

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR
BENCH, JAIPUR.

J U D G M E N T

Shree Ram Vs. Radhaballabh & Anr.

S.B. CIVIL SECOND APPEAL No.514/2002
 against the judgment & decree dated
 dated 3.10.2002 passed by the ADJ
 No.1, Alwar in Civil Regular Appeal
 No.10/1996.

Date of Judgment :: May 31, 2006

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. B.L. Mandhana for the defendant-appellant.
 Mr. Dinesh Sharma for the plaintiff respondents.

REPORTABLE **BY THE COURT:**

1. This second appeal of tenant Shree Ram son of Bodhan is directed against the concurrent findings and judgments of two courts below decreeing the suit on the grounds of personal bona fide necessity of the plaintiff-landlord Radhaballabh son of Hiralal. This appeal was admitted by this Court on 11.12.2002 with the followings substantial questions of law framed by the Court:-

(1) Whether the need of a brother who is not dependent on the plaintiff and is living separately is a member of the plaintiff's family and the ground U/s.13(1)(h)(i) of the Rajasthan Premises (Control of

Rent and Eviction) Act is available to him for eviction?

(2) Whether the decree of eviction is bad in law for non-determination of question of partial eviction?

(3) Whether the impugned judgment has been passed in violation of mandatory provision of Order 41 Rule 31 CPC and is liable to be set aside on this ground as well?

2. The facts giving rise to the present second appeal are that a shop situated at Sabji Mandi, Alwar was given on rent of Rs.50/- per month on 18.3.1972 by the plaintiff-landlord to the defendant-tenant. The suit for eviction was filed by the landlord on the ground of personal bona fide necessity of the brother of landlord Rakesh. According to plaintiff, after the death of the father of these two brothers, the elder brother plaintiff Radhaballabh was responsible for upbringing of the younger brother Rakesh and in the absence of any job he had to work as a driver in Delhi but he wanted to start his business in the suit premises i.e. the shop in question and, therefore, the said shop was needed for personal bona fide necessity of brother of plaintiff. Another ground raised by the plaintiff was that the shop in question was in a dilapidated condition and in order to re-construct it properly the said premises was

required by the landlord.

3. The suit was decreed by the trial court vide its judgment dated 24.1.1996 on both the aforesaid issues and on the comparative hardship also the trial court found that if the eviction decree is not granted, the plaintiff would stand to suffer more hardship than the defendant. The trial court also found that the shop was in a dilapidated condition and, therefore, required major repairs/ re-construction. Accordingly the suit was decreed.

4. The first appeal filed by the defendant-tenant before the court of learned Additional District Judge No.1, Alwar also failed vide judgment dated 3.10.2002 and the learned first Appellate Court while upholding the judgment of trial court also found that the suit premises in question were being used by the tenant by allowing other persons to use the same as godown or storage who were carrying on the business of selling gol gappa in the same market and he himself was not using the said premises. The Appellate Court also found that there was personal bona fide necessity of the landlord as the responsibility of the brother was on his shoulders after the death of his father. Learned counsel for the landlord also submitted during the course of argument that the

appellant has himself since retired from service and, therefore, he along with his brother can carry on his business in the suit premises and, therefore, the personal need is now all the more aggravated.

5. Making his submissions on the present second appeal of the tenant Mr. B.L. Mandhana submitted that from the evidence while has come before the courts below, it was clear that the brother of the plaintiff, Rakesh had since settled in Delhi and was working there as Taxi driver hence there was nothing on record to indicate that Rakesh was inclined to leave Delhi and come back to Alwar for carrying on any business, there was in fact no personal bona fide necessity of the shop in question and in the suit premises i.e. shop in question of about 10'x5', the work of scooter repair garage cannot be carried out as alleged and, therefore the suit deserved to be dismissed. He further submitted that there was no evidence on record to establish that the suit shop was unsafe or in dilapidated condition and, therefore, the ground of evictions U/s.13(1)(k) of the Rajasthan Rent Control Act, 1950 was not made out. He also assailed the tenor of the judgment by the first Appellate Court as being contrary to requirements of Order 41 Rule 31 CPC and he submitted that the learned first Appellate Court has merely noticed the contentions of both the sides and without assigning

any proper reasons dismissed the appeal of the appellant-tenant. He also submitted that both the courts below have failed to consider the case of partial eviction of the shop as required under the law.

6. Mr. B.L. Mandhana, learned counsel relied on the judgment of this Court in **Kamruddin Vs. Wahid Ali** [1987 (1) RLR 290] in which the reversal of finding of trial court on the ground of bona fide necessity by the first Appellate Court was upheld by this Court and it was held that High Court could not interfere with the findings arrived at by the first Appellate Court. He also relied on **Surya Prasad Vs. Ganga Ram** [1991 (2) RLR 641] wherein this Court held that ordinarily a younger brother would not be a member of the family of his elder brother and unless he is supported by the elder brother, such younger brother cannot be said to be dependent of elder brother and, therefore, requirement of younger brother cannot be said to be requirement of plaintiff so as to form a ground for eviction. On the requirement of judgment of first Appellate Court to be self contained and to substantially comply with the requirement of Order 41 Rule 31, he relied upon the judgment of this Court in **Smt. Patu & ors. Vs. L.Rs. Of Dau Lal** [1997 (1) RLR 444] and **Mst. Kamla Vs. Badri Narain** [1953 RLW 512]. Having perused these judgments, this Court is of the opinion

that neither the judgment of first Appellate Court in the present case is a faulty one and nor it can be said that it does not conform to the requirement of Order 41 Rule 31 CPC. The other case laws relied upon by the learned counsel are also distinguishable on fact of the present case. So far as [1991 (2) RLR 641] is concerned, this Court itself held that it would depend upon the facts as to whether the brother was dependent on the plaintiff or not and secondly the judgment relied upon by the learned counsel for the appellant for partial eviction, this Court has already held that such question is not relevant to be considered when subject matter of the suit is only single shop. The suit premises in the present case is a small single shop and, therefore, this question is not relevant to be considered in the present case. So far as cases relied upon by the learned counsel on Order 41 Rule 31 CPC are concerned, as already observed the judgment of first Appellate Court affirming the judgment of trial court which runs into 8 pages dealing with all the contentions of both the sides cannot be said to be not in accordance with the requirement of law.

7. Countering the arguments of the learned counsel for the appellant Mr. Dinesh Sharma learned counsel for the respondent-plaintiff urged before the Court that bona fide necessity of brother was also very well covered

under clause 13 (1)(h) of the Act as he was person closely connected with the plaintiff and was a family member and relying on the judgment in **Joginder Pal Vs. Naval Kishore Behal** [(2002) 5 SCC 397] he submitted that the decree awarded by the courts below was absolutely justified and required no interference in the present second appeal. He submitted that as a matter of fact against the concurrent findings of two courts below in favour of the landlord on the ground of personal bona fide necessity and comparative hardship no substantial question arises, as held by this Court in **Jai Kishan Malpani & ors. Vs. Braspath Chand** [2003 WLC (Raj.) 287]. He also relied upon the judgment of this Court in **Sohan Lal & ors. Vs. Khetu Lal & ors.** [1995 (2) WLC 742] wherein this Court held that question of bona fide personal necessity being mixed question of fact and law, mere error, if any on part of lower courts in appreciation of evidence is not sufficient for entertaining the second appeal. About the bona fide necessity of brother, learned counsel for the respondent-landlord also relied upon the judgment of this Court in **Raj Rani Vs. Ramanlal Agarwal** [1972 All India Rent Journal 699] wherein this Court held that the family of the deceased landlord's brother must also be taken into consideration while deciding the question of personal bona fide necessity in cases of

eviction. About dilapidated condition of the shop he submitted that it would depend upon age and condition of suit premises, whether such repair or re-construction is required by the local authorities or even for bona fide necessity of the landlord and since the two courts below have concurrently held that the suit premises in question were in dilapidated condition the same being a finding of fact, it could not be interfered with in the present second appeal. He relied upon the judgment of Hon'ble Supreme Court in **Jagat Pal Dhawan Vs. Kahan Singh (dead) by Lrs. & anr.** [(2003) 1 SCC 191] in this regard. About necessity to consider the question of partial eviction he cited judgment of this Court in **Hanuman Das & ors. Vs. Sanwal Ram** [1982 RLR 916] and submitted that this question need not be considered when the subject matter of the suit is a single shop.

8. Having heard the learned counsel at length and considered the impugned judgments and evidence on record, this Court is of the opinion that the present second appeal is devoid of merit and the same deserves to be dismissed.

9. So far as necessity of brother is concerned, learned counsel for the respondent-landlord is right in his submission that after the death of the father if the

responsibility of bringing up the younger brother is on the shoulders on the elder brother, the plaintiff, the defendant-tenant cannot contend that he is not a member of the family. The concept of joint Hindu families is a well known concept in India and the responsibility of bringing up younger brother by the elder brother is also not a concept foreign to Indian culture. It is also irrelevant that the brother Rakesh had to go to Delhi and work as driver and, therefore, the chances of his coming back and starting the business here in Alwar are not there. The painfully long period of litigation taken in these type of matters and the change of circumstances in between cannot avail or enure to the benefit of the defendant and it is not for the tenant to suggest that if the brother of the landlord had gone to Delhi and was working as driver there, the bona fide necessity of the suit premises for the landlord were over. Going by the analogy canvassed by the learned counsel for the appellant-tenant the suit premises are now all the more required by the landlord in view of his own retirement from service and he seeking a source of livelihood in a business with his brother in the suit premises. It is the necessity on date of filing of the suit which is important and not the subsequent change in circumstances. Likewise the contention of the learned counsel for the appellant-tenant that the shop was not in dilapidated

condition as no expert was examined about the shop being unsafe, is of little consequence. Merely because the tenant himself has used the said premises in the condition in which it is, the same does not detract it in any manner from the finding of fact arrived at by the two courts below that this suit premises are unsafe and having only tin shed on the top of it whereas the nearby shops have been re-constructed by a pakka construction. Therefore, this ground of the appellant-tenant also does not have much water to hold. The argument raised by the learned counsel for the appellant that the other two shops owned by the same landlord against whom some litigation for eviction was going on were given on higher rent to those very tenants and this shows that the landlord in the present case was also inclined to merely increase the rent and in fact the shop was not required for any business purpose of the landlord is also of little help to the appellant-tenant. No such compromise with other tenants is either on record nor such compromise if any in relation to other two shops weakens the case of the landlord for the shop in question. So far as question of partial eviction is concerned, I find considerable force in the contention of respondent-landlord that the said question need not be considered when the suit premises in question is only one shop.

10. Consequently, on the basis of aforesaid discussions, this Court is of the view that the present second appeal has no force and the same is liable to be dismissed and the same is accordingly dismissed. The tenant shall hand over the peaceful vacant possession of the suit premises to the landlord within a period of two months from today. Decree be made accordingly. No order as to costs.

(Dr.VINEET KOTHARI),J.

VS/