

SUPREME COURT OF INDIA

Maqboolunnisa

Vs.

Mohd. Saleha Quaraishi

(A Anand and K Venkataswami JJ.)

06.11.1997

ORDER

1. The appellant is the landlady who filed an eviction petition against the respondent on the ground of bona fide requirement of the suit shop to enable her sons to run embroidery business therein. It was the case of the appellant that the eldest son of the appellant was running his business of embroidery in a rented premises measuring 4' x 4' and that her other son was also unemployed. It was asserted that the suit shop measuring 10' x 15' was bona fide and genuinely required to enable her eldest son to shift the embroidery business because he was under threat of eviction from the rented premises where he was carrying on the embroidery business. The trial court after recording evidence of the parties allowed the application and directed eviction of the respondent. The High Court in revision reversed the finding of the trial court and dismissed the eviction petition.

2. We have heard learned counsel for the parties.

3. It is an admitted case of the parties that during the pendency of the proceedings in the trial court, a shop adjacent to the demised premises, also measuring 10' x 15' was vacated by one Shri Sukumaran. The appellant did not amend the pleadings to assert that the shop which had been vacated by Shri Sukumaran was not sufficient for her son to shift his business. Even at the trial no such plea was raised. The fact position is that the shop from which the son of the appellant was to shift measured only 4' x 4' while the shop which had been vacated by Shri Sukumaran measured 10'

x 15'. At the trial, during her evidence, the appellant went on to say that by breaking the wall between the suit shop and the shop vacated by Shri Sukumaran the entire area can be converted into one big shop to enable the son to carry on his business. That such evidence should not have been allowed to be let in since it was beyond the pleadings admits of no exception. But even if we ignore that infirmity, we find that the assertion itself does not establish a genuine bona fide need. It is not stated by the appellant in her evidence that the shop vacated by Shri Sukumaran was not sufficient accommodation to enable her son to carry on the business. The "desire" to have a very large shop cannot be equated with a "genuine bona fide need" to have the premises. The landlady, thus, has failed to establish the bona fide need to have the scheduled property vacated. The High Court while considering this aspect observed:

"The scheduled premises as admitted by Smt Maqboolunnisa is about 10' x 15'. It is also admitted by her that adjacent premises occupied by Shri Sukumaran has been vacated and it is lying vacant. The vacancy of this premises occurred during the pendency of the proceedings for eviction. The vacation of the premises by Sukumaran is admitted by PW 2 Shri Munner Ahamad. With regard to the area and dimensions of the shop vacated by Sukumaran, Smt Maqboolunnisa PW 1 admits as under:

'The scheduled shop and adjacent shop are of same measurement. It may be little less than 10' x 15'.' Though PW 2 stated that the scheduled shop is 6' x 6', on further cross-examination admitted as under: 'I do not know whether the shop fallen vacant is 10' x 15'. Again I say it is of similar size as that of the scheduled shop.'"

The High Court then concluded:

"From these admissions of the respondent and her witness, it is obvious that subsequent to the institution of the eviction petition against the revision petitioner she has come into possession of the premises measuring about 10' x 15' that is almost equal in dimensions of the scheduled premises."

4. The finding recorded by the High Court is pre-eminently reasonable and based on proper appreciation of the material on the record with which we find no reason to disagree. We do not find any error to have been committed by the High Court. There is no merit in this appeal. The appeal, therefore, fails and is dismissed. No costs.