

Soonda Ram and Another

Vs

Shri Rameshwarlal and Another

Civil Appeal No. 1136 (N) of 1974

(K. K. Mathew, P. N. Bhagwati, N. L. Untwalia JJ)

11.12.1974

JUDGMENT

UNTWALIA, J. -

1. This is a defendants' appeal by special leave of this Court from the judgment and decree dated February 7, 1974 of the Rajasthan High Court dismissing the appellants second appeal preferred from the appellate judgment of the District Judge of Jaipur. The plaintiffs respondent filed a suit against the appellants for their eviction after termination of their tenancy by service of a notice under Section 106 of the Transfer of property Act on the ground that they required the suit premises bona fide for their personal necessity. The suit was contested by the appellants on various grounds. The learned Munsif who tried the suit in the first instance held in favour of the plaintiffs on some of the issues which arose for determination on the pleadings of the parties. He, however, dismissed the suit on the finding that the plaintiffs had failed to prove that they required the suit premises bond fide for their personal necessity. They went up in appeal before the District Judge of Jaipur who reversed the findings of the trial Court on the question of personal necessity of the plaintiff, accepted their case and decreed the suit. The defendants filed a second appeal in the High Court. When it came up for heading before a learned single Judge of that Court a contention was raised on behalf of the plaintiffs respondents that the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 had not been extended to Chomu where the suit premises are situate. This contention was accepted and the appeal was dismissed by the High Court on January 23, 1973. Subsequently it was found that the Act aforesaid had been applied to Chomu by a notification on a date which fell during the pendency of the suit in the trial Court. The judgment of dismissal of second appeal was reviewed and the appeal was heard afresh by another Judge of the High Court sitting singly. The appeal was dismissed again by the judgment dated February 7, 1974. The defendants presented this appeal by special leave of this Court.

2. Mr. S. M. Jain, learned Counsel for the respondents asked us to revoke the grant of the special leave on certain grounds. We did not feel persuaded to examine the question of revocation of the special leave in view of the earlier order of this Court made on November 4, 1974 whereby instead of revoking the special leave the appeal itself was directed to be posted for hearing at an early date.

3. Mr. Manchanda, learned Counsel for the appellants submitted that the judgment of the High court is erroneous in law as it wrongly affirmed the decision of the District Judge on the question of the allegedly personal necessity of the respondents and without recording a finding that they required the premises bona fide for their own use. Counsel submitted that the statements in the plaint were too sketchy to permit admission of evidence adduced on behalf of the plaintiffs in this regard. In any event the appellants did not get sufficient opportunity to rebut that evidence. Counsel further urged

that the High Court ought to have admitted additional evidence which it was asked to do by an application filed on behalf of the appellants under Section 151 of the Code of Civil Procedure. He, therefore, strenuously urged before us to remit back the case to any of the courts below for a fresh decision after giving an opportunity to the parties to adduce further evidence.

4. In our opinion the submissions made for the appellants are devoid of substance. On perusal of the judgment of the High Court as also of the First Appellate Court we have come to the conclusion that in clear terms the requisite findings of fact have been recorded on appraisal of the evidence adduced by the parties. The appellants had adduced evidence to show that the respondents had more shops than the one in question and did not require it bona fide for their personal use. But the evidence adduced on their behalf was found to be too meagre as conceded also before the District Judge on behalf of the appellants. The issue was decided on the evidence adduced by the parties and the defect of pleading was not such that could enable the Court to obliterate and ignore the evidence adduced on the point of bona fide personal necessity of the plaintiffs. The High Court committed no error, rather, it was right in not permitting the appellants to adduce any additional evidence at the second appellate stage. No such prayer had been made in the First Appellate Court. We see no justification for making an order of remand in this case as repeatedly asked for by Mr. Manchanda, learned Counsel for the appellants.

5. In the result the appeal fails and is dismissed with costs.

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