Rameshwar Lal and Another

Vs

Raghunath Das and Others

Civil Appeal No. 1448(N) of 1976

(R. M. Sahai, Dr. T. K. Thommen JJ)

19.09.1990

JUDGMENT

R. M. SHAHI, J. -

1. This tenant's appeals is directed against concurrent findings of the three court below that the need of landlord was bonafide in proceedings, arising out of the suit for ejectment filed under Rajasthan Premises Control of Rent and Eviction Act, 1960.

2. Since the finding is based on consideration of evidence it is a finding of fact which could not have been challenged in second appeal much less in this court. But various submission were made to assail the judgment some of which were either not raised or given up at one stage or another in courts below. For instance, it was urged that in 1976 the Act was amended and in suit for eviction under Rent Control Act requirement of comparative hardship was also added, yet the High Court committed an error of law in not setting aside the orders of courts below and directing the landlord to amend his pleadings and afford opportunity to appellant prove that mandatory requirement of hardship was not satisfied. Legal position that the suit could not have been decided without finding of hardship cannot be disputed. But factually the appellant filed an application for amendment of his written statement before first appellate court as the amendment had come during pendency of first appeal but it was rejected presumably because evidence of hardship was already on record. And the appellate court found it as a fact on appreciation of evidence that the respondent having no other shop and having been ejected from the shop in which he was carrying on business would suffer hardship as appellants were carrying on business in another shop. The evidence was already there and it was examined but the amendment was sought as a pretext to get the decree for eviction set aside. Not only that the futility of the point being well apparent it was not pressed before the High Court yet it was argued in this Court as out of thirty grounds raised in memorandum of appeal in the High Court it was one.

3. Similarly the question of pecuniary jurisdiction and valuation was argued irrespective of that it was neither raised in the first appellate court nor even in second appeal because the trial court had rightly rejected the objection since it was a suit for ejectment of tenant and arrears of rent.

4. Even the service of notice under Section 106 of Transfer of Property Act was argued vehemently. There were two set of defendants, one the heir of deceased tenant and other the appellant his legatee or co-partner in business who were contesting the suit independently and both had raised this question. The trial court found that notice was valid and it was served on the tenant who was alive when suit was constituted. Both the set of defendants filed separate appeals and it appears to have been argued and rightly that common aspects need not be argued separately. In appeal filed by the

defendant who is pro forma respondent in this Court the finding of the trial court on service and validity of notice was affirmed and it was upheld even by High Court. Therefore it was not argued separately in appellant's appeal and when it was raised in High Court it was, rightly, observed that it having not been raised before first appellate court and the finding in other appeal having become final it could not be agitated again in the appeal. Even otherwise the finding that notice was received by younger brother of appellant who used to sit in the shop, thus validly served, does not suffer from any error of law.

5. What was vehemently argued was that the appellants having not based their claim through the tenant and having claimed that they were in possession as trespasser the issue raised was one of the title which could not have been gone into in these proceedings and the suit was liable to be thrown out on this ground alone. Legal arguments bereft of facts are of no consequence. The original tenant who died in the trial court did not dispute title of respondent's predecessor. He, rather, averred that premises were taken for a firm of which appellant was the partner but the suit having been filed against him alone was defective. When he died his daughter, the pro forma respondent was brought on record. She set up a will executed by her father in favour of appellants. Therefore they were, also, impleaded. Plaint was amended and written statement was filed. The appellant claimed adverse possession. But the High Court rejected it as the appellants were either legal representative or legatee. In either case they could not set up a claim contrary to the one set up by the tenant through whom they were inducted into possession. No exception can be taken to it. And that also in appeal under Article 136.

6. Despite long arguments no question of law could be said to arise out of the orders of courts below what to say of substantial question of law. Further the decree was executed fifteen years ago and respondents are in possession.

7. For the reasons stated above, this appeal fails and is dismissed with costs.

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