

Vithaldas and Others

Vs

Ramchandra and Others

Civil Appeal No. 451 of 1979

(S. Mohan, M. K. Mukharjee JJ)

03.03.1994

ORDER

1. In this case, the suit premises is a non-residential one. The original landlord, Ram, Chandra, who has since died, claimed that he was carrying on textile business in the rental premises and that the suit premises which is occupied by the appellants was bona fide required for the said business. The trial court accepted the case of the landlord and directed eviction. On appeal, the same was reversed. In the second appeal, the judgment of the appellate court was set aside and the original decree for eviction was restored. Hence, this civil appeal.

2. The following points are urged by the learned counsel for the appellants :

(1) Bona fide need is a question of fact. The first appellate court is the final court in relation to such questions of fact. The same cannot be interfered with by the High Court under Section 100 of the Code of Civil Procedure. In support of this submission, *Mattulal v. Radhe Lal* [(1974) 2 SCC 365 : (1975) 1 SCR 127] is cited.

(2) In any event, as on today, the original landlord, Ram Chandra, died and his sons have no intention of starting business. Therefore, the bona fide need had disappeared.

In opposition to this, Mr H.K. Puri, learned counsel for the respondents submits that this is a case in which the High Court has found that the lower appellant court was not justified in reversing the decision of the trial court without properly appreciating the evidence. It is further found that the judgment of the lower appellate court was perverse. If that be so, even within the restricted scope of Section 100 of CPC interference was warranted at the hands of the High Court. The decision cited by the appellants, *Mattulal v. Radhe Lal* [(1974) 2 SCC 365 : (1975) 1 SCR 127] therefore is not applicable to the facts of the case.

3. It is true Ram Chandra, the original landlord, died but his son, Arun Kumar, after retirement has been continuing the said textile business of his father. Therefore, it cannot be contended that the bona fide need had disappeared.

4. As regards the first submission all that we need is to note the following. The High Court has found in paragraph 3 :

"Even assuming that the plaintiff's landlord was not pressing the plaintiff to vacate the suit accommodation the plaintiff could not be held disentitled to the relief of eviction under Section 12(1)(f) of the Act. The trial court found, and this finding is

not set aside by the lower appellate court, that the plaintiff is carrying on business as a dealer in cloth in premises not owned by the plaintiff and that there is no other non-residential accommodation of his own in the town of Dhat in his possession for the purpose of carrying on business. The trial court further found, after analysing the evidence on record, that the plaintiff's requirement of the suit accommodation was bona fide and he was entitled to a decree for ejection on the ground specified in Section 12(1)(f) of the Act. In reversing the finding of the trial court in this behalf on a ground which is not justified by law, the lower appellate court must be held to have committed an error of law."

5. Then again, we are unable to support the judgment of the lower appellate court because it says the landlord did not institute the suit before January 1969. This in our considered opinion is not relevant to the issue of bona fides. Therefore, the High Court was justified in interfering under Section 100 CPC. As rightly contended by Mr H.K. Puri, learned counsel the decision of *Mattulal v. Radhe Lal* [(1974) 2 SCC 365 : (1975) 1 SCR 127] is factually distinguishable.

6. Since Arun Kumar, one of the sons of the deceased-landlord is carrying on business in textiles, certainly he could step into the shoes of the father and establish the bona fides, which has been done in this case. The civil appeal stands dismissed. No costs.

7. Both the learned counsel agree that the tenant will have 6 months' time to hand over vacant possession. This shall be subject to the filing of the usual undertaking within 4 weeks from today.

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