
(1997) 01 RAJ CK 0076

Rajasthan High Court

Case No: Civil Second Appeal No. 115 of 1993

Jashwant Raj and
Others

APPELLANT

Vs

Bata India Limited

RESPONDENT

Date of Decision: Jan. 14, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100, 101

Citation: (1997) 1 RLW 322 : (1997) 2 WLC 115 : (1997) 1 WLN 103

Hon'ble Judges: R.R. Yadav, J

Bench: Single Bench

Final Decision: Allowed

Judgement

R.R. Yadav, J.

The Instant Second Appeal was argued at length I by the learned Counsel for the parties on 14.01.97 and after conclusion of their arguments the judgment and decree passed by learned lower appellate court dated 7.8.92 was set aside and the judgment and decree passed by learned trial Court was restored with an observation that reasons will follow later on. In pursuance of the aforesaid pronouncement of judgment on 14.01.97 reasons are being given today herein below:

2. The present Second Appeal was filed by the plaintiff-land lord-appellants against the judgment and decree dated 17.8.92 passed by learned Additional District Judge No. 2, Jodhpur in civil Appeal No. 15/89 by means of which he has set aside the judgment and decree dated 19.5.89 passed by learned trial Court decreeing the suit of the plaintiff-land lord-appellants on the ground of their reasonable and bonafide necessity after comparing the comparative hardships of land lord and tenant.

3. The brief facts necessary for adjudication of the instant Second Appeal are as under.

4. The plaintiff-land lord-appellants filed a suit for ejectment against the defendant-tenant-respondent, Beta India Limited on the ground of reasonable and bonafide necessity of the suit shop for business of clothes by plaintiff-appellant No.I. It is stated that disputed shop along with its upper storey was purchased on 1.9.77 from Prayag Raj for which the defendant-tenant-respondent has information. It is alleged in the plaint by the plaintiffs that the shop in question was purchased for doing clothes business by plaintiff-appellant No. 1 but in order to avoid long-drawn litigation he who was earlier doing clothes business with his father, opened a clothes shop in the upper storey of the disputed shop. Since the opening of the upper storey clothes shop was in a lane I and there was only one and a half feet upstairs leading to the 1 upper-storey clothes shop, therefore, customers were not coming to his 1 shop and he suffered a loss and closed his clothes business. Thereafter, 1 he took a shop on rent initially at the rent of Rs. 323.50 per month in "Dabgaron Ki Gali" which was later on enhanced to Rs. 375/- per month where he was forced to start business of Betel nuts (supari), as it was 1 not a proper place for starting clothes business.

5. The defendant-respondent filed a detail written statement, denying the averments made in the plaint and stated that the plaintiff-appellants have no reasonable and bonafide requirement of the shop in question but the suit has been filed for eviction with an oblique motive to enhance the rent from Rs. 150/- to Rs. 1,000/- per month.

6. On the pleadings of the parties, learned trial Court framed necessary issues and allowed the parties to adduce evidence in support of their respective claims. The plaintiff-appellants examined Jashwant Raj as PW 1, Mohan Raj as PW 2 and Suraj Mal as PW 3 whereas the defendant-respondent examined Shri K.L. Bhatia as DW 1, Shri Ramanand as DW 2 and Pukhraj as DW 3 in support of their respective claims.

7. After giving cogent and convincing reasons the learned trial Court believed the statements of PW 1, PW 2 and PW 3 and disbelieved the statements of DW 1, DW 2 and DW 3.

8. This Second Appeal was posted for admission on 9.12.1996 before Hon"ble Mr. B.R. Arora, J. and His Lordship with the consent of the learned Counsel for the parties directed the office for listing the case for final hearing at admission stage on 14.01.97 without framing substantial question of law. This is how the Second Appeal is listed before me today.

9. The law now be taken to be well-settled that no Second Appeal is maintainable unless substantial question of law is involved. Therefore at the first out set I think it proper to formulate the following substantial questions of law involved in the present Second Appeal:

(1) Whether the need of the plaintiff-land lord appellants in the present case can be safely said to be reasonable and bonafide, who purchased the shop for their own use and also

to save rent which they are paying to the rented shop at "Dabgaron Ki Gali"?

(2) Whether while deciding the question on comparative hardships between land lord and tenant the financial position of the land lord and the tenant is also to be taken into consideration as envisaged under Sub-section (2) of Section 14 of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as Act No. 17 of 1950)?

(3) Whether the findings of fact recorded by learned lower appellate court without analytical discussion of the evidence adduced by the parties and without meeting the cogent and convincing reasons given by the learned trial court is binding in Second Appeal?

10. I have heard the learned Counsel for parties and perused the judgments given by both the Courts below.

11. From perusal of the judgment given by learned lower appellate court it is evident that the learned lower appellate Court has set aside the decree passed by learned trial Court without setting-aside the finding recorded by the learned trial Court on the question of comparative hardships after taking into consideration the financial position of the land lord and tenant. It is also evident from perusal of the judgment given by learned lower appellate Court that it does not meet the cogent and convincing reasons given by learned trial Court in believing the statements given on oath by PW 1, PW 2 and PW 3 and disbelieving the statements of DW 1, DW 2 and DW 3.

12. A close scrutiny of the judgment of learned lower appellate Court further reveals that although it has affirmed the finding of the learned trial Court to the effect that suit for eviction has not been filed by plaintiff-land lord-appellants to enhance the rent from Rs. 3150/- to Rs. 1,000/- as averred by the defendant tenant-respondent, yet decree passed by learned trial Court in their favour on the ground of reasonable and bonafide necessity has been set aside.

13. With the aforesaid circumspection now this Court would like to examine the substantial questions of law which are involved in the instant Second Appeal in seriatim:

Question No. 1:

Whether the need of the plaintiff-landlord appellants in the present case can be safely said to be reasonable and bonafide, who purchased the shop for their own use and also to save rent which they are paying to the rented shop at "Dabgaron Ki Gali"?

14. An identical question came up for consideration before this Court in case of Heera Lal v. Panna Lal reported in 1974 WLN (UC) 365 wherein it was held that if the plaintiff was admittedly occupying a shop on rent for his business then the requirement of the plaintiff for his own shop could not be said to be unreasonable and mala fide.

15. The aforesaid question again came up for consideration before the Apex Court in case of *Om Prakash v. Bhagwan Das* reported in 1986(2) UJ(SC) 287 where their lordships ruled that since the appellant land lord was living in rented premises, therefore, there was no reason as to why he should be deprived of benefit of enjoyment of his own property. I am of the view that if a land lord is doing business in a rented shop on higher rent then his desire to start business in his own shop cannot be said to be inspired by dishonest motive but on the contrary it is most natural human desire to start business in his own shop therefore in natural circumstances the court must proceed on the presumption that such desire is an honest and bonafide desire. Further there is check on such desire of land lord u/s 15 of Act No. 17 of 1950 which clearly provides that if a land lord obtains a decree for eviction of any premises against a tenant on any of the grounds of his reasonable and bonafide necessity as specified in Clause (h) of Sub-section (1) of Section 13 of the said Act and he fails to utilise the premises to the use or purpose for which such eviction has been passed within two months of obtaining possession thereof or lets the whole or any part thereof to any person other than the evicted tenant, the court which passed the decree may, on the application of the evicted tenant, place him in possession of the premises.

16. In view of the aforesaid legal principles in the present case the learned lower appellate Court has erred in law in not addressing itself correctly about the reasonable and bona fide necessity of the plaintiff land lord-appellants who purchased the suit shop for their own use and also to save rent which they are paying for the shop for the business of Betel nuts (supari) at the rate of 375/- 1 while they are getting only rent of Rs. 150/- per month of suit shop 1 from, tenant-defendant-respondent. This aspect "ought to have been 1 taken into consideration by learned lower appellate Court while I recording the finding on question of" reasonable and bonafide 1 necessity of the plaintiff land lord-appellants but the same has been ignored by it which has resulted in miscarriage of justice. 1 In the present case no evidence has been placed on record which may suggest that the desire of the plaintiff-land lord appellants to start business of clothes in the disputed shop under the tenancy of defendant tenant-respondent was not an honest and bonafide desire as discussed above.

17. In the present case the learned lower appellate Court obviously committed substantial error of law and procedure in 1 interfering with the findings of learned trial court on the question of reasonable and bonafide necessity of plaintiff-land lord-appellants on its own imaginary assumptions and presumptions drawing incorrect inferences.

Question No. 2:

Whether while deciding the question of comparative hardships between land lord and tenant the financial position of the land lord and the tenant was also to be taken into consideration as envisaged under Sub-section (2) of Section 14 of Act No. 17 of 1950?

18. I have given my most anxious consideration to the aforesaid question. In my considered opinion addition of Sub-section (2) of Section 14 of Act No. 17 of 1950 w.e.f. 29.9.75 has brought a sea change in its conception. The phraseology used under Sub-section (2) of Section 14 of the said Act to the effect "All the circumstances of the case" would definitely include the financial position of the land lord and the tenant for determination on the question of comparative hardship for purpose of passing a decree under Clause (h) of Sub-section (1) of Section 13 of Act No. 17 of 1950 on the ground of reasonable and bonafide necessity. In the present case a very heavy burden was cast upon the learned lower appellate court to decide this delicate question of comparative hardships after looking into the comparative financial position of the plaintiff-land lord appellants and the defendant-tenant-respondent. The learned trial court has correctly proceeded to examine the comparative hardships of the plaintiff-land lord appellants and defendant-tenant-respondent Bata India Limited which is indisputably a multi-millionaire Company after taking into account their respective financial position but the learned lower appellate Court has committed grave illegality in setting aside the decree passed by learned trial Court without setting aside the finding of comparative hardships recorded by learned trial Court after comparing the financial position of the plaintiff-land lord-appellants and tenant-defendant respondent.

19. I am of the view that in the present case it cannot be said that while deciding the question of comparative hardships, the financial position of the plaintiff-land lord-appellants and defendant-tenant respondent was not a relevant consideration. As a matter of fact, this aspect of the matter was properly and legally considered by the learned trial Court yet the learned lower appellate Court without setting aside the aforesaid finding recorded by learned trial Court allowed the appeal which is per se illegal. It is to be imbibed that if the aforesaid finding recorded by learned trial Court is not set aside by learned lower appellate Court then it will be deemed that it has been affirmed.

20. In view of the aforesaid discussion the learned lower appellate Court has no legal justification whatsoever to set aside the judgment and decree passed by learned trial court. The aforesaid Conclusion is strengthened specially when the learned lower appellate Court has confirmed the finding of the learned trial Court to the effect that the plaintiff-land lord appellants have not filed the present suit for eviction with oblique motive to enhance the rent from Rs. 150/- to Rs. 1,000/-per month.

Question No. 3

Whether the finding of fact recorded by learned lower appellate court without analytical discussion of the evidence adduced by the parties and without meeting the cogent and convincing reasons given by the learned trial court is binding in Second Appeal?

21. Learned Counsel appearing on behalf of defendant-tenant-respondent strenuously urged before me that the finding recorded by the learned lower appellate court on

questions of reasonable and bona fide necessity and comparative hardships are findings of fact therefore these findings of fact are binding in present Second Appeal.

22. In support of his aforesaid contention he placed reliance on a decision rendered by the learned Single Judge of Allahabad High Court in case of [Ramdeo Vs. Smt Dulari Devi](#) , a decision rendered by this Court in case of [Bharat General and Seeds Stores and Others Vs. Mahendra Singh and Another](#), again a decision rendered by the learned Single Judge of this Court in case of [Jaharuddin Vs. Mohammed Lukman](#), a decision rendered by the Apex Court in case of [Rajender Kumar Vs. Jamna Das Kotewala](#), again a decision rendered by the Apex Court in case of [Smt. Annapoorani Ammal Vs. G. Thangapalam](#) .

23. I have given my thoughtful consideration to the aforesaid argument advanced by learned Counsel for defendant-tenant-respondent and examined the decisions cited by him with respect in support of his aforesaid argument.

24. In my humble opinion, there is no quarrel with the proposition of law argued by the learned Counsel for respondent and also there is no dispute about the principles of law enunciated in the decisions cited in support of his contention. It is true that concurrent findings of fact are binding in Second Appeal. It is further true that findings of fact recorded by learned lower appellate courts are also binding in Second Appeal with a rider that in case of concurrent findings of fact the aforesaid principle applies with greater force whereas in case of finding of reversal recorded by learned lower appellate court it is not binding with the same force.

25. On the aforesaid question I am of the view that a conjoined reading of Section 100 and 101 of the CPC distinctly revealed that no Second Appeal could be entertained by the High Court on question of fact unless in process of arriving at a finding of fact the learned lower appellate court has committed substantial error of law or substantial error of procedure.

26. In my considered opinion in the instant Second Appeal the learned lower appellate court in process of arriving at findings of fact with regard to reasonable and bonafide necessity of the plaintiff-land lord appellants as well as on the question of comparative hardships of land lord and tenant has committed substantial error of law and also substantial error of procedure as discussed in preceding paragraph of this judgment therefore such findings of fact on the aforesaid questions recorded by it are not binding in Second Appeal.

27. As discussed above at the risk of repetition it is held that the learned trial court after giving cogent and convincing reasons rightly believed the statements of PW 1, PW 2 and PW 3 for arriving at a conclusion on the question of reasonable and bonafide necessity of plaintiff-land lord appellants. The learned trial court has legally after taking into account the financial position of plaintiff-land lord-appellants and defendant tenant-respondent

recorded a finding on question of comparative hardships but the learned lower appellate court without meeting the reasons given by learned trial court set aside the decree passed by learned trial court which tantamounts substantial error of law and procedure both.

28. It is well to remember that in case of finding of affirmance recorded by the learned lower appellate court over all general agreement expressed by it with the finding recorded by learned trial court ordinarily may be taken to be sufficient but whenever and wherever the learned lower appellate court proposed to reverse the finding recorded by learned trial court it is incumbent upon it to meet the reasons given by the learned trial court which is lacking in the case on hand.

29. I am satisfied that the learned lower appellate court in the present case has not recorded the findings on the aforesaid two questions in accordance with the evidence available on record but on the basis of surmises and conjectures, after misreading the materials on record. The learned lower appellate court recorded the aforesaid findings of fact on aforementioned two questions after misreading the materials on record. The finding of the learned lower appellate court to the effect that the plaintiff-land lord-appellants have not averred in their plaint that their land lord is insisting to vacate the shop at "Dabgaron Ki Gali" where appellant No.I is doing "Supari" business is based on misreading of evidence on record. A close scrutiny of Paragraph 7 of the plaint filed by the plaintiff-land lord-appellants clearly revealed that their land lord of shop of "Dabgaron Ki Gali" where appellant No.I is doing business of "Supari" is insisting upon to vacate his shop. In the present case the learned lower appellate court has committed serious illegality in misleading the averments made in Paragraph 7 of the plaint filed by the plaintiff-land lord-appellants and a finding based on misreading of material averments made in Paragraph 7 of the plaint has further resulted in miscarriage of justice.

30. Looking into the facts and circumstances of the present case I am of the view that the learned lower appellate court has set aside the well considered findings recorded by learned trial court on questions of reasonable and bonafide necessity of the plaintiff land lord appellants and comparative hardships between the land lord and the tenant on surmises and conjectures and also after misreading the material averments made in Paragraph 7 of the plaint, therefore, the findings of fact recorded by learned lower appellate court are not binding in the instant Second Appeal and as such liable to be set aside.

31. As a result of the aforementioned discussion the judgment and decree passed by learned lower appellate court on 17.8.92 is hereby set aside and the judgment and decree passed by learned trial court dated 19.5.89 is restored. In the peculiar facts and circumstances of the case both the parties are directed to bear their own costs.