
Satya Narain and Others Vs Jatan Mal Lodha and Others

Civil Second Appeal No. 573 of 2009

Court: Rajasthan High Court (Jaipur Bench)

Date of Decision: May 11, 2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 100#Rajasthan Premises (Control of Rent and Eviction) Act, 1950 â€” Section 13(1)(C)

Citation: (2011) 2 RCR(Rent) 625 : (2011) 3 RLW 2209

Hon'ble Judges: S.S. Kothari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S.S. Kothari, J.

This appeal, in which judgment and decrees of Trial Court and First Appellate Court dated 31.07.2000 and 21.07.2009

are under challenge, is a grim reminder of delays in our justice delivery system which has led people to believe that result of a litigation is reaped by

the 2nd/3rd generation of the person who initiated the lis. Bereft of details, the relevant facts are that Sh. Jatan Mal Lodha, the predecessor of the

Respondents, filed suit on 20.09.1988 on the averments that Bhanwar Lal Sharma, predecessor of the Appellants, was a tenant in the Shop No.

13/269, Naya Bazar, Ajmer. The tenancy was oral and the month used to commence on 1 Sudi of every Hindi Vikram Calendar. Bhanwar Lal

Sharma expired on 1.12.1987 and the Defendants became his tenants. The Plaintiff was Manager and Karta of Joint Hindu Family which included

his two sons. The Plaintiff claimed ejectment of the Defendants from the said shop on the ground that they have committed default by not paying

rent from Kartik Sudi 1 Samwat 2044 to Sawanvadi 15 (Amawas) Samwat 2045. The Defendants have also sublet part of the said shop to M/s.

R.B. Saraf without permission of the Plaintiff. It was further alleged that the Defendants have made material alteration in the said shop by joining it

with the adjacent shop, purchased by them, by removing the gate of the shop and fixing glass show case. It was also alleged that the said shop is

required for personal, reasonable and bonafide use of the younger son of the Plaintiff, namely, Rajendra Kumar Lodha, who has graduated in

commerce and wants to start cloth business in it for his livelihood. The Plaintiff and his son have no accommodation for running the said business.

The Plaintiff and his son will suffer hardship and inconvenience if the shop is not vacated as he will not be able to start their business, while the

Defendants will not face any difficulty in case decree of ejectment is passed against them as they have three other shops in which they are already

running their business. The disputed shop is being used only for keeping a show case. The Plaintiff prayed for a decree of ejectment, arrears of rent

of Rs. 1750/-, future mesne profits and costs of the suit. The plaint was amended to incorporate the details of the material alterations made by the

Defendants in the shop which included removal of pillar between the two shops and fixing of girder in its place which has resulted in weakening the

base of the first floor. It was further alleged that the level of the shop which was 3 ft. high from the road has been lowered and now it is only 2 ft.

high from the road resulting in weakness in the walls of the shop. It was also submitted that the Defendants have removed tin shade in front of the

shop and constructed one cement balcony in its place. All the aforesaid material alterations were made without obtaining permission from the

Plaintiff.

2. The Defendants denied plaintiff allegations except tenancy in their written statement. It was submitted that rent from Kartik Sudi 1 Samwat 2044

to Shravanvadi Samwat 2045 @ Rs. 175/- was paid to the Plaintiff on 22.04.1989 and subsequent rent has been deposited in Account No. 7525

in the Bank of Baroda. No portion of the shop has been sublet to M/s. B.R. Saraf. Actually M/s. B.R. Saraf means Bhanwar Lal, Ramswaroop

Saraf which is the business name of the Defendants. Both the shops were in the present shape right from the beginning as they were owned only by

one person. They are in the same shape even today. No glass show-case has been fixed. Moreover, fixing of glass show-case does not amount to

material alteration. The Plaintiff wants to get the shop vacated and give it on enhanced rent. If the shop is vacated, greater inconvenience will be

caused to the Defendants and their business of 40 years will be ruined. The standard rent of the shop cannot be more than Rs. 56.25 paisa and the

same may be determined by the Court. In reply to the amended plaint it was submitted that the pillar between both the shops was not removed and

the shop is in the same position as when it was taken on rent. It is also wrong that the level of the shop has been lowered. The tin shade in front of

the shop was removed by the District Administration with police help treating it as tress-pass and the balcony has been constructed as per

permission of the District Administration given to all shop keepers of the market. The District Administration removed the chabutri and covered the

drain by cement slabs and wires. Hence, the level of the shop was lowered by 6 inches. The construction of shop has not been weakened by the

above changes. A decree of ejectment for Shop no AMC 13/2666, Naya Bazar, Ajmer has been passed in Civil Suit No. 54/93, Jatan Mal

Lodha and Ors. v. Jainarain and Ors. on 31.01.2002 which is bigger and adjacent to the disputed shop. The said shop is more suitable to the

Plaintiff and the suit deserves to be dismissed with special costs.

3. The Plaintiff filed rejoinder denying that no cheque of Rs. 1700/- was paid to him by the Defendant. So far as depositing of rent in A/c No.

7525 is concerned, it is unauthorized and illegal as the Defendants did not ask the Plaintiff to give details of his account. The standard rent of the

shop can be determined only on the basis of rent of adjacent shops as the disputed shop was not on rent in 1962.

4. On the pleadings of the parties, six issues were initially framed. Subsequently, issue No. 2 was amended and two more issues as 3K and 4K

were added and issue No. 6 was deleted. Rajendra Kumar Lodha P.W. 1, Ratan Lal P.W. 2, Narain P.W. 3, B.P. Gupta P.W. 4 and Jatan Mal

Lodha P.W. 5 were examined on behalf of the Plaintiff and documents Exts. 1 to 34 were proved. Ashok Kumar Sharma D.W. 1, Nemi Chand

Jain D.W. 2, Ramesh Chand D.W. 3, Vinod Sharma D.W. 4, Ram Ratan D.W. 5 were examined on behalf of the Defendants and documents

Exts. A1 to A29 were proved. After hearing the parties, the Trial Court decided issue Nos. 2, 3, 4, and 5 in favour of the Plaintiff and issue No. 1

was decided against the Plaintiff. Issue Nos. 3K and 4K were decided against the Defendants. Consequently, the suit of the Plaintiff was decreed

for ejectment and mense profits. The Defendants preferred an appeal and the Appellate Court after hearing the parties endorsed the findings of the

Trial Court and dismissed the appeal with costs throughout.

5. I have heard learned Counsel for the parties carefully and at great length.

6. The learned Counsel for the Appellants has submitted that the concurrent findings by the learned Courts below are required to be interfered by

this Hon"ble Court as they are based on misreading, misappreciation and consideration of irrelevant and inadmissible evidence. He has also

contended that the learned Courts below have failed miserably to consider the questions of bonafide necessity and material alteration objectively in

the right perspective. Hence, substantial questions of law are involved in the present appeal which require consideration and adjudication by this

Hon"ble Court. In support of his arguments, he has placed reliance on M/S Rahabhar Productions Pvt. Ltd. Vs. Rajendra K. Tandon, Shiv Sarup

Gupta Vs. Dr. Mahesh Chand Gupta, T. Sivasubramaniam and Others Vs. Kasinath Pujari and Others, Shri Hafazat Hussain Vs. Abdul Majeed

and Others, Sri Kempaiah Vs. Lingaiah and Others, Waryam Singh Vs. Baldev Singh, Commissioner of Customs (Preventive) Vs. Vijay

Dasharath Patel, P. Chandrasekharan and Others Vs. S. Kanakarajan and Others, Dinesh Kumar Vs. Yusuf Ali, and D.R. Rathna Murthy Vs.

Ramappa,

7. On the other hand, the learned Counsel for the Respondents has submitted that, in view of concurrent findings of facts recorded by both the

learned Lower Courts, this Hon"ble Court is not entitled to re-appreciate the evidence and interfere with it under provisions of Section 100 Code

of Civil Procedure. He has further contended that the scope of Section 100 CPC is limited and this Hon"ble Court can not substitute its own

opinion and relief cannot be granted merely on equitable grounds. His further submission is that the question of bonafide need, comparative

hardship, default are questions of fact and do not raise any substantial question of law. According to him, the choice of accommodation is the

discretion of the landlord and the Court cannot dictate it. He has further submitted that lowering level of floor and demolition of partition wall

amount to material alteration and it is not necessary to prove that the value of the premises has been reduced as a result of material alterations. In

support of his contentions, he has placed reliance on Babu Manmohan Das Shah and Others Vs. Bishun Das, Kishan Lal v. Ram Babu 1971 RCI

95; Shankar Lal v. Ved Prakash 1993 DNJ (Raj) 190 ; Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, Dhanna Lal v.

Kalawatibai and Ors. 2002 DNI (SC) 608; Govind Lal v. Devi Lal 2002 (3) DNI (Raj) 1065; Raees Ahmed v. Shrigopal Prakash and Ors. 2003

(1) DNI (Raj.) 370 ; Ram Dass Vs. Davinder, Bhagirath Mal and Anr. v. Smt. Yuvrani Sahiba, 2004 (2) DNJ (Raj.) 967, Jethmal v. Swaroop

Raj and Ors. 2004 (3) DNJ (Raj.) 1317; Nishar Mohammed v. Abdul Rashid 2004 (4) RLW 2684; Mst. Sugani v. Rameshwar Das and Anr.

2006 (2) WLC (SC) Civil 162; Kishan Lal Sharma v. Nanag Ram Sharma 2006 (1) WLC (Raj.) 452 ; Gurdev Kaur and Others Vs. Kaki and

Others, Usha P. Kuvelkar and Others Vs. Ravindra Subrai Dalvi, Ajit Singh and Another Vs. Jit Ram and Another, Mahesh v. Moorti Mohanji

Maharaj Lahaoti Wale 2009 (2) DNJ (Raj.) 896 ; Uday Shankar Upadhyay and Others Vs. Naveen Maheshwari,

8. Before examining the facts and evidence of the case, it is necessary to consider the ambit and scope of Section 100 Code of Civil Procedure.

The Hon"ble Apex Court in Hafazat Hussain case (supra) has held as under:

No doubt, it has been repeatedly pointed out by this Court that concurrent findings recorded by the trial Judge as well as the First Appellate Judge

on proper appreciation of the materials on record should not be disturbed by the High Court, while exercising second appellate jurisdiction, but at

the same time, it is not an absolute rule to be applied universally and invariably since the exceptions to the same also were often indicated with

equal importance by this Court, and instances are innumerable where despite such need and necessity warranting such interference, if the second

appellate Court mechanically declined to interfere, the matter has been even relegated by this Court to the second appellate Court to properly deal

with the claims of parties in the second appeal objectively keeping in view the parameters of consideration for interference u/s 100 of the Code of

Civil Procedure.

9. In the case Dinesh Kumar (supra) Hon"ble Apex Court has held as under:

There is no prohibition to entertain a second appeal even on question of fact provided the Court is satisfied that the findings of the Courts below

were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter.

10. In the case of D.R. Rathnamurthy (supra), Hon"ble Apex Court has held as under:

Undoubtedly, the High Court can interfere with the findings of fact even in the second appeal, provided the findings recorded by the Courts below

are found to be perverse, i.e., not being based on the evidence or contrary to the evidence on record or reasoning is based on surmises and

misreading of the evidence on record or where the core issue is not decided. There is no absolute bar on the reappraisal of evidence in those

proceedings, however, such a course is permissible in exceptional circumstances.

11. In the case of Gurdev Kaur (supra), Hon"ble Apex Court has held as under:

Now, after the 1976 amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have

jurisdiction of interfering u/s 100 CPC only in a case where substantial questions of law are involved and those questions have been clearly

formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to

formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law. The

language used in the amended section specifically incorporates the words as ""substantial question of law"" which is indicative of the legislative

intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become ""third

trial on facts"" or ""one more dice in the gamble"". The effect of the amendment mainly, according to the amended section, was:

(i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved;

(ii) The substantial question of law to precisely state such question;

(iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the appeal;

(iv) Another part of the section is that the appeal shall be heard only on that question.

12. In the case of Mst. Sugani (Supra) Hon"ble Apex Court has held as under:

It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last Court of fact. It is true that

the Lower Appellate Court should not ordinarily reject witnesses accepted by the Trial Court in respect of credibility but even where it has

rejected the witnesses accepted by the Trial Court, the same is no ground for interference in second appeal, when it is found that the Appellate

Court has given satisfactory reasons for doing so. In a case where, from a given set of circumstances, two inferences are possible, one drawn by

the Lower Appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot

substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the Lower Appellate Court were

erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex

Court, or was based upon inadmissible evidence or arrived at without evidence.

13. In the above cases the Hon"ble Apex Court has referred to a large number of cases decided by it regarding the scope of Section 100 and

made the above observations. From the above observations the principle of law which can be culled is that normally this Court will not interfere in

concurrent findings of the Courts below on facts, but if findings are vitiated by non-consideration of relevant evidence or shows erroneous

approach to the matter or are perverse, second appeal is maintainable even on questions of facts.

14. Having considered the scope and ambit of Section 100 Code of Civil Procedure, I proceed to examine the findings recorded by the Courts

below on questions of fact. Broadly speaking, the questions of fact involved in the case are of bonafide necessity; comparative hardship and partial

ejection; default; material alterations. Both the parties have adduced elaborate oral and documentary evidence on the aforesaid facts. Both the

Courts below have examined and considered the entire evidence meticulously. So far as the question of bonafide necessity is concerned, the case

of the Plaintiff was the shop is needed for establishing cloth business by Rajendra Kumar Lodha. This was contested by Defendants by saying that

he has no experience and suits are pending for getting other shops vacated. The Trial Court examined this aspect and came to the conclusion that

perusal of Ext. A8 to A14 shows that the suits are in respect of personal need of another son of the Plaintiff named Sumtimal Lodha. Hence, the

objection taken by the Defendants is of no avail. It was also contended on behalf of the Defendants that the Plaintiff wants to enhance the rent but

there is no evidence on the point. The Hon"ble Apex Court in the case of Ramdass v. Ishwar Chander AIR 1988 1422 held that bonafide need

should be genuine, honest and conceived in good faith. It was also indicated that landlord"s desire for possession, however honest it might

otherwise be, has, inevitably, a subjective element to it. The ""desire"" to become ""requirement"" must have the objective element of a ""need"" which

can be decided only by taking all relevant circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or

whittled down. A careful reading of the judgments of the Courts below show that the projected bonafide need of the Plaintiff is not motivated by

any greed and it cannot be called mere desire. The Courts below have carefully analyzed the evidence of the parties on issue No. 3 and their

findings are not perverse.

15. So far as the question of comparative hardship is concerned, once the Court is satisfied about the bonafides 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 need. In short, the

concept of bonafide need or genuine requirement needs a practical approach instructed by the realities of life.

16. So far as the question of partial ejection is concerned, the Trial Court has on the basis of the statement of Ashok Kumar Sharma DW-1 held

that partial eviction of the disputed shop is not possible. The First Appellate Court has also agreed with it.

17. So far as the question of material alterations is concerned, it deserves to be mentioned that the Defendants have not denied construction but

have submitted that they were carried out by the District Administration treating some constructions as tress-pass, and the balcony was

constructed for keeping uniformity with other shopkeepers of the market. However, the Trial Court after consideration of the evidence of the

parties concluded that the Defendants have not produced any evidence to show that the alterations/constructions were made by the District

Administration or under its direction. The First Appellate Court took into consideration the statements of witnesses of the Defendants as well as

blueprint, map and photographs Exts. 9 to 21, 23, 24, 26, 27, 29, 30, 32 and 33. This Court has in the case of Bhagirathmal (Supra) held that it is

not necessary u/s 13(1)(C) of the Rajasthan premises (Control of Rent and Eviction) Act, 1950 to prove that the material alterations should be

such which are likely to diminish or increase the value of the premises. Thus, the finding on this point is based on relevant evidence.

18. On the question of default, the Trial Court has observed that provision of rent was determined on 07.07.94 but the amount was not deposited

within fixed period and Defendants wanted condonation of delay. It was also submitted on behalf of the Defendants that due to the death of

original Plaintiff the rent was deposited on 06.08.99 as no information was received from his legal heirs about Bank Account number, etc. The

Trial Court has observed that if the Defendants were in confusion they should have sent a notice for obtaining the requisite details for depositing the

rent but no such attempt was made. This clearly shows that the Defendants were negligent and as such they have been held defaulters in depositing

the rent. The First Appellate Court has also considered the evidence of the parties and approved the finding of the Trial Court.

19. Having examined questions involved in the case and findings of the Courts below on them it remains to be seen whether any substantial

question of law is required to be framed in this appeal. From the above discussion, it is crystal clear that both the Courts below have discussed the

elaborate oral and documentary evidence of the parties on the aforesaid question involved in the case, and recorded concurrent findings. The

Lower Courts have taken into consideration all relevant evidence of the parties and have not been influenced by any irrelevant or inadmissible

evidence. Their findings cannot be called perverse. Apart from it there are catena of judgments holding that bonafide necessity, comparative

hardship, partial ejectment and default are pure questions of fact and do not raise any substantial question of law. The Hon"ble Apex Court in the

case of Bholaram Vs. Ameerchand, observed as under:

... The High Court, however, seems to have justified its interference in second appeal mainly on the ground that the judgments of the Courts below

were perverse and were given in utter disregard of the important materials on the record particularly misconstruction of the rent note. Even if we

accept the main reason given by the High Court the utmost that could be said was that the findings of fact by the Courts below were wrong or

grossly inexcusable but that by itself would not entitle the High Court to interfere in the absence of a clear error of law.

20. In the case of Ramaswamy Kalingaryar Vs. Mathayan Padayachi, the Hon"ble Apex Court has observed as under:

... Suggested shortcomings in the findings of fact recorded by the Courts below would not alter the situation that those were findings of facts,

unquestionable, under the provisions of Section 100 Code of Civil Procedure, which defines the contours of the power of the High Court in

second appeal....

From the aforesaid discussions, it is clear that no substantial question of law is involved in this appeal and accordingly it is dismissed.