

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR.**

## JUDGMENT.

Ranidan through his legal representatives vs. Bal Kishan through his legal representatives.

S.B. Civil Second Appeal No.114/1987 against the judgment and decree dated 12.10.1987 passed by the Addl. District Judge, Jaisalmer in Civil Appeal DeceeeNo.14/1985.

Date of Judgment: March,31 2006.

## PRESENT

## HON'BLE MR. PRAKASH TATIA, J.

Mr. Mishri Lal Chhangani, for the appellants.  
Mr. R.K. Thanvi, for the respondents.

## **REPORTABLE**

**BY THE COURT:**

This appeal is by the defendant-tenant against the judgment and decree of the first appellate court dated 12.10.1987 by which the first appellate court set aside the judgment and decree of the trial court passed for eviction of the defendant-appellant on 27.3.1985.

Brief facts of the case are that the plaintiff filed the suit for eviction of the defendant-tenant. According to the plaintiff, the plaintiff purchased one house constructed on plot no.629 and 630. This house was purchased by the plaintiff from one Roop Chand on 9.4.1979 for a consideration of Rs.7951/- . The description of the entire house is given in para no.1. The total house consists of two rooms, one store, one *chowk*, one *varanda* and one stair. Out of this,a portion of the house which in fact was separated by the partition wall, was let out to the defendant's father. The rented premises consists of one room, one *Pareda* and one *kotha and Patival*. It is alleged that the tenancy was

created about 25 years ago and the rent was Rs.8/- per month. The plaintiff in para no.2 again gave description of the property which is in possession of the tenant. The plaintiff also submitted sketch map which has been exhibited as Ex.7 to show the entire purchased property of the plaintiff and the portion let out to the tenant. The plaintiff also produced the sale-deed by which he purchased the entire house and that sale-deed has been marked as Ex.1.

The ground for eviction set up by the plaintiff was that the defendant committed default in payment of the rent, the suit premises required bona-fidely and reasonably for the personal necessity of the plaintiff and his family. The plaintiff submitted that the plaintiff has two sons, one was of the age of 15 years and the second was of the age of 12 years. The plaintiff is residing in the father's house along with his brother and in that house there are only two rooms (*Maliya*) and the house is very small, therefore, the plaintiff purchased the house for his residence after paying consideration of Rs.7951/-. The plaintiff pleaded that the plaintiff will improve the entire house and he will include the portion which is in possession of the tenant in the rest of the house so that the plaintiff can live in the entire house. The plaintiff also pleaded that the defendant denied the title of the plaintiff, therefore, on this ground also the plaintiff is entitled to decree for eviction against the tenant.

The defendant submitted written statement and pleaded that the house no.629 and 630 are two separate houses. It is partitioned by wall

between house no.629 and 630. The defendant pleaded that the defendant's father took the property in dispute from the predecessor-in-title of the plaintiff with a consideration only that the defendant will keep the house cleaned as well as incur the expenditure of white-wash and repairing etc. The defendant, therefore, denied the rent to be Rs.8/- . However, the defendant, in his written statement, categorically admitted that for this consideration of keeping the house cleaned and for white-wash time to time, the house was taken on rent. The defendant denied the personal bona-fide necessity of the plaintiff and further denied that he ever denied the title of the plaintiff. The plaintiff submitted rejoinder to the defendant's written statement.

The trial court framed the issues which are, whether the plaintiff is owner of the house, whether the suit property was let out to Naval Ram (father of the defendant) by Roop Chand (predecessor-in-title of the plaintiff) about 25 yeas ago on monthly rent of Rs.8/- for running hotel, whether the suit property is required by the plaintiff reasonably and bona-fidely, whether the plaintiff is entitled to decree for eviction of the tenant on the grounds mentioned in para 5(d) (which is with respect to the denial of title) whether the tenancy was terminated by valid notice and issue about comparative hardship.

The trial court decreed the suit of the plaintiff on both the grounds, i.e., personal bona-fide necessity of the plaintiff as well as on the ground of denial of title by the tenant. The trial court's decree was challenged by preferring regular first appeal. The appellate court found

that in view of the statutory provisions, it is necessary to determine whether the need of the plaintiff can be satisfied by passing the eviction decree of the tenant from part of the premises. The first appellate court, therefore, by order dated 16.2.1987, framed issue no.8 and i.e. that in case decree for eviction of the tenant is passed, then whether the need of the plaintiff can be satisfied by passing the decree of eviction of the tenant from part of the premises only. Both the parties were given opportunities to lead evidence. Therefore, again the evidence was recorded and the trial court recorded finding on issue no.8 by order dated 25.7.1987 and held that the need of the plaintiff cannot be satisfied by eviction of the tenant from the part of the premises. The trial court in its order dated 25.7.1987 looked into all aspects of the measurements of the house as well as the family members of both the parties and, thereafter, decided in favour of the plaintiff.

The appellate court, after hearing both the parties, reversed the trial court's finding with respect to personal bona-fide necessity of the plaintiff but maintained the decree for eviction of the tenant on the ground of denial of title. The defendant being aggrieved against the eviction decree on the sole ground of denial of title, preferred this second appeal, whereas the plaintiff-respondent submitted cross-objection against the reversal of the finding of the trial court by the first appellate court on the ground of personal bona-fide necessity of the plaintiff.

Following substantial question of law was framed by this Court

while admitting this appeal on 15.12.1987:-

*“Whether the allegation of the defendant that he had taken the house from Roop Chand for looking after it (नीपने गूपने के लिए) amounts to denial of the landlord's title and the plaintiff is entitled to eject the defendant on that count.”*

From the cross-objection, following substantial question of law was framed on 29.3.2006:-

*“Whether the finding of the first appellate court reversing the finding of the trial court on the ground of personal bona-fide necessity of the plaintiff is vitiated because of non-consideration of the plaint allegations as well as the evidence recorded by the trial court after framing issue by the first appellate court by order dated 16.2.1987 and because of non-consideration of the evidence of the defendant himself and because of taking into account the defence which was not set up by the defendant.”*

The learned counsel for the appellant vehemently submitted that the finding of both the court below on issue of denial of title of the plaintiff is absolutely perverse as the two courts below could not appreciate that services can also be consideration for tenancy. It is also submitted that the courts below were wrong when the courts held that defendant's disputing the rent or saying that premises was let out not for rent in the form of money is denial of title or renunciation of relationship of landlord and tenant. It is also submitted that the defendant never denied the title of the plaintiff and further the defendant never renounced his character as of tenant. Not only this but

the defendant categorically and unequivocally admitted in the written statement that he is tenant in occupation. It is entirely different that consideration for tenancy according to the defendant was only of keeping the house neat and clean and incurring expenditure for repairing and maintaining. According to the learned counsel for the appellant-defendant-tenant, the consideration for tenancy can be in kind or can be in service also. The denial of title and renouncing of character by the tenant has not been properly understood by the two courts below.

The learned counsel for the respondent-landlord vehemently submitted that the entire stand taken by the defendant clearly shows that he has denied his character as of tenant by saying that the suit property was taken for consideration of keeping the house neat and clean and for maintaining it. He nowhere stated a single word in examination-in-chief or even in cross-examination that he is occupying the house as tenant. It is also submitted that it is also not the case of the defendant that keeping the house neat and clean and its repairing and white-wash was the consideration for creating the tenancy. Therefore, the two courts below after appreciation of the facts of the case and pleadings as well as the evidence, held that the tenant denied the relationship of landlord and tenant in the above facts and circumstances. Therefore, this is a finding of fact binding upon the court in second appeal.

The learned counsel for the respondent arguing on cross-objection submitted that the first appellate court totally failed to appreciate the

facts of the case. The plaintiff filed the suit by specifically stating that the plaintiff purchased one house having no.629 and 630. This house consists of a few apartments only and it is divided by one partition wall and half of the house having a distinct number of plot, was let out to the defendant. The plaintiff pleaded that, the plaintiff will renovate the entire house which means the entire house is situated on plot no.629 and 630. The plaintiff also pleaded specifically that he will remove the partition wall between the two portions of one house and thereafter use for occupation of his family which has four members at that time. The first appellate court further committed serious error of law in drawing inference from the statement of the plaintiff where the plaintiff admitted that that half portion of the property mentioned in this suit was let out to one person on rent of Rs.40/-. The defendant himself admitted that the said tenant already vacated the suit premises. The first appellate court should not have looked into this evidence because of the reason that it was never the case of the defendant at any point of time that the plaintiff let out the remaining half portion of the same building. It is also submitted that even if that defence is available to the defendant then the defendant himself admitted that the said tenant already vacated the premises, therefore, the defendant could have pleaded any other defence including the defence that the said property was again let out but that has not been done by the defendant. In view of the above, the first appellate court firstly failed to read the plaint allegations, secondly, failed to read the statement of the defendant

where he stated that tenant of the plaintiff has vacated the part of the same building and thirdly by not giving an opportunity to rebut the said allegations of the defendant of letting out of part of the building during pendency of suit.

The learned counsel for the appellant submitted that though the trial court recorded finding in favour of the plaintiff on the issue of personal bona-fide necessity but that finding is not based on evidence. The trial court did not discuss any evidence while deciding the issue of personal bona-fide necessity of the plaintiff, whereas the first appellate court considered the evidence in detail and thereafter reached to the conclusion that the plaintiff's need is not established because of the reason that the plaintiff himself admitted that he let out exactly half of the house of the same building during pendency of suit. In view of the above, the finding of the first appellate court on issue of personal bona-fide necessity is based on evidence and has been recorded after full consideration of the facts of the case.

I need not to narrate the facts again here but it will be worthwhile to mention here that the plaintiff filed the suit in the year 1981 with a specific case that the defendant denied the plaintiff's title whereas in fact there is no evidence worth name-shake on record that the defendant denied the title of the plaintiff from the date prior to the filing of the suit by the plaintiff. It was never the case of the plaintiff that the defendant after filing of the present suit by the plaintiff, denied the title of the plaintiff and same is with respect to the

allegation of renouncing character of the tenant by the tenant. The two courts below as well as during the course of arguments before this Court, only plea on behalf of the plaintiff is that the defendant in written statement, since pleaded that the house was taken on consideration of keeping the house neat and clean and its repair and its white-wash, therefore, the defendant has denied the title or at least renounced the character of tenant. It is proved that there was no denial of title of the plaintiff by the defendant at any time prior to the date of the filing of the suit, rather the plaintiff in para no.2 gave some instance when the defendant admitted the title of the plaintiff. So far as subsequent denial of title in the written statement is concerned, that plea was accepted by the two courts below by misreading the written statement and by drawing inference from the statement of the defendant.

The misreading is of the empathetic stand of the defendant in pleading where the defendant admitted that the suit property is taken on rent by him. However, for consideration, there may be dispute between the landlord and the tenant but disputing consideration denial of title or renunciation of the character of tenant. Section 105 of the Transfer of Property Act itself clearly provides that the tenancy may be for consideration; (1) money or (2) a share in crops, or (3) service or (4) any other thing of value, to be rendered periodically or on specified occasions to the transferor(lessor) by the transferee (lessee). The consideration for creation of tenancy may be in cash or kind or service

or any other thing of value. Not only this but Section 105 of the Transfer of Property Act clearly says that consideration even can be "Service". The defendant in his statement also took the same stand. The emphasis of the learned counsel for the respondent-landlord is that the defendant himself has not stated that keeping the house neat and clean and white-washed, is a consideration for tenancy. The tenant is bound by his admission in pleading. The fact which he has admitted in his written statement, if has not been stated on oath in his evidence, still the defendant is bound by that fact. Whereas in this case the plaintiff did not put any question to the defendant that whether he is occupying in the suit premises as tenant or not. Not only this, the entire meaningful reading of the statement of the defendant is in consonance with the plea taken by the defendant admitting the tenancy only. The defendant in his evidence, specifically admitted that the property was taken on rent for consideration of keeping the house neat and clean and its repairing.

This Court also cannot ignore the fact that the property was let out in the year of sixties if not before that and the property is situated in the desert and backward area of the Rajasthan where the land was in abundance and population was less and this Court take judicial notice because of geographical situation and the living standard at that place, that consideration of maintaining the property itself could have been sufficient consideration for giving the property on lease. Be it as it may be, the consideration as given by the defendant could have been a

consideration for creation of lease and otherwise also the only disputing consideration for creation of tenancy by the tenant cannot tantamount to renouncing the character as of tenant by the tenant. Therefore, substantial question of law no.1 is decided in favour of the appellant.

So far as personal bona-fide necessity of the plaintiff is concerned, in para no.5 of the plaint, the plaintiff clearly stated that he is residing in his father's house with his brother. The entire father's house consists of only two rooms, and the plaintiff's two sons, wife and brother and plaintiff's mother and father are living in the said house. The plaintiff's sons were of the age of 15 years and 12 years respectively. The plaintiff pleaded that the plaintiff purchased the house because of the shortage of the space in the plaintiff's father's house. The plaintiff further pleaded that he will improve the entire house, obviously materially change the house and he further pleaded that the plaintiff will reside in the entire house including the portion which was vacant and the portion which is in possession of the defendant. The defendant himself in his statement very specifically admitted that the portion which is adjacent to the portion occupied by the defendant, is not sufficient for living of the plaintiff. This statement of the defendant was not considered by both the courts below, though the finding of the trial court is in favour of the plaintiff. In view of the above and particularly in view of the fact that the first appellate court framed the issue about partial eviction and remanded the matter to the trial court to decide the issue and thereafter the courts held that the

need of the plaintiff cannot be satisfied from part of the rented premises as the plaintiff's case is that he will include the rented portion in rest of his house for living.

The apartments described by the plaintiff in the plaint disclosed that the entire house including the portion which is not in occupation of the defendant, consists of two rooms, one store, one *chowk*, one *varanda* and one stair. What inference the first appellate court has drawn is that the plaintiff in his statement stated that the adjoining portion of the house, more particularly situated on plot no.629, was let out by the landlord only an year ago only but the first appellate court ignored that that was not even the case of the defendant in the written statement. Assuming for the sake of argument that the defendant can use the admission of the plaintiff to destroy the case of the plaintiff but at this time, the first appellate court failed to read the statement of the defendant where he admitted that the tenant already vacated the suit property. If the statement of the defendant is taken into account as a whole then it comes out that the defendant admitted that in the half portion of the house, the plaintiff cannot reside and that was the case of the plaintiff also. Therefore, his non-occupying that portion in the facts of the case, was fully justified. Its letting out for short period is not very much relevant because of the reason that had there been any defence of the defendant, the plaintiff would have opportunity to explain on what terms and conditions the said portion of the house was let out by the plaintiff to the tenant during pendency of suit. The fact cannot be

ignored that the plaintiff took possession again from the said tenant, therefore, that may be a clear understanding of temporary occupation by the another tenant and there might have been reasons for the plaintiff to believe that he will get the possession from the tenant inducted during pendency of suit. This fact finds supports from the statement of the defendant where the defendant admitted that the said tenant vacated the house. So far as the statement of the defendant that now new tenant has come in, firstly, the defendant did not move any application under Order 7 Rule 7 C.P.C. if he did not choose to amend the written statement to take this plea. Earlier entry of the tenant was the admitted fact of the plaintiff, therefore, that admission could have been taken use of by the defendant but the plaintiff cannot use his own admission in his favour and, therefore, he should have set up a case of induction of new tenant by the landlord during pendency of the suit so as to make the premises not available for use of the plaintiff, therefore, the defendant left no opportunity for the plaintiff to rebut the statement.

In view of the above, the first appellate court failed to read the evidence of the plaintiff properly and failed to appreciate the facts of the case. The first appellate court also failed in appreciating the effect of the admission of the plaintiff as well as committed serious error of law by ignoring the material piece of evidence from the statement of the defendant. Therefore, the substantial question of law no.2 is decided in favour of the respondent-cross-objector and the finding of

the first appellate court on issue of personal bona-fide necessity reversing the finding of the trial court is reversed.

So far as issue of comparative hardship as well as partial eviction is concerned, it is clear from the finding of the trial court based on evidence that looking to the accommodation and looking to the fact that the plaintiff who was residing in his father's house with his brother and mere part of the said house cannot satisfy the need of the plaintiff, therefore, in case decree for eviction of tenant is not passed, the landlord will suffer greater hardship and it is not a case where the need of the plaintiff can be satisfied by the part of the premises in occupation of the defendant.

In view of the above, the appeal of the appellant is dismissed and the cross-objection is allowed. The net result is that the decree of eviction of the tenant is upheld. No order as to costs.

( PRAKASH TATIA ),J.

mlt.