rs.5,500/- and he spent about Rs.3,000/- on the repairs and renovations of the said house and being in need of money to repay back the loan from Hukam Chand of Rs.4,000/-, the defendant Laxmi Narayan borrowed Rs.5,000/- from the plaintiff Laxmi Narayan (his brother-in-law or Behanoi, Hastimal), upon which the S.B. CIVIL FIRST APPEAL NO.19/1989 LAXMI NARAYAN VS. HASTI MAL
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5. 11 plaintiff Hastimal said that since he had no money lending licence, therefore, he cannot give money on mortgage and, therefore, he said that a sale-deed may be executed in his favour by the defendant Laxmi Narayan in respect of the said suit premises and accordingly the said sale-deed Ex.1 was executed on 28.02.1968. Mr. N.K. Vyas, submitted that the Laxmi Narayan had a minor son of 7 years namely Nenuram also and no permission of the Court was taken for transferring the minor's share in the said joint property. He, therefore, submitted that the defendant Laxmi Narayan was the real owner of the said property and, therefore, no eviction or decree of possession could be granted against him and the court below has erred in decreeing the suit under appeal.

7. On the other hand, Mr. P.R. Choudhary, learned counsel for the plaintiff respondent Hasti Mal, relying upon various evidence already brought on record, urged that the possession of the suit premises was given back to the plaintiff under the Court decree in an eviction suit filed by the plaintiff on 06.01.1974 and the same was purchased by the registered sale deed Ex.1 dated 28.02.1968 and, therefore, the defendant Laxmi Narayan cannot claim any S.B. CIVIL FIRST APPEAL NO.19/1989 LAXMI NARAYAN VS. HASTI MAL DATE OF JUDGMENT:

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6. 11 title over the suit property and since he had forcibly entered the suit premises, the possession of which was handed over to the plaintiff Hasti Mal in execution of the eviction decree and the plaintiff Hasti Mal, in these circumstances, had to again file the present suit for possession. The learned court below has rightly decreed the suit in favour of the plaintiff- Hastimal and rightly not believing the defence set up by the defendant Laxmi Narayan about the mortgage of the suit property for Rs.5,000/- and, therefore, the present first appeal of the defendant Laxmi Narayan deserves to be dismissed. He also submitted that, if it was a case of mortgage, the defendant Laxmi Narayan would have filed a suit for redemption of the mortgage and upon payment of the borrowed sum in question, he could have asked for possession of the mortgaged property in question, but nothing of this sort was ever done even by him and on the contrary, in the transferred/sold property to the plaintiff, the defendant Laxmi Narayan not only forcibly occupied

the same, but his possession and now continued possession by his legal representatives is nothing more than that of a trespasser and accordingly the decree under appeal deserves to be upheld and the possession of the suit S.B. CIVIL FIRST APPEAL NO.19/1989 LAXMI NARAYAN VS. HASTI MAL DATE OF JUDGMENT:

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7. 11 property deserves to be handed over back to the legal representatives of the plaintiff Hasti Mal, who are now on record.

8. In rejoinder, Mr. N.K. Vyas, learned counsel for the appellant defendant also submitted that the arrears of mesne profits amounting to Rs.5,000/- have been deposited by the legal representatives of defendant appellant Laxmi Narayan on 06.08.2012 in the account of plaintiff Hasti Mal with the Indian Bank, 5th Road, Jodhpur and the circumstance of delay in such deposit has been explained in the application that some of the legal representatives of the defendant Laxmi Narayan were living outside the Jodhpur in Ahemdabad and Uttar Pradesh and after the death of Prakash and the mental imbalance of appellant's wife, such delay occurred on account of bonafide reasons.

9. Having heard learned counsels at length and upon perusal of the judgment under appeal and record of the case and from perusal of the various documents and statements of the witnesses on record, this Court is of the opinion that the learned trial court has rightly decreed the suit for possession in favour of the plaintiff - Hastimal and not believing the defence of the defendant Laxmi Narayan S.B. CIVIL FIRST APPEAL NO.19/1989 LAXMI NARAYAN VS. HASTI MAL DATE OF JUDGMENT:

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8. 11 about the mortgage of the suit property. The suit property was sold by a registered sale deed Ex.1 by Laxmi Narayan to Hasti Mal for a consideration of Rs.5,000/- and, therefore, there is a strong presumption of ownership, title and possession of the plaintiff Hasti Mal over the suit property. The defence of the

same being a mortgage, appears to be a sham defence, as never any steps for redemption of such claimed mortgage were taken by the defendant Laxmi Narayan. The factum of possession of plaintiff Hasti Mal was proved by the documentary evidence on record namely Rent Notes in favour of the Muzaffar Hussain and Badri Lal Chunni Lal. The decree in the earlier eviction suit No.52/72 in favour of the plaintiff and its execution, after the defendant Laxmi Narayan's appeal was dismissed by the appellate court on 24.07.1975, are also glaring facts on record, which firmly establish the title and ownership of the plaintiff Hasti Mal of the suit premises. The various witnesses, who appeared on behalf of the plaintiff before the learned trial court viz. PW-1 plaintiff Hasti Mal himself, PW-2 Sidhraj, PW-3 Ganesh Songara and PW-4 Aaskaran have duly supported the case of the plaintiff in this regard and the documentary evidence on record, also S.B. CIVIL FIRST APPEAL NO.19/1989 LAXMI NARAYAN VS. HASTI MAL DATE OF JUDGMENT:

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9. 11 clearly supports the claim of the plaintiff- Hasti Mal about the title of the suit property and his legal possession over the same. As against this, the defendant Laxmi Narayan has failed to establish any semblance of title or interest in the suit property after the execution of the registered sale deed on 28.02.1968 vide Ex.1. The defendant Laxmi Narayan himself has admitted his signatures on the sale deed, therefore, his claim that it was only mortgage of suit property in favour of plaintiff Hasti Mal is not sustainable. No such stipulation of mortgage or borrowal of the sum is made in the sale deed Ex.1 itself. The defendant- Laxmi Narayan also failed to adduce any evidence before the trial court about the construction allegedly raised by him on the second floor of the suit premises, after the purchase of the property by him in 1964 prior to its sale in 1968 in favour of the plaintiff Hasti Mal. As against this, the plaintiff has proved the construction at his own cost and, therefore, the issue No.3 has rightly been decided by the learned trial court in favour of the plaintiff. The main issue No.1 has also been decided on the basis of the registered sale deed and legal possession of the plaintiff on the basis of Rent Notes exhibited by him vide Exs.3 and 4 in favour of S.B. CIVIL FIRST APPEAL NO.19/1989 LAXMI NARAYAN VS. HASTI MAL DATE OF JUDGMENT:

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10. 11 Muzaffar Hussain and Badri Lal Chunni Lal.

10. Thus, an overall appreciation of the evidence on record, this Court concurs with the findings of the learned trial court and is of the considered opinion that the trial court was justified in decreeing the suit of the plaintiff and there is no force in the present first appeal of the defendant Laxmi Narayan.

11. Accordingly, the present first appeal filed by the appellant defendant Laxmi Narayan, now represented by his legal representatives, is liable to be dismissed and the same is accordingly dismissed with no order as to cost.

12. The defendant appellants, legal representatives of Laxmi Narayan shall hand over the vacant and peaceful possession of the suit premises to the plaintiff's legal representatives within six months from today and in the meanwhile shall pay mesne profit @ Rs.1,000/- per month to the legal representatives of plaintiff Hasti Mal. They will also clear the arrears of mesne profits besides the above sum of Rs.5,000/- paid by him on 06.08.2012, if any, in three months, otherwise said amount of arrears shall bear interest @ 9% per annum and the learned executing court below shall compute such arrears and recover the same S.B. CIVIL FIRST APPEAL NO.19/1989 LAXMI NARAYAN VS. HASTI MAL DATE OF JUDGMENT:

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11. 11 from the defendants, legal representatives of Laxmi Narayan and pay the same to the plaintiffs decree holders. If the possession of the suit premises is not handed over to the plaintiffs-decree holders within the aforesaid six months or arrears of mesne profits are not paid, besides execution of the decree in normal course, the plaintiffs shall also be entitled to initiate contempt jurisdiction before this Court. (DR. VINEET KOTHARI)J.

Anil/ Item No.5

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