

Firm Panjumul Daulatram

Vs

Sakhi Gopal

Civil Appeal No. 991 Of 1976

(V. R. Krishna Iyer, R. S. Sarkaria, Jaswant Singh JJ)

03.05.1977

JUDGMENT

KRISHNA IYER, J. –

1. A suit for eviction of an accommodation from the tenant to whom it had been let for residential and non-residential purposes resulted in dismissal by the trial Judge. But in an appeal, the final Court of fact took the view that the landlord (respondent) was entitled to eviction. The tenant challenged the appellate decree before the High Court in Second Appeal without success and has therefore come up to this Court with this appeal by special leave.
2. A short point has been raised which deserves only a short answer. Since we agree with the High Court which in turn has agreed with the first appellate Court, our judgment can afford to be brief.
3. A statement of necessary facts may now be given. The landlord had let out the premises, which is a storeyed building, to the tenant as per Ex. P-1 of 1955. The significant clause in the lease deed runs thus :

#1. * * *2. I take your house for my own use, i.e. for opening a cloth shop and for residential purposes and I will not sub-let your house to anybody. * * * *##

The tenant has thus put the building to business and residential purposes. The landlord, who is an M. Sc., claimed the building back on the score that he wanted to run a medical store on the ground floor - a non-residential purpose - and stay on the first floor with his wife - a residential purpose. Thus the accommodation was let out for dual purpose, was being used presumably for these requirements and was being claimed back by the landlord for the twin purposes mentioned above. The final Court of fact has held that the landlord needs the building for his chemist's shop and his residential use. The High Court in Second Appeal has upheld this finding and added that the finding as to his bona fide requirement was right no challenged before me. The conclusion that the courts have reached is the only conclusion memorandum of appeal to this Court. It must therefore be taken that the bona fide need of the landlord is validly made out.

4. The short point that survives is as to whether the composite purposes of the lease would put it out of the ground set out for eviction under Section 12 of the Madhya Pradesh Accommodation Control Act, 1961. The said Act defines 'accommodation' thus :

'accommodation' means any building or part of a building, whether residential or non-residential and includes, -

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It follows that an accommodation can be residential, non-residential or both. Section 12 bars an action of eviction of a tenant from any accommodation except on one or more of the grounds set out therein. Section 12 (1) (e) and (f), bearing on the present case, may be appropriately extracted here :

12. Restriction on eviction of tenants-(1)

#(a) to (d) * * *###

(e) that the accommodation let for residential purposes is required bona fide by the landlord for occupation as a residence for himself or for any member of his family, if he is the owner thereof, or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in the occupation in the city or town concerned;

(f) that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has not other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned;

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The residential portion is a part of the building and is an accommodation by definition. The non-residential portion is also a part of the building and is an accommodation by definition. The lease has been given for residential as well as non-residential purposes. The landlord is entitled to eviction of the residential portion if he makes out a bona fide residential requirement. Likewise he is entitled to eviction of the non-residential portion which is an accommodation if he makes out a non-residential requirement. We have already found that the final Court of fact, affirmed by the High Court, has found in favour of the landlord regarding his residential as well as non-residential requirements. Therefore, nothing more can be done in defence of the tenant in the light of the present law.

5. Counsel contended that in a decision of this Court, viz., *S. Sanyal v. Gian Chand* (1968) 1 SCR 536 : AIR 1968 SC 438 : (1968) 2 SCJ 218), it has been held that it is not permissible for the Court to split up a contract in an eviction proceeding. We agree, There is not question of splitting up of the contract in the present case, as is abundantly plain from what we have stated. The contract was integral but and dual purposes. The landlord has put forward dual requirements which neatly fit into Section 12 (1) (e) and (f). The consequence is inevitable that the eviction order has to be upheld.

6. It is seen that the tenant has been doing a thriving cloth business with goodwill attached to it, for well nigh 30 years. It is therefore but fair that the tenant is given some time or rehabilitate himself by securing an alternative but suitable accommodation. In our towns where scarcity of accommodation is the rule it is not that easy to secure alternative premises. Taking due note of this reality, we direct that while dismissing the appeal the eviction order shall not be put into execution before January 1, 1978. Parties will bear their respective costs.

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