

RAJASTHAN HIGH COURT

Motilal Pannalal

Vs.

Kailash Narain

Second Appeal No. 47 of 1957, Decided on 29-10-1959 from decree of Addl. Dist. J.,

Bhilsa

(A.H. Khan and Shiv Dayal, JJ.)

20.02.1957. 29.10.1959

JUDGMENT

A.H. Khan J.

1. The only question involved in this second appeal is whether a decree passed in favor of the plaintiff on the ground of personal necessity under section 4(g) of the M. B. Control of Accommodation Act No. 23 of 1955 must be set aside if the plaintiff dies during the pendency of the appeal from that decree.

2. The respondent's father Banwarilal instituted this suit against Motilal appellant on the ground that he required that house for himself because he wanted to shift from his village Barkheda to Biaora, where the disputed house is situated. It was also alleged in the suit that the portion A, B, C, D of the house was actually let out to the defendant while he took wrongful possession of the other portion E, F, G, H. The suit was resisted by the defendant but he has been unsuccessful in both the Courts below.

3. In this second appeal the learned counsel for the defendant contends that the personal requirement must continue upto the date of the judgment in the final Court of appeal, otherwise no decree can be passed for eviction of the tenant and, if one is already passed by the lower Court, it must be set aside by the superior Court. On this argument it is urged by Sri Gupta that because of Banwarilal's death during the pendency of the appeal, the decree should have been set aside by the first appellate Court. The learned counsel relies on the decision reported in *Savitridevi v. Ramsarup*¹

. I am of the opinion that this argument ignores the fact that the expression 'personal requirement' in Section 4(g) of the Act must be construed to mean the requirement of the accommodation for his own body as also his wife and dependant children, because they cannot be separated from him so far as the question of residence is concerned. I am, therefore, clearly of the opinion that the requirement for his own residence cannot be construed so narrowly as to confine the requirement for the person of the single individual, namely, the landlord alone. I am supported in my view by the decision in *Smith v. Penny*,² where it is laid down :

"The words "for himself" in the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, Schedule I, (h)(i), should not be strictly interpreted as meaning occupation for residence by the landlord personally, but should be interpreted as covering the case of his wanting the house as a family home, whether he intends to live in it himself or is unable to do so for some special reason."

If Banwarilal wanted to shift from Barkheda to Biora it necessarily implied that his house at Biaora was required for himself, his minor son Kailash Narain (respondent in this Court) and his wife Bhavari Bai, guardian of the minor. The decree passed by the trial Judge in favor of the landlord Banwarilal cannot be set aside on the ground that he has died. The decree enures to the benefit of his son and widow.

4. The next contention is that no decree can be passed in this suit for the portion E F G H because the plaintiff complained in the suit wrongful occupation of that portion. Since the defendant contested that part of the suit on the ground that the said portion was also rented to him along with the other portion A B C D and the trial Judge found in his favor, the contention is now untenable. It is then urged that the notice for eviction was not according to law. The argument is that under section 106 T. P. Act the notice must be so served that it should not be for one day more nor one day less than 15 days prior to the commencement of the next month of tenancy. In my opinion this argument is to be mentioned only to be rejected. It is uncontested that the notice was served on May 11, 53 determining the tenancy on May 30, 1953 and the next month of tenancy was to commence on June 1, 1953. It is undoubted law that if a notice gives at least 15 days to the tenant and if it expires with the end of the month of tenancy it is a good notice to determine the lease. The period should not be less than 15 days but there is no outside limit; the notice can be given several months before the date on

which the landlord desires to determine the lease.

5. It is lastly urged that the plaintiff's requirement was not proved to be genuine. That is a question of fact and concurrent findings of the Courts below cannot be disturbed in second appeal.

6. For these reasons the appeal is dismissed with costs.

Appeal dismissed.

Cases Referred.

1. MBLJ 1954 HCR 1719

2. (1946) 2 All England Reporter 672