

Amritlal Gupta

Vs

Budhwanti

Civil Appeal No. 4373 of 1988

(L. M. Sharma, V. Ramaswami II JJ)

01.12.1989

JUDGMENT

SHARMA, J. -

1. This appeal by the tenant is directed against the concurrent decree for his eviction by the three courts below. The plaintiff-respondent is an old widow who is residing with her married daughter and desires to shift to her own house. She has two sons, one of them being service elsewhere. The elder son Raj Pal also was earlier in service in Jammu and after his retirement he had gone to the United States of America for some time. This there was nobody in her own family to look after the plaintiff, and she was forced to take residence in the house of her daughter's husband. According to her case, Raj Pal has since returned to India permanently and has no other place of residence. The plaintiff in these circumstances filed the present suit for eviction of the appellant which has been decreed.

2. Mr. Satish Chandra, learned counsel appearing in support of the appeal, has contended that the plaintiff is already in possession of two rooms in the building in question and is thus not entitled to any further accommodation in the house. It is also argued that the necessity of the plaintiff's son Raj Pal cannot be taken into account in view of the provisions of the rent Act. The learned counsel further suggested that the plaintiff's case that her son Raj Pal has returned back to India Permanently does not appear to be correct. He was not examined as a witness in the case and the appellant, therefore, did not have an opportunity to cross-examine him. The plaintiff's explanation is that Raj pal was not the Country when the suit was tried and after he has returned he has filed an affidavit stating his firm decision to stay in this country permanently. However, we need not refer to this affidavit filed belatedly.

3. We have gone through the judgment of the first appellate court which has been approved by the High Court and the evidence of the plaintiff placed in extenso by Mr. Satish Chandra, and we do not find any error in the view taken by the courts below that the rooms which the plaintiff is at the present in possession of, do not appear to be in the disputed house. Her evidence, if properly analysed, would indicate that she has referred to the two rooms which she is occupying in the house of her son-in-law as a guest. We also do not find any reason to depart from the view of the courts below that the plaintiff has established her personal necessity. Apart from the question whether her son Raj Pal does not have a place to live, she needs his presence in the house so that she can be properly looked after in her old age. It is, therefore, not correct to suggest that the fact that Raj Pal also shall be coming and occupying a portion of the house is irrelevant. We do not think it necessary to deal with the evidence led by the parties in further detail as the question whether the plaintiff has established her personal necessity within the meaning of rent Act has been accepted by the High

Court. Accordingly, we hold that there is no merit in this appeal which is dismissed with costs.

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