

CF 230/r
①③

IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

Single Bench

SECOND APPEAL NO 474 OF 2003.

APPELLANTS
DEFENDANTS

P. R. No. 1842/03
Presented by Shri K. S. Agrawal
dated 11-8-03

1. Madan Singh, Aged about 65 years
S/o Mual Singh Skh R/o Gondpara
Bilaspur (C.G)
2. Surendra Singh ilas Babi, Aged
about 30 years S/o Madan Singh
Sikh R/o Gnadpara Bilaspur (C.G.)

VERSES

RESPONDENT
PLAINTIFF

1. Sudhir Kumar Agrawal, Aged about
44 years S/o Harrihar Prasad
Agrawal R/o Saraswati Nagar
Pratap Chowk Bilaspur (C.G.)

SECOND APPELA UNDER SECTION 100 OF THE CODE OF
CIVIL PROCEDURE

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal NO.474/2003

Madan Singh and Others

VS

Sudhir Kumar Agrawal

J U D G M E N T

Post for: 19 /12/2003

Sd/-
Fakhruddin
Judge

Seen
Shah
19/12/03

42

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal NO.474/2003

Madan Singh and Others

VS

Sudhir Kumar Agrawal

Shri Shailesh Ahuja, Counsel for the appellants.

Shri Shrikumar Agrawal, Senior Counsel, with Shri Sanjay K. Agrawal and Shri Anand Gupta, Advocates, for the respondent.

J U D G M E N T

Per Fakhruddin, J:

The appellants have preferred this appeal against the judgment and decree dated 30.07.2003 passed in Civil Appeal No.12-A/2003 by Third Additional District Judge, Bilaspur arising out of the judgment and decree dated 30.6.2003 passed by the Third Civil Judge, Class-II, Bilaspur in civil suit No.242-A/2002.

2. Briefly stated the facts of the case that the respondent had filed a suit for eviction before the trial court on the ground that the respondent/plaintiff is the owner/landlord and the appellants are tenants of the said premises/non-residential accommodation. It was stated that the let out accommodation was non-residential. The area

has been shown in the plaint. The respondent contended that he purchased the property through registered sale deed on 17.05.2001 and the appellant No.1 was tenant. The eviction of the accommodation was sought on the ground of bona fide requirement, which was in possession of the tenant. It was submitted that the respondent and his wife both are advocates and they do not have any other non-residential accommodation of their own in the city. The tenant denied the claim and contended that the requirement shown by the plaintiff is not bonafide as alternative accommodation is available to him.

3. The learned trial court framed 6 issues. So far as sub-tenancy is concerned, the trial court held that it was not proved. The tenant is using the premises for immoral and un-lawful activities. The bona fide issue is found to be proved. So far as issue No.2 is concerned, the trial court considering the evidence on record arrived to a conclusion that the plaintiff is in bonafide requirement of the accommodation and that no other reasonable/suitable accommodation is available to him. Finding has been recorded in paragraph-26 of the judgment of the trial court, in which it is held that the respondent is an advocate and somehow he is carrying on his profession of advocacy in the drawing room, which is

causing great inconvenience to the family. It is also recorded that there is no other non-residential accommodation available to the plaintiff in the city of Bilaspur.

4. The defendants/appellants preferred an appeal before the lower appellate court. Learned lower appellate court has considered the legal and factual aspects of the matter. The lower appellate court discussed and considered in paragraphs 12, 13, 14, 15 and categorical findings have been recorded in para 16. The appeal filed by the defendants was dismissed by the lower appellate court.

5. The appellants have preferred this appeal contending that it involved the following substantial questions of law:

- (i) Whether the learned court below have resulted in the error of justice while ignoring the evidence of appellant No.2 challenging the bona-fide requirement of the respondent which goes to the root of the case.
- (ii) Whether the learned court below erred in totally overlooking the important aspect that the appellant No.1 was tenant prior to the purchase of the shop in question since last 20 years and recently shop was purchased on dated 17.05.2001 by respondent without their being any bona-fide requirement.
- (iii) Whether the courts below though have held that sub tenancy was not proved, neither default in

US

payment of rent was there on part of appellants nor any illegal businesses were done by them, yet allowed the suit of Respondent ignoring valuable evidence pertaining to other alternative accommodation available to the respondent.

6. Learned counsel for the appellants submitted that the judgment and decree passed by the court below is not sustainable. So far as the question of bonafide requirement is concerned, the contention of learned counsel is that the other accommodation is available to the plaintiff.

7. Learned counsel for the appellants relied upon the decision in the case of Joginder Pal vs. Naval Kishore Behal, reported in (2002) Supreme Court Case 397, wherein it has been held as under:

"The courts should adopt a reasonable and balanced approach while interpreting rent control legislations and assume that equal treatment has been meted out to both, the tenants and landlords - Although rent control statutes lean in favour of tenants, courts must lean in favour of landlords while interpreting those provisions which take care of landlord's interest Further held, such provisions are enacted to take care of situations where the landlords are too weak and feeble and feel humble - East Punjab Urban Rent Restrictions Act, 1949 (3 of 1949), S.13(3)(a)(ii)(a)"

8. Learned counsel further relied on a decision in the case of Ishwar Das Jain (dead) through LRs vs.

(16)

Sohan Lal (dead) by LRs, reported in AIR 2000 SC

426, wherein it has been held as under:

"There are two situations in which interference with findings of fact is permissible. The first one is when material or relevant evidence is not considered which, if considered would have led to an opposite conclusion. This principle has been laid in relation to Section 100, CPC after the 1976 amendment. The second situation in which interference with findings of fact is permissible is where a finding has been arrived at by the appellate court by placing reliance on inadmissible evidence which if it was omitted, an apparent conclusion was possible.

In either of the above situations, a substantial question of law can arise. The substantial question of law that arises for consideration in this appeal is: "whether the Courts below had failed to consider vital pieces of evidence and whether the Courts relied upon inadmissible evidence while arriving at the conclusion that the mortgage was sham and that there was no relationship between the plaintiff and the defendant as mortgagor and mortgagee but real relationship was as landlord and tenant? point 1 is decided accordingly."

9. Learned counsel for the respondent on the other hand has relied upon the decision of the Apex Court in the case of Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta reported in (1999) 6 SCC 222, wherein it has been held as under:

"The term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by "requires" is much more higher than in mere desire. The phrase "required bona fide" is suggestive of legislative intent that a mere desire which

is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire in contradistinction with a mere pretence or pretext to evict a tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejection of the tenant..."

In the aforesaid case in Para 13, it was further observed that:-

"...Once the court is satisfied of the bona fides of the need of the landlord, for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the Court. The Court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against."

10. Learned counsel for the respondent has further relied upon the judgment of the Apex Court in the case of Har Narain Daga vs. Heeralal and Others reported in (2001) 1 Supreme Court Cases 41, wherein it has been held that:

"Bona fide requirement of landlord - Held, is essentially a question of fact -

Concurrent findings of fact having been recorded by both lower courts (that tenanted accommodation located on ground floor of respondent landlord's residential building was required for needs of his growing sons; also for holding private tuition classes for his students), held, High Court was justified in not interfering and in dismissing appellant tenant's second appeal - Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (17 of 1950), S.13(1)(h) - Civil Procedure Code, 1908, S.100"

11. Learned counsel for the respondent has also relied upon the judgment of the Apex Court in the case of Ram Prasad Rajak vs. Nand Kumar & Bros. & Anr. reported in JT 1998(5)SC 540, wherein it has been held as under:

"Section 100 - Second appeal - Finding of fact arrived at by first appellate Court - Question of bona fide requirement - High Court re-appreciating the evidence and recording a finding that bona fide necessity not established - Held that High Court has exceeded its jurisdiction in appreciating evidence and in interfering in the find of fact."

12. Learned counsel further relied upon the judgment of Apex Court in the case of Prem Narayan Barchhjha vs. Hakimudding Saifi, reported in AIR 1999 Supreme Court 2450, wherein it has been held as under:

"It is no part of the obligation of the landlord seeking eviction of a tenant under cl.(f) of S.12(1) of the Act to aver in his plaint/petition the facts that he is in occupation of residential accommodation and

Ug

that it is not suitable for non-residential purposes. These facts are not the requirement of cl.(f) and are irrelevant to make out a case under that clause. To read such a requirement in the said cl.(f) would amount to doing violence to the language of the clause may rewriting the clause which is far beyond the principle of iron out the creases and is clearly impermissible.

It is futile to contend that accommodation is a neutral word taking in its fold both residential as well as non-residential purposes, the landlord ought to disclose the residential accommodation in his possession and show that it is not reasonably suitable for non-residential purposes when he is seeking eviction of the tenant from accommodation let for non-residential purposes. The Court cannot burden the landlord with additional conditions of disclosing particulars of residential accommodation in his possession and proving that it is not reasonably suitable for non-residential purposes. Non-suiting him on such grounds will mean non-suiting him on extraneous grounds."

13. In view of the position of law, ~~now~~ it is necessary to examine the facts of the present case.

14. The facts, which have been proved beyond reasonable doubt and not disputed are that the plaintiff respondent Sudhir Kumar Agrawal is an Advocate and is practicing since 1981. His wife is also an Advocate. The respondent plaintiff had earlier the office adjoining to the suit accommodation and he was carrying on his legal profession in the area 8x8 ft. It had fallen down and as a result thereof he started practicing in the drawing room of his house by effecting wooden

(20)

partition in the area 9x9 ft. He purchased this on 17.05.2001. It is stated by the plaintiff that it is very difficult for him to carry on his legal profession in the drawing room where he and his family members are living. This is causing great hardship. The suit accommodation is larger in area and is in commercial area. The plaintiff does not own any other non-residential accommodation. The defendants main contention is that the area sought to be evicted from the tenant is not ~~disputed~~ ^{suitable}. It is contended that the plaintiff's residence where he is carrying on his legal profession is more suitable than the suit accommodation. The defendants want the plaintiff to carry on legal profession in the residential accommodation.

15. The Court below has considered in great detail in para 12 of the judgment. In the opinion of this Court as well, it is landlord who is the best judge. The Courts have to substantiate the bonafide need and the need of the plaintiff. Applying its test, the choice has to be that of the landlord. In the present facts and circumstances of the case, it is the landlord whose choice has to be respected by the Court. The Court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most

suited for the purpose; the Court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. The Supreme Court in the case of Shiv Sarup Gupta (supra) has held that the concept of bonafide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

16. It will be appropriate to go through the evidence. The plaintiff is a registered advocate. Exhibit P-25 is a registration certificate issued by the State Bar Council of Madhya Pradesh. His wife is also an advocate and Exhibit P-26 is a registration certificate issued by the State Bar Council of Madhya Pradesh. In para-26, he has stated that he is carrying on his legal profession in the drawing room and has partitioned it by wooden almirah and furniture itself. This he is carrying on under compulsion. There is no facility of light, water and bathroom. In para-27, he stated that he is carrying on his profession there from September, 1999 as his earlier office had collapsed. He had to shift to the drawing room as his earlier office

(52)

being dilapidated fallen down. In para-28, he admitted that clients are able to reach to his office but by asking. In para-29, he has stated that he is finding it very difficult to carry on the legal profession. He further stated that the suit accommodation is on the main road and that will ~~be~~ ^{very} facilitate him to carry on the profession and further that his drawing room would be available for living, as it is very difficult for the guests who come to get them even seated.

17. DW-1 Madan Singh in para-15 has stated that it is true that the plaintiff had served the notice for vacation. He stated that he cannot say as to whether the plaintiff has any other non-residential accommodation in Bilaspur City. In para-16, he has admitted that it is true that the plaintiff has made a chamber by partition. He also stated that the chamber is big one. He denied that the chamber of the plaintiff is in the area 9x9 ft. He has admitted that the portion of the drawing room, which is situated behind the partition, is not visible from the chamber. In para-17, he has admitted that the plaintiff has three children. In para-22, he has admitted that earlier the office of the plaintiff was in Pratap Chowk. In para-25, he has

stated that he has his own house at Gonpara, which is big one having area of 2400 sq.ft.

18. In view of the categorical admission of the defendant Madan Singh in para-16, the difficulties, which are being faced by the plaintiff, can well be appreciated.

19. The trial Court and the lower appellate Court considered the evidence in great detail. This Court has also considered the evidence as discussed herein above. In view of the evidence on record, the findings recorded regarding bonafide are just and proper. No interference is called for. The question of law, which has been formulated that the evidence has been considered ignoring the evidence of appellant No.2, cannot be said to be a question of law as the evidence has been properly considered. Likewise, the question No.2 that the tenant is living since 20 years or so has nothing to do with the requirement. It is requirement of the plaintiff/landlord, which has to be considered and the fact that he is living from 20 years or so has no bearing at all. The question No.3 that the suit of the plaintiff/respondent has been allowed ignoring the valuable evidence pertaining to other alternative accommodation available to him cannot be said to be a question of law as the evidence has

(520)

been properly considered. None of these questions are substantial questions of law. The existence of substantial questions of law is a *sine-qua-non* and that being not there, no case for interference under Section 100 C.P.C. is made out.

20. At this stage, Shri Shailesh Ahuja, learned counsel for the appellants, submits that some time may be granted to the appellants to vacate the suit premises. Learned counsel for the respondent submits that certain terms be imposed.

21. Having thus considered, ends of justice would be served if three months time is granted to the tenants/appellants to vacate the premises in dispute and hand over the vacant peaceful possession to the landlord/respondent subject to the following conditions:

(i) That the appellants/tenants shall furnish an undertaking duly supported by an affidavit within one month from today to the effect that they shall vacate the premises in dispute and handover the vacant peaceful possession on or before 18th of March, 2004 to the landlord/respondent.

(ii) That the tenants/appellants shall deposit all arrears of rent, if any, within one month from today and they shall continue to deposit monthly rent till the accommodation is vacated.

(iii) That if the undertaking is not complied with and the accommodation, as directed above, is not vacated within the specified time, then in

(68)

that situation, the executing Court shall proceed with the matter in accordance with law forthwith.

22. In view of what has been stated above, the appeal fails and is dismissed.

Counsel fee as per scale.

Sd/-
Fakhruddin
Judge

19-12-2003

R/Hande

26/12/03