

Surajmal

Vs

Radheyshyam

Civil Appeal No. 836 of 1981

(A.P. Sen, L.M. Sharma JJ)

26.04.1988

JUDGMENT

SHARMA, J. –

1. The present appeal arises out of a suit filed by the respondent Radheyshyam for eviction of the original appellant Surajmal from the demised premises comprised of a shop described in the plaint. The premises was in possession of Surajmal in the capacity of a tenant and the respondent-landlord prayed for a decree of eviction on the grounds of personal necessity and default in payment of rent.
2. The trial court dismissed the suit and the plaintiff appealed. Before the appellate court the plaintiff urged only the ground of personal necessity which was accepted. The defendant besides challenging the plaintiff's case, raised a plea of res judicata on the basis of a judgment dismissing an earlier suit on the ground of necessity. The appellate court rejected the plea and decreed the suit. The defendant approached the Madhya Pradesh High Court with an appeal under Section 100 of the Code of Civil Procedure which was dismissed. He thereafter filed the present appeal by special leave before this Court. The appeal was dismissed on February 17, 1987.
3. It appears that the sole appellant Surajmal died on June 29, 1983, leaving behind his widow and a number of children mentioned in the application for substitution filed on August 25, 1983 by Chaturbhuj, one of the sons of the deceased. The substitution application was registered as CMP No. 28400 of 1983. Chaturbhuj claimed the entire estate of his deceased father on the basis of a will which was denied by his mother Sunderbai, widow of Surajmal. When the civil appeal was placed for final hearing on February 17, 1987, Chaturbhuj pressed the same on merits. It is stated on behalf of Sunderbai that since no order on the substitution application was made, she did not argue the appeal. However, the appeal was disposed of as stated earlier without a formal order of substitution. The Supreme Court office has listed the miscellaneous petition for orders after the disposal of the civil appeal.
4. The substitution petition on behalf of Chaturbhuj had been filed by the same learned counsel who had originally filed the appeal on behalf of Surajmal. Although present in court, he had not pressed the prayer for substitution before us. The learned counsel appearing on behalf of Sunderbai contended that she is desirous of challenging the decree for eviction. It was suggested that an inquiry should be made with respect to the claim of Chaturbhuj based on the alleged will. The other six heirs mentioned in the substitution petition have not appeared.
5. The learned counsel for the plaintiff-respondent said that Chaturbhuj was representing all the heirs of Surajmal including Sunderbai and had pressed the civil appeal on their behalf also. After

the dismissal of the appeal he gave an undertaking to vacate the building on the expiry of a period of six months which he did not do. The heirs, in collusion with each other are now attempting to bypass the judgment of this Court and the aforementioned undertaking by dubious methods. Although a formal order was not passed by this Court on the substitution application, in substance the prayer for substitution was allowed inasmuch as Chaturbhuj was allowed to press the civil appeal on merits. It had been contended that the prayer made on behalf of Sunderbai amounts to a gross abuse of the process of the court.

6. The plaintiff-respondent is right in saying that Chaturbhuj must in the facts and circumstances be deemed to have been substituted when he was allowed to press the appeal on merits. After hearing the learned counsel for Sunderbai and the plaintiff-respondent, however, we decided to substitute her (Sunderbai) also in place of her husband deceased Surajmal and indicating this decision to her learned counsel we permitted him to argue the appeal afresh. The learned counsel prayed for some time. The case was accordingly adjourned for further hearing. It was listed again on April 19, 1988 when the learned advocate appearing for Sunderbai pressed the appeal on merits.

7. Let the records of the appeal be corrected by inserting the names of Sunderbai and Chaturbhuj as appellants and the other heirs mentioned in the substitution petition as respondents 2 to 7.

8. The learned counsel for the appellant Sunderbai contended that in substance the case of the plaintiff-respondent in the earlier eviction suit and in the present suit is the same and since the earlier suit was dismissed the present suit also should be dismissed. The High Court in paragraph 4 of its judgment pointed out that the nature of requirement pleaded in the earlier suit was different from that in the present suit. The first appellate court while deciding the issue against the defendant observed that the bona fide need must be considered with reference to the time when a suit for eviction is filed and it cannot be assumed that once the question of necessity is decided against the plaintiff it has to be assumed that he will be not have a bona fide and genuine necessity ever in future. We are in agreement with the views as expressed by the two courts.

9. The learned counsel then attempted to challenge on merits the concurrent finding of the aforesaid two courts. We do not find any reason to ignore the finding and proceed to reprise the evidence. We, therefore, hold that there is no merit in the civil appeal.

10. In the circumstances of the case, it is not necessary to serve appeal notices on the added respondents. They have not taken any interest in this litigation and did not make any prayer for substitution or for an opportunity to argue the appeal which was filed as long back as 1981. In the result, Civil Appeal No. 836 of 1981 is dismissed with costs payable by appellant Sunderbai to plaintiff-respondent 1.

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