

Satwant Kaur

Vs

Dhund Singh

Civil Appeal No. 2938 of 1980

(Syed M. Fazal Ali, D. P. Madon JJ)

27.04.1983

JUDGMENT

Fazal Ali, J.-

1. This appeal by the plaintiff-appellant is directed against a judgment dated September 22, 1980 of the Rajasthan High Court by which the plaintiff-landlady who had filed a suit for a decree of eviction of the entire premises in possession of the tenant-respondent was given only a marginal relief by granting a decree for partial eviction. The cases of the parties have been fully detailed in the judgments of the High Court and that of the trial court.

2. The High Court has approached all the aspects and shades of the question very thoroughly and in a very well reasoned judgment come to the conclusion that the plaintiff-landlady has not been able to prove the case of complete of the tenant-respondent from the premises.

3. In the view that we take in the case it is not necessary for us to dilate further on the facts of the case. Suffice it to say that the admitted position is that the plaintiff-landlady requires the shop in question for personal necessity, viz., to settle her son Trilochan Singh for starting motor battery business in the disputed premises. The plaintiff-appellant alleged that no hardship will be cause to the tenant-respondent because he is doing tent business and has got sufficient accommodation in other places besides the shop in question. The High Court after examining the arguments of the parties came to the conclusion that having regard to the nature of the business of Trilochan Singh it was wholly unnecessary to evict the defendant respondent from the entire premises and passed a decree for partial eviction of the respondent from the disputed shop measuring 14 feet x 14 feet which is already separated by a pucca wall.

4. The main controversy before us was as to whether the partial eviction should be from the back portion of the shop or from the front portion which abuts the market road. It was represented to us by the respondent that having regard to the nature of his tent business he requires not only a godown but sufficient accommodation to keep tents and various other accessories in order to supply them on rent for purpose of functions like marriages, meetings, etc. In these circumstances, it was contended on behalf of the respondent that if he is given the back portion it will be extremely detrimental to his business whereas Trilochan Singh, who is just to start his motor battery business, would not at all be affected if he gets the back portion where all that he is to do is to store motor batteries for charging them. This process of reasoning appealed to the High Court and accordingly it passed a decree for partial eviction of the disputed premises only from the back portion, which is already separated by a wall. The counsel for the appellant despite his vehement arguments was not able to convince us that if his client gets the back portion it might create difficulties in starting his motor battery business

which, as it is, does not require a large space because in a room measuring 14 feet x 14 feet any number of batteries can be easily stored and charged. Moreover, the disputed shop itself being situated in the market, whether it is the front portion or the back portion makes little difference so far as Trilochan Singh's business is concerned.

5. The respondent, however, rightly represented to us that as the front portion of the shop was adjacent to his godown it will be much more convenient for him to keep the tents, etc., in the godown and carry on the business from the front portion by supplying and giving the same to the customers. In these circumstances we are satisfied that the High Court was right in passing a decree for partial eviction only from the back portion of the shop measuring 14 feet x 14 feet. We do not find any merit in the appeal which is accordingly dismissed without any order as to costs. The respondent-tenant shall continue to pay rent regularly as usual.

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