Jagarnath Ram Vs Mohammad Yusuf Abbasi and Others

Court: Allahabad High Court

Date of Decision: April 7, 1964

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 10 Rule 2, Order 10 Rule 3, Order 8 Rule 6

Citation: AIR 1965 All 266

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

Bench: Single Bench

Advocate: Gopinath and Trilokinath, for the Appellant; S. Sadiq Ali and Afsar Ali, for the Respondent

Final Decision: Dismissed

Judgement

Dhavan, J.
This is a tenant''s second appeal from the decision of the Civil Judge, Ghazipur confirming a decree for his ejectment and

recovery of arrears of rent from him. The plaintiff-respondents Mohammad Yusuf Abbasi and others alleged that they were the owners of the

house and the defendant-appellant Jagarnath Ram their tenant on a rent of Rs. 20/- per month from the year 1951; that the defendant appellant had

not paid any rent from 1-12-1953 till the date of the suit; that he had been served with a notice demanding rent and terminating his tenancy but bad

not paid the rent; hence the suit. The appellant admitted the tenancy but alleged that the rent was Rs. 3/- and not Rs. 20A per month; that no rent

was due as it had been adjusted against the price of goods purchased by the plaintiffs from the appellant''s shop and the expenses incurred by him

on repairs of the house. He also contended that the notice of demand and the termination of tenancy was not in accordance with law.

2. The trial court recorded the statements of the parties under Order 10 Rule 2, C.P.C. Mohammad Yusuf Abbasi, one of the plaintiffs, stated that

the defendant-appellant originally took the shop on rent from his mother Sadruinissa Bibi in the year 1940 but he (Mohammad Yusuf Abbasi) did

not know on what rent. He further stated that after the death of his mother in 1950 he (Mohammad Yusuf) added one more shop to the old shop

and the defendant made an oral contract with him settling the rent at Rs. 20/- per month. He also alleged that this agreement was made in the

presence of two persons whom he named. The defendant in his statement under Order 10 Rule 2 stated that he took the shop on Rs. 3/- per

month as rent from Sadruinissa Bibi in 1940, and after her death he continued as the tenant of the plaintiffs and paid the same rent to them. He

further stated that he supplied goods to the plaintiff and the price of the articles was set off against rent and this fact had been endorsed by the

plaintiffs in their ""diary.

3. The learned Munsif disbelieved the plain-tiff-respondent''s story that they had constructed an additional shop alter the death of their mother But

also rejected the appellant''s case that the rent was Rs. 3/- per month and disbelieved his story of adjustment of rent against the price of goods

alleged to have been purchased by the landlord. He held that the shop had been rented by the appellant on Rs. 20/- per month and he had failed to

pay the arrears. Accordingly he decreed the suit for the ejectment and recovery of rent. On appeal the Civil Judge confirmed these findings and the

decree of the trial court. The appellant has come to this Court in second appeal.

4. Gopi Nath, learned counsel for the appellant advanced four arguments in support of this appeal. First, he contended that as the plaintiff-

respondents'' story of addition of a new shop and consequent enhancement of rent had been disbelieved, the appellant''s case that the rent was Rs.

3/- per month should have been accepted by the courts below. Learned counsel argued that the Civil Judge had tried to explain away the plaintiff''s

statement under Order 10 Rule 2 by surmises and conjectures for which there was no basis. I have read the statements of the parties under Order

10 Rule 2 and also the remarks of the learned Judge. He took the view that the plaintiff''s statement was either made under a misapprehension or

wrongly recorded by the trial court. This was pure speculation on the part of the Civil Judge for which there was no basis. The statement of

Mohammad Yusuf is crystal clear and relates a definite story about which there could be no misapprehension in his mind, statements under Order

10 Rule 3 are usually made in the presence of counsel and if there is any error in recording it counsel can have it rectified. Mohammad Yusuf''s

statement was signed by him and its correctness was not challenged by him at any stage of the suit. An appellate court is not entitled to get round

or explain away a clear statement made under Order 10 Rule 2 C. P. C. on the speculative surmise that the trial Court might have wrongly

recorded it. This type of speculation is not only unfair to the trial judge in attributing to it an error in the discharge of his duties but also introduces

an element of uncertainty into the record of the proceedings for no reason. The appellate court is bound to accept the correctness of the statement

recorded by the trial court unless there is a clear proof of error. I must, therefore, hold that the plaintiff did make a statement that the rent was

increased after he had added a shop to the old accommodation and that this story was disbelieved by both the courts below.

5. If the matter had rested here I would have allowed this appeal and dismissed the plaintiffs'' suit. But unfortunately for the defendant, the

erroneous approach of the lower appellate court does not help his case. It only means that his story that the rent was Rs. 3/- per month should

have been believed. Even so, the suit for ejectment was rightly decreed because the courts below have held that the appellant did not pay any rent

whatsoever. Learned counsel for the appellant relied on an alleged admission of the plaintiff that he had accepted rent from the defendant up to the

year 1957. The appellate Judge alter reading the statement came to the conclusion that the figure was not 1957 but 1951, and he appears to be

correct. The date on which the plaintiff made that statement was 28-8-l956, and it is obvious that the plaintiff could not have stated in 1956 that he

had accepted rent for 1957. The figure in dispute is 1951.

6. Learned counsel then contended that the plaintiff having admitted that he mode purchases at the appellant''s shop, the story of adjustment of the

price of the purchased goods against rent should have been believed. I do not agree. There is nothing to show whether the plaintiff purchased the

goods for cash or on credit and, therefore, the mere fact that he was the defendant''s customer does not prove that he owed him the price of the

goods. If a tenant is sued for rent and pleads that the landlord owes the price of goods purchased from him he may either set up an agreement that

the parties agreed to make this adjustment or he may plead a set off or make a counter claim. in the present case the defendant pleaded no set off

and made no counter claim. His written statement floes not allege that the plaintiff owed him any money for the price of the goods which should be

adjusted against rent but in his statement under Order 10 Rule 2 ho alleged that there was some sort of arrangement that the rent was to be

adjusted against the price of goods purchased by the landlord. The story or this arrangement has been disbelieved by the lower appellate court and

this finding cannot be reviewed in second appeal.

7. The position, therefore, is that the appellant was in arrears of rent even at the rate admitted by him and he failed to pay it within one month of a

notice of demand. He is, therefore, liable to be ejected.

8. Learned counsel then argued that the notice of demand is invalid as it merely reminded the tenant that he was in arrears but did not make any

request for payment. Counsel relied upon the text of the notice as quoted by the learned Judge, but this quotation is erroneous. The original notice

was read out in court and it contains a specific demand for payment of rent. Learned counsel had to concede after reading this notice that there

was no substance left in this argument.

9. The next question is with regard to the amount due from the appellant. I have already observed that the landlord''s story of enhancement of rent

after the addition of a shop to the accommodation has been disbelieved. But nevertheless the lower appellate court has held that there was an

agreement between the appellant and the landlord fixing the rent at Rs. 20/-. The finding is not very satisfactory, nor there is evidence to support it.

No argument was addressed against this finding.

10. For these reasons I dismiss this appeal with costs. The stay order dated 24-5-1962 is discharged.