

Badru Khan

Vs

Gyarsi Lal

Civil Appeal No. 4610 of 1989

(L. M. Sharma, K. Ramaswamy JJ)

09.11.1989

ORDER

1. The case has been placed on the cause list today for final disposal. We have heard the learned counsel for the parties. Special leave is granted.
2. The subject matter of the present litigation is a shop belonging to the respondent which is in possession of the appellant as a tenant. This appeal arises out of a suit filed by the respondent for eviction of the appellant on the ground of sub-letting. The suit was dismissed by the trial court, but on appeal was decreed by the first appellate court. The High Court has confirmed the decision by the impugned judgment.
3. According to the landlord's case, the appellant Badru Khan has let out the shop to one Jan Mohd. This is denied by the appellant. One of the questions on which the parties seriously differ is whether Jan Mohd. is Badru Khan's brother as alleged by him or not. The learned counsel for the appellant has contended that the first appellate court erroneously assumed that there was no relationship between Badru Khan and Jan Mohd. and the High Court has not given a categorical finding on the point. It is further argued that the High Court has also failed to record a clear finding on the question of sub-letting, and has closed the issue by observing that either the plaintiff's allegation of grant of sub-lease by the appellant has to be accepted or in the alternative it should be held that a case of parting with possession has been made out. We agree with appellant that the High Court ought to have recorded a clear finding on the question of sub-letting and parting with possession. Besides, the question whether the tenant can be said to have parted with possession of the disputed shop within the meaning of the Rent Act has to be considered in the light of several judgments of this Court including those in *Gopal Saran v. Satyanarayana* ((1989) 3 SCC 56 : (1989) 1 SCR 767), and *Jagan Nath v. Chander Bhan* ((1988) 3 SCC 57) and others. The issue cannot be disposed of by merely repeating the language of the Rent Act. We think that the case deserves to be reconsidered by the High Court.
4. The learned counsel for the respondent has placed before us an affidavit filed in this Court mentioning certain subsequent events and has suggested that in case of remand the plaintiff should be allowed to rely upon the same. We agree with him.
5. The appeal is allowed, the decision of the High Court is set aside and the case is remitted to it for fresh decision in accordance with law. The parties shall bear their own costs of this Court. Both the parties shall be permitted to urge all the points relevant in the case. We hope and expect that the High Court will be able to take up the hearing of the appeal expeditiously, preferably within a period of three months from the receipt of a copy of this order.

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