Bholaram

Vs

Ameerchand

Civil Appeal No. 1603 (N) of 1971

(Syed M. Fazal Ali, A. Varadarajan JJ)

13.03.1981

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave by the defendant is directed against a judgment dated July 2', 1971 of the Madhya Pradesh High Court by which the High Court interfered in second appeal and after having set aside the findings of fact by the trial Court and the appellant Court decreed the plaintiff's suit for ejectment. We have gone though the judgment of the High Court seems to have reversed the concurrent finding of fact arrived at by the trial Court and the appellate Court and, therefore, prima facie travelled beyond the limits imposed on its jurisdiction under section 100 of the Code of Civil procedure. The High Court, however, seems to have justified its interference in second appeal mainly non 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 High Courts below were wrong or grossly inexcusable but that by itself would onto entitle the High Court to interfere in the absence of a clear error of law.

2. Even so, after going through the documents and evidence produced by the parties we are unable to agree with the conclusion arrived at by the High Court.

3. The plaintiff's case was that by virtue of a rent note dated June 3, 1963 (Ex. p-1) he had rented out the premises in question, being house No. 1205, Ganjipura Ward, Lord Ganj, Jabalpur, to the defendant at a rental of Rs. 205 per month. The plaintiff averred that originally the premises let out were only a room on the ground floor and the newly constructed portion on the first floor which consisted of two rooms as shown in the map as E. F. G. H. The plaintiff's case was not the subject matter of the tenancy, but appears to have been encroached upon by the defendant-tenant subsequently sometimes in July 1966. This encroachment was, therefore, one of the ground on which ejectment was sought.

4. Another ground for ejecting was that the defendant had defaulted in the payment of rent as a result of which arrears of Rs. 232-33 had fallen due up to the date of the suit. We might state here that so far as the ground of arrears or default of rent is concerned, that was negatived by the Civil Judge and the District Judge and this finding of fact has been fully affirmed by the High Court. We are, therefore, left only with the solitary ground for ejectment relating to the encroachment on the room, shown by letters I] J. K. L. made by the tenant after the lease by which he committed a breach of the terms of tenancy and made himself liable to ejectment under the provision of the Madhya Pradesh Accommodation control Act, 1961.

5. Thus, the pivotal controversy in this appeal centers on the question as to the exact nature of the terms on which the promises were let out to the e rent note, Ex. P-1, may be extracted thus :

> I take your house bearing present corporation No. 1205 situate at Ganjipura Ward, Lord Ganj, City of Jabalpur, which you have got constructed double started in the year 1963, with effect from June 10, 1963, according to English calendar, on reasonable monthly rent of Rs. 205 (in words; rupees two hundred and five)..... That I shall open a shop in the block of the ground floor of the house and I shall reside in the upper portion of the house.

6. It would be pertinent to note that in the first preamble of the rent note which describes the property leased, there is absolutely no mention that only two rooms on the first floor were let out to the defendant, The admitted position seems to be that the first floor was reconstructed by the plaintiff by which two rooms were added and one old room remained as it was. The plaintiff's case is that only two rooms which had been newly reconstructed were given to the defendant and not the old room. This fact is conspicuously absent from the preamble of the rent note, extracted above, which merely refers to the tenancy as consisting of the double storey house constructed in 1963. There is not averment that there was an old room also on the first floor which had not been let out to the defendant. Furthermore, other portion extracted clearly shows that the defendant had stipulated that he would open a shop in the block of the ground floor of the house and would aside in the upper portion of the house. He also the defendant does not say that he would reside only in the two rooms newly constructed and that the old room which also was situated on the first floor would not be part of the tenancy. Thus, the rent note, which is the main document on which rests the case of the parties, does not at all shows that the old room on the first floor was excluded from the tenancy of the defendant. Right from the year 1963, when the premises were let out to the defendant, up to July 1966 there is no evidence that the respondent-landlord ever raised any remaining on the first floor. The trouble seems to have started when some more repairs were made by the plaintiff-landlord as a result of which the roof of the old room was damaged and a report was made to the police by the defendant-appellant of July 21, 1966, Ex. D-8, wherein the defendant complained that the landlord had demolished the roof of the kitchen room and wanted to demolished the balcony also which so to its front side. Admittedly, both these premises were situated on the first floor. A day thereafter, i. e. on July 22, 196, the defendant gave a notice, which is Ex. D-10, to the plaintiff of the damage done to a part of the first floor occupied may be extracted thus :

> 4. In order to harass may client and force him to vacate the premises you have removed the cement plastering of the upper floor. Similarly, you have put my client to great inconvenience and harassment. The removing the cornices on the terrace and the edging on one side of the terrace, on July 21, 1966.
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> 6. The result of all this illegal action in contravention of provisions of law has put my client to great inconvenience and harassment. The result of removing of the plaster in that whole of upper floor in use of my client started leaking and water started pouring in on account of removal of cement.
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> 7. On account of removal of edging and some portion of balcony, the water started pouring in kitchen and the store-room.

7. A perusal of the contents of the notice manifestly shows that the defendant had made a compliant amongst other matters, also in regard to the damage done to the kitchen which rally formed the old

rom on the first floor which existed even before the other two rooms were added in the year 1963 by reconstructing the upper portion of the house. In reply to this notice, the plaintiff sent a notice on his behalf where he for the first time averred that the old room and the balcony adjoining it, were not rebuilt in 1963 and were not let out to the diffident. In paragraph 7, however, the following averments were made;

> It is also denied that water started pouring in kitchen and store-room. All these allegations are absolutely false.

8. Thus, the landlord did not deny that the kitchen and the store-room were in possession of the defendant and what was contested was that the landlord had not damaged anything so as to let the water pour into the kitchen and the store-room. It may be noticed that in this notice there was no clear averment that the kitchen or the store-room did not form part of the tenancy of the defendant.

9. Similarly, in another notice sent to the appellant by the respondent sometime in the year 1965, as no exact date is given in the notice, the landlord complained of some nuisance created by the appellant. Even in this notice, which was two years after the premises were let out to the appellant, no complaint was made that the appellant had made by encroachment in the old room which existed on the first floor. The only complaint made in Paragraph 4 of the notice may be extracted thus :

> That on the first floor a water tap has been provided for use and Nistar. recently you and the members of your family have started using the tap in the courtyard in occupation of may client. This has resulted in the deprivation of privacy of the females of my client's family.....

The complaint related merely to the using of the tap in the courtyard which was in the occupation of the landlord. In Clause 5 of the notice the defendant was informed that his tenancy stood terminated from September 10, 1965 and he was called upon to give vacant possession immediately. This shows that this notice was given prior to September 10, 1965.

10. On a conspectus of the circumstances discussed above, it is therefore clear that the case of the plaintiff that the old room on the first floor was not let out to the appellant was made for the first time in the notice dated July 28, 196 (Ex. p-5) given to the appellant. The defendant in his evidence as DW 1 has clearly stated that the room marked I J K L in the map, and the balcony on its front was old and does not form part of the reconstructed portion. He has further stated that only one room on the ground floor an two rooms on the first floor were newly constructed. The plaintiff in his evidence as PW 1 himself has clearly admitted in para 8 of his statement that all terms and conditions of tenancy have been mentioned in Ex. P-1, the rent note, and also that there is mention of the portion which is let out. In view of this clear admission if we do not find in the rent note any mention of the old room an the balcony as not having been let out to the defendant, if follows as a logical corollary from the admission of the plaintiffs himself that the entire upper floor including the newly constructed rooms, the balcony and the old room formed apart of the tenancy of the appellant.

11. Thus, having regard to the oral and documentary evidence referred to above, the conclusion is inescapable that by virtue of the rent, Ex. P-1, the portion rented out to the defendant-appellant was room on the ground floor and the balcony and the two rooms newly constructed. This is exactly what the Civil Judgment ad the District Judge had held on an appreciation of the evidence in the case. The High Court was, therefore, clearly wrong in holding that the old room and the balcony did

not from part of the tenanted premises of the defendant. The High Court seems to have overlooked the various facts to which we have adverted and proceeded mainly on the contents of the notice (Ex. P-5) by the plaintiff to the defendant. The High Court failed to consider that the new case made out by the plaintiff could not be accepted on his own evidence which shows that all the terms and conditions of the tenancy had been mentioned in the rent note and if the old room was expressly excluded from the tenancy, the same should have found mention in the rent note itself. The High Court seems to have relied mainly in the flowing words used in the rent note in vernacular (Hindi) :

> To Makan Moujudanagar Nigam Nambari 1205 Ca-Ke Ganjipura Ward Lord Ganj Shahar Jabalpur Ko As Sare 1963 Men Do Manzila Banwaya us Makan Ko Main Dinak June 10, 1963 Se Angrezi Calendar Ke Mutabik MU. 205 Rupaya Ankan Do Sau Panch Rupaya Mahana Ki Dar Se Maoul Kiraya Per Le Raha Hun.

12. These words do not at all lead to the irresistible conclusion that only two rooms on the first floor, which were reconstructed, had been let out to the defendant and not the old room which was already in existence. A correct interpretation of the words extracted by the High Court in its judgment from the rent note shows that what was really let out to the defendant was a room on the ground floor and the entire upper floor including the constructed portion. This is apparent from the words"Do Manzila Banwaya Us Maken Ko" which really means that the house was reconstructed and made double storeyed. There is no averment in the rent not that out of the reconstructed house only two rooms on the upper portion of the first floor minus the old construction was rented out to the appellant-defendant.

13. We are, therefore, satisfied that the High Court erred both on law and on facts in interfering with the judgments of the courts below and in holding that the balcony and the old too, which has been referred to by the defendant as kitchen', did not from par to the tenanted premises of the appellant. The appeal is, therefore, allowed and the judgment of the High Court is se aside and that of the trial Court is restored/ the plaintiff's suit for ejectment is dismissed but in the circumstances costs to be paid by the appellants as already ordered by this Court while granting special leave.

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