

RAJASTHAN HIGH COURT

S.S. Khurana

Vs.

Mahaveer Prasad

Civil Second Appeal No. 318 of 1999

(Prakash Tatia, J.)

07.10.2003

JUDGEMENT

Prakash Tatia, J.

1. Heard learned counsel for the parties.
2. This appeal is against the judgment and decree passed by the first appellate Court dated 24-8-1999 by which the first appellate Court reversing the judgment and decree of the trial Court dated 17-8-1998 and passed decree for eviction against the present appellant-defendant.
3. The brief facts of the case are that the plaintiffs-Mahaveer Prasad and Kesha Ram let out the suit premises to the defendant-appellant. It has not come in record that in which year the premises was let out to the defendant but the fact came on record is that in the year 1980, these plaintiffs- respondents, before filing present suit, filed one suit for eviction against the defendant-tenant which was registered as Civil Suit No. 81/80 in the Court of Munisif, Sriganga-nagar and that suit was dismissed by the trial Court on 27-2-1984. In that suit No. 81/80, there were allegations against the tenant, of causing material alteration in the suit premises and there was one more ground for seeking decree for eviction which is need of premises for establishing a Photostat machine of one of the plaintiffs's son Ved Prakash. However, plea on the ground of personal necessity was not pressed by the plaintiffs which is clear from the judgment dated 27-2-1984 delivered in the Suit No. 81/80. Plaintiff's appeal against the above judgment was also dismissed.
4. After about 16 years of the decision of earlier Suit No. 81/80, on 10-7-1996, the present suit has been filed by the plaintiffs seeking decree for eviction against the

defendants on the grounds that suit premises is needed for both the plaintiff's sons Ved Prakash and Pawan Kumar. The plaintiff No. 1's son Ved Prakash is a practicing lawyer since 1980 and it was alleged that Ved Prakash will have his office in the suit premises. In addition to above, the suit premises will be used for putting some business goods of Pawan Kumar son of the plaintiff No. 2. It is stated in the plaint itself that Ved Prakash son of the plaintiff No. 1 is residing with his family in the upper floor of the suit premises. It has come on record that before 1993, Ved Prakash was residing in the house situated at Plot No. 63 'B'Block but in the year 1993, Ved Prakash shifted in the building situated over the Plot No. 53 'B'Block where the suit premises is on the ground floor.

5. The defendant-tenant submitted written statement and took a plea that plaintiffs' earlier suit was dismissed by the trial Court and appeal against that was also dismissed. It is also submitted that on the same pleas, the present suit has been filed. However, the defendant admitted that Ved Prakash is a lawyer and he is residing over the suit premises. According to the defendant, part of the property situated over Plot No. 63 'B'Block where the plaintiffs and plaintiff No. 1's son Ved Prakash were residing, the plaintiff's brother Dr. Ashok Garg was running a nursing home on the first floor. Dr. Ashok Garg shifted his nursing home and the same portion was let out by the plaintiffs to another person, Shyam Chug. If there was any need of the plaintiff's sons, they would not have let out the portion of building, which was vacated by the plaintiff's son and plaintiffs would not have let out that portion to other. Therefore, it is submitted that there is no need of the premises in dispute to the plaintiffs. It is also submitted that Ved Prakash was put in possession over the shop of the present appellant-tenant so that Ved Prakash may harass the appellant-tenant. It is also pleaded, by amending the written statement, that during the pendency of the suit, two shop Nos. 114 and 155 were got vacated by the plaintiff-Mahaveer Prasad. In reply to the plea of the plaintiffs that defendant is having his own property at Plot No. 40 'B'Block which has shops and underground (sic) also and the defendant can establish his entire clinic in his own building. The defendant submitted that first floor is not suitable for running clinic of doctor and in the shops, there can be only one bed in one shop for one patient which will be insufficient. Therefore, the premises situated at Plot No. 40 'B'Block is not suitable for clinic.

6. The plaintiffs filed rejoinder to the para No. 5 of the written statement. The trial Court framed two issues for need of two sons of the plaintiffs and consolidated the issue for comparative hardship in case decree is not granted in favour of the plaintiffs

and whether the need of the plaintiffs can be satisfied by decree for part of the premises only. It is relevant to mention here that on the basis of the plea taken by the defendant, a specific issue No. 5 was framed by the trial Court that since plaintiffs on the basis of the same pleas filed suit earlier and that was dismissed by the Court, then what is the effect of this fact over the present suit. However, the defendant did not choose to press the issue No. 5 before the trial Court.

7. The trial Court held that there is distance of only 10 houses between the property situated over plot No. 53 'B'Block (in which disputed premises is situated) and property situated at plot No. 63 'B'Block where earlier plaintiff's son was residing and where some portion was vacated by plaintiff's another son. Therefore, Ved Prakash may reside in upper floor of the House No. 53 'B'Block and could have started his office at House No. 63 'B'Block. The trial Court also held that it is not necessary that Ved Prakash should have his office in the same house where he is residing. The trial Court, after considering the judgments of the Hon'ble Supreme Court, reported in AIR 1981 Supreme Court 1113; AIR 1987 Supreme Court 741 and AIR 1998 Supreme Court 994, and held that in case the plaintiff has other vacant premises with him then it is for him to explain that the said vacant premises is not suitable for the need of the plaintiff and in case the plaintiff let out vacant premises during the pendency of the litigation for eviction against the tenant, then he is not entitled for decree against the tenant as his need cannot be considered as bonafide. The trial Court applied these judgments on the facts that the plaintiffs' brother Dr. Ashok Garg, who was running the nursing home in the first floor of House No. 63 'B'Block, vacated the premises and thereafter, part of that premise was let out to another person, namely, Shyam Chug, therefore, plaintiffs are not entitled for the decree for possession of the suit premises. The trial Court also observed that plaintiffs have not pleaded why Ved Prakash is living separately and why Ved Prakash developed the need of office after about 18 years of his entering into the profession and, therefore, it appears that plaintiffs want to earn more rent and in fact there is no need of the premises. In addition to above, the learned trial Court also took note of the fact that plaintiffs earlier also filed suit for eviction against the present defendant and also filed two suits against his two tenants and, therefore, it appears that plaintiffs have oblique motive.

8. Issue No. 2 was also decided against the plaintiffs, which was based on the plea of the plaintiffs for the need of Pawan Kumar son of the plaintiff No. 2 but it appears that the said ground was not pressed forward by the plaintiffs in appeal against the decree of the trial Court. Therefore, only question before the first appellate Court was with

respect to the need of Ved Prakash, the plaintiff No. 1's son. The trial Court considered the issue of comparative hardship and while considering that issue, considered the facts relating to the properties of House No. 63 'B' and 53 'B' of the plaintiffs and property situated at plot No. 40 'B' of the defendant wherein there are three shops measuring 8'x 9' with two rooms behind them with one basement and in which defendant is running his nursing home at ground floor. The trial Court found that there will be no hardship to the plaintiffs in case decree for eviction is not granted. The trial Court, on the basis of the statement of the defendant, held that the suit premises cannot be divided as it will not satisfy the need of the defendant after division.

9. The first appellate Court, in appeal filed by the plaintiffs, reversed the judgment and decree of the trial Court holding that the property situated at House No. 63 'B' is not available for the need of the plaintiff No. 1's son Ved Prakash and there is no vacant portion available with the plaintiffs for establishing the office of Ved Prakash except the suit premises.

10. Learned counsel vehemently submitted that a detailed reasoned judgment given by the trial Court was reversed by the first appellate Court without meeting with the reasons given by the trial Court and this itself is a substantial question of law for which learned counsel for the appellant relied upon the earlier judgments of the Hon'ble Supreme Court. It is also submitted by the learned counsel for the appellant that effect of the decision of the earlier suit was not considered by the first appellate Court and in the same way, the important material fact that plaintiff's son entered into profession of Advocate in the year 1980 suit was prosecuted till it was dismissed in the year 1984, after that this suit has been filed, therefore, the present suit of the plaintiffs is barred by the principle of *res judicata* as the cause of action for filing the suit on the ground of personal necessity of the plaintiff No. 1's son Ved Prakash accrued in the year 1980 and that ground was not taken by the plaintiffs in their earlier suit which could have been taken by the plaintiffs. Learned counsel for the appellant submits that there is no evidence on record that the portion of the property of House No. 63 'B'; cannot satisfy the need of the plaintiff No. 1's son Ved Prakash. Learned counsel for the appellant further submits that the Hon'ble Supreme Court, in the case of *M. M. Quasim v. Manohar Lal Sharma*, reported in ¹ held that it is for the plaintiff to prove that the vacant premises, if available with the landlord, that is not sufficient or suitable. It is submitted that letting out of some portion by the plaintiffs from the property situated at House No. 63 'B' is not in dispute. Therefore, in view of the decision of the Hon'ble Supreme Court in the case of *Amarjeet Singh v. Smt. Khatoon*

Quamarain, reported in ² the plaintiffs were not entitled for the decree for eviction and the reasons given on the basis of these judgments of the Hon'ble Supreme Court were not met with by the first appellate Court. Learned counsel for the appellant further submits that the plaintiff No. 1 Mahaveer Prasad did not appear in the witness-box and, therefore, in view of the decision of the Hon'ble Supreme Court reported in the case of *Vidhyadhar v. Mankikrao, reported in* ³ adverse inference is required to be taken against the plaintiffs and it may be held that case of the plaintiffs is false.

11. In reply, learned counsel for the respondents vehemently submitted that the first appellate Court carefully considered all the facts of the case and recorded findings on questions of facts that the premises of Plot No. 63 'B' or its part cannot satisfy the need of the plaintiff No. 1's son Ved Prakash for establishing his office and the same is not even suitable for establishing the office. It is also submitted that it is not necessary for the first appellate Court to record the finding on each reason which was recorded by the first appellate Court for reaching to the conclusion and on the basis of which the question of fact was decided. Learned counsel for the respondents relies upon the recent judgment of the Hon'ble Apex Court reported in the case of *Arumugham (dead) by L.Rs. v. Sundrambal, reported in* ⁴ wherein the Hon'ble Apex Court, after considering the earlier judgments of the Hon'ble Supreme Court delivered in case reported in the case of *V. Ramchandra Ayyar v. Ramalingam Chettiar, reported in* ⁵ overruled the two-Judges decision of the Supreme Court delivered in the case of *S. V. Mudaliar, (1995) 4 SCC 15 : (AIR 1995 SC 1607)* and held that merely because the first appellate Court has not adverted to the reasoning given by the trial Court, the High Court cannot interfere in second appeal. It is also submitted that otherwise in this case all the reasons given by the trial Court were considered by the first appellate Court and the first appellate Court reversed the finding of the trial Court on a question of fact that the premises situated at Plot No. 63 'B' is not suitable and is not available for establishing the office of the plaintiff No. 1's son Ved Prakash and this was the point in issue specifically dealt with by the trial Court and reversed by the first appellate Court. Therefore, even if any word or any line of reason or even any of the reasons from all reasons have not been mentioned in the judgment of the first appellate Court, this Court cannot and should not interfere in the finding of fact recorded by the first appellate Court. It is also submitted that there appears to be no reason for assailing the finding on this point that the premises situated at Plot No. 63 'B' is not suitable and not available for the purpose of establishing the office of the plaintiff No. 1's son Ved Prakash. Even if there are possibility of two views, which is not here in this case, even then there is no reason for interference by this Court. Apart

from it, it was vehemently argued that the points which were never raised by the appellant earlier before the first appellate Court and were not made grounds for challenge in the memo of appeal and the questions of law which have not been framed, the appellant cannot be permitted to argue the same in this appeal. It is also submitted that the second appeal can be heard on additional grounds only if the High Court while hearing the appeal, after admitting, may hear appeal on any other substantial questions of law not formulated earlier but here the appeal has not been admitted, therefore, the appellant cannot argue on any other question which he has not formulated in appeal as substantial question of law.

12. Learned counsel for the appellant, in addition to above also challenged the order of the first appellate Court by which the trial Court rejected defendant's amendment application seeking permission to amend written statement. The appellant also submitted two amendment applications before this Court, in second appeal, under Order 6, Rule 17, CPC, one on 3-11-1999 and another is dated 2-1-2002 seeking permission to amend the written statement to incorporate new facts in the written statement that the plaintiff No. 1 constructed a room over the disputed premises during the pendency of the appeal and, therefore, need of Ved Prakash has come to an end and by second application the defendant wants to plead that during the pendency of the appeal, the tenant Shyam Chug vacated the portion of House No. 63 'B'; and it was let out to one Praveen Kumar on monthly rent of Rs. 1,250/-. The appellant submits that since these are subsequent developments therefore, amendments in written statement may be permitted even at second appeal stage.

13. I considered the rival submissions of learned counsel for the appellant Sri B. L. Purohit and learned Senior Counsel for the respondent Sri D. S. Shishodia.

14. For arriving at a decision on a question of fact, there may be several reasons. The decision is cumulative effect of all the reasons. A reason in isolation sometimes may become not very much important unless it is read with all other reasons. Some times out of several reasons, only one reason may be sufficient to uphold the ultimate decision. The reversal of other reasons except one may also not necessarily will result into reversal of finding of fact recorded on the basis of all the reasons by the subordinate Court. This view finds support from the decision of the Hon'ble Supreme Court delivered in V. Ramchandra Ayyar's case, reported in AIR 1963 Supreme Court 302 and in view of the recent judgment of the Hon'ble Supreme Court in Arumugham's case, reported in AIR 1999 Supreme Court 2216, there is no force in the submission of the learned counsel for the appellant that the first appellate Court should

have recorded each and every reason given by the trial Court in its judgment and should have reversed all the reasons for reaching to a different conclusion.

15. Raising a ground in the form of substantial question of law is not enough unless that question of law in fact arises in the case. To find out whether the first appellate Court considered the reasons given by the trial Court, mere mechanical reading of the two judgments is not enough nor it is enough to find out whether all of the reasons have been re-written in the appellate Court's judgment or not? What is binding is the finding. Reasons may be same for upholding the finding of fact, reasons may be supplemented by the first appellate Court in addition to the already recorded reasons, the reasons given by the trial Court in totality may be considered by the first appellate Court and some times each individual reason may be considered by the first appellate Court. The questions are, whether in process of arriving at a conclusion, the first appellate Court applied its mind to the facts of the case; whether first appellate Court's judgment discloses that the reasons given by the trial Court were considered which can be gathered from the reading of the judgment of the appellate Court though the appellate Court has not quoted or specifically mentioned all the reasons given by the lower Court; and whether the first appellate Court appreciated the evidence in lawful manner and found reasons for interference in ultimate decision of the trial Court.

16. Here, in the present case, broad and undisputed facts are that suit premises was let out to the defendant by the plaintiffs. They filed a suit earlier as back as in the year 1980 about 16 years before the present suit. That suit filed for eviction of the same tenant has been made a ground for attack on the conduct of the plaintiffs by showing that since plaintiffs filed suit for eviction against the defendant, therefore, this may be treated as oblique motive and the trial Court felt persuaded to hold so, though by taking help of other reasons also. So far as this aspect which has been heavily pressed by the learned counsel for the appellant is concerned, requires consideration to find out how far it is correct.

17. In the written statement, the defendant submitted that on the same pleas, which are taken in the present suit, earlier suit No. 81/80 was filed by the plaintiffs upon which issues were framed and decided in favour of the defendant. Therefore, on the basis of the same pleas, present suit cannot be maintained. The trial Court framed the issue whether there is any effect on the present suit because, plaintiffs filed the earlier suit on the basis of the same grounds and that was dismissed. This issue was not pressed by the defendant-appellant specifically before the trial Court itself. Learned counsel for the appellant could not give any reason for permitting the appellant to raise a

ground in second appeal which was withdrawn in trial Court. Therefore, only on this count alone, the defendant-appellant has no right now to raise the same issue in the second appeal which he relinquished in the trial Court.

18. It appears that defendant's above contention was on the basis of the plea of *res judicata* as pleaded because the defendant pleaded in the written statement that on the same pleas, earlier suit was filed, issues were framed and decided in favor of the defendants, but without saying that the present is barred by the principle of *res judicata*. However, here, in second appeal, learned counsel for the appellant vehemently argued that the present suit is barred by the principle of constructive *res judicata*. Strangely, issue and the ground which was not pressed before the trial Court is the main ground of challenge to the decisions of the Court below. The facts will reveal that the argument is based on absolutely non-existent facts.

19. A certified copy of the judgment delivered in the Suit No. 81/80 was placed on record by the defendant himself from which it is clear that the defendant deliberately pleaded wrong fact in the written statement in this suit. The Suit No. 81/80 was filed by the plaintiffs against the defendant on the grounds of material alteration and for the purpose of need of the shop in dispute for running a photostat machine of plaintiff No. 1's son Ved Prakash and not filed for the purpose of establishing office (of Advocate) of Ved Prakash. It is not in dispute that plaintiff No. 1's son entered into profession only in the year 1980 and it is clear from the judgment dated 27-2-1984 in the Suit No. 81/80 that plea of need of Ved Prakash for establishing the photostat machine was withdrawn by the plaintiffs. Obvious reason is that in the year 1980, the plaintiff No. 1's son Ved Prakash became Advocate and his that need came to an end and this can be gathered from the judgment dated 27-2-1984 which is being relied upon by the defendant himself wherein it is clearly mentioned that the plaintiffs are not pressing the issue No. 2 relating to the need for establishing the business of photostat copies. It appears that the defendant found it difficult to press issue No. 5 framed in this case because it is difficult for him to keep the copy of the judgment of the earlier suit on record and say that the same issues were involved in the earlier suit as pleaded by the defendant. This shows the conduct of the defendant-appellant and in view of these facts, it does not lie in the mouth of the appellant to comment on the conduct of the plaintiffs by saying that the earlier suit has any relevance in the present controversy. The reasons are twofold; one is that a plea which has been withdrawn by the defendant in the trial Court expressly cannot be revived in second appeal and secondly because of the reason that plea is based upon wrong facts.

20. Learned counsel for the appellant though submitted that, that is a relevant consideration for the purpose of examining the conduct of the plaintiffs but failed to give any reason how it is a fact adversely affecting the conduct of the plaintiffs. The trial Court, in its judgment, without giving a single reasons, rather without reading the earlier judgment Ex. A/3, observed and felt influenced from the fact of filing of the earlier suit and ignored even the timings between two litigations, that 16 years'period, which itself was sufficient for rejection of the plea of the defendant and the finding of the trial Court is absolutely non-speaking.

21. The learned counsel for the appellant tried to submit that the plaintiffs have not pleaded that premises situated in House No. 63 'B'in which earlier plaintiff No. 1's son Ved Prakash himself was residing is not suitable or not available to the plaintiffs. The plea deserves to be rejected simply because of the reason that at the time of filing of the suit, the portion of the premises of House No. 63 'B'was in occupation of plaintiffs'brother where he was running his nursing home. The availability of any portion in House No. 63 'B'is absolutely irrelevant because of the reason that it is not in dispute that Ved Prakash, for whose need the suit has been filed, started living in the portion above the shop in dispute with his family in the year 1993. The suit was filed in the year 1996 after three years of Ved Prakash's shifting of the residence over the disputed property. The trial Court's observation that Ved Prakash may live in House No. 53 'B'and can use portion of the House No. 63 'B'; for his office as it is not necessary that the plaintiffs should have his residence and office in the same premises appears absolutely perverse. Admittedly, the plaintiffs'brother was running his nursing home in the first floor of the property situated over House No. 63 'B'. Meaning thereby, both the properties, portion of House No. 53 'B' which was taken into consideration and the portion where Ved Prakash is residing, both are on the first floor. Asking the plaintiffs to keep his residence on first floor, permitting the defendant on the ground floor and have his own office in another house, that too on the first floor, 10 houses away from his residence, can hardly be a reason on the basis of which the plaintiffs can be denied the decree of eviction against the defendant.

22. Learned counsel for the appellant though tried to submit that it has not been pleaded by the plaintiffs that property situated over Plot No. 63 'B'is not sufficient and not available for establishing the office of Advocate but failed to demonstrate any reason for holding that the reason given by the first appellate Court is wrong, factually or legally or does not substantially rejects all the reasons given by the trial Court about the availability and suitability of plot accommodation at No. 63 'B' for establishing

plaintiff's son's office. It is relevant to mention here that the trial Court even did not consider the fact that if there was any oblique motive of the plaintiffs to take benefit by putting Ved Prakash in the first floor of the property where shop in dispute is situated, then why the suit was filed after three years of occupation by Ved Prakash. The trial Court's finding was reversed by the first appellate Court after considering the evidence of the plaintiffs as well as the statement of the defendant. The first appellate Court found that the defendant is speaking lie about the availability of the portion in the House No. 63 'B'; for which the first appellate Court recorded the reason. The first appellate Court recorded the finding on the basis of the admitted facts that the plaintiff No. 1's son Ved Prakash is residing in first floor of the shop in dispute and, therefore, he can have a *bonafide* need for the shop in dispute so that he may have his office in the same building and it is not possible to keep the house at different place and office at different place which cause serious disturbance to Ved Prakash.

23. In my opinion, the availability of any portion in plot No. 63 'B'; due to the shifting of the Nursing Home of the plaintiffs' brother to other place and letting out to one Sri Shyam Chug and subsequently to Preveen Kumar, as alleged by the appellant in his applications seeking amendment of the written statement filed in this second appeal, are absolutely irrelevant because of the reason that the first appellate Court's finding is that Ved Prakash's Office is required to be at ground floor of the same premises where he is residing. It is not necessary for the landlord to keep all his properties available for need of his or his family members and he need not to manage his property as prudent man. A premises where the Nursing Home was running on the first floor was let out and further let out during the pendency of the suit whereas the plaintiffs' case is that the need can be satisfied by passing decree for eviction from the premises which is situated within the property where the needy person is residing cannot be said to be lacking in *bonafide* in any manner.

24. So far as the contention of the learned counsel for the appellant that plaintiff No. 1 Mahaveer Prasad did not appear in the witness box, therefore, the case of the plaintiffs is false and liable to be rejected even in view of the reasons given in the judgment relied upon by the learned counsel himself i.e. the judgment in the Vidhyadhar's case, (AIR 1999 SC 1441) (*supra*). The relevant witness is the witness who can give statement in Court on facts which are in his knowledge and the Hon'ble Supreme Court, in the above case, held that the witness who was not involved in the transaction, though appeared as witness, his testimony is of no help to prove or to rebut a fact in issue. Here, in this case, admittedly the suit was filed for the need of

Ved Prakash and he was the best witness to prove his need. Another point of distinction is that here in this case one of the plaintiffs Keshav Ram appeared as witness. In addition to above, the Hon'ble Supreme Court in recent judgment, reported in the case of *Smt. Ramku Bai since deceased by L.Rs. v. Hajarimal Dhokalchand Chandak*,⁶ held that in case where landlady filed the suit for eviction for the need of her son but did not come into the witness box to give evidence cannot be fatal.

25. It is further relevant to mention here that the learned counsel for the appellant tried to challenge the order of the first appellate Court by which the amendment application of the defendant was rejected by the first appellate Court. The defendant sought permission to take additional ground in the written statement that during the pendency of the appeal, one of the plaintiffs Mahaveer Prasad, suit was decreed by the trial Court on 3-8-1999 for eviction against his tenants from two shops and, therefore, the need of Ved Prakash has come to an end. In this appeal also, two applications have been filed by the appellant stating that on the roof of the disputed premises, the plaintiff No. 1's son has constructed a room measuring 16'x 12'and by another application submitted that the premises, which was in occupation of the plaintiff's brother vacated during the pendency of the suit by him and which was let out to one Sri Shyam Chug and he also vacated the premises and now has been let out to one Praveen Kumar for a monthly rent of Rs. 1,250/-. These all pleas are having no relevance for the purpose of deciding the controversy involved in the suit in view of the fact that the plaintiffs ably proved that Ved Prakash is in need of the premises in dispute which is situated on the ground floor and admittedly the alleged construction of room over the premises in dispute as well as the portion of the House No. 63 'B'which was let out to Praveen Kumar, are situated on the first floor. So far as letting out of the premises to Praveen Kumar is concerned, this fact is not relevant whether it is Praveen Kumar or Shyam Chug, the fact is that the occupant of that portion of the House No. 63 'B'vacated that portion and letting out the same to Shyam Chug was before the Courts below and after considering this fact, the first appellate Court decided the appeal of the respondents-plaintiffs.

26. The first appellate Court was right in rejecting the application for amendment of the written statement because of the reason that admittedly the decree was granted in favor of Mahaveer Prasad for the shops which are situated away from the residence of Ved Prakash which is undisputed fact and the raising of construction of a room over the disputed premises for the convenient living of the family of Ved Prakash and letting out of the portion of the House No. 63 'B' to Praveen Kumar during the

pendency of the appeal are not the facts which can be considered to be the facts of letting out of premises during the pendency of the litigation for eviction against the tenant as a conduct disentitling the plaintiff from seeking decree for eviction.

27. Before parting, it may be relevant to mention here that raising several points on the basis of the judgments of the Hon'ble Supreme Court to demonstrate that these are the substantial questions of law which appellant wants to raise is not sufficient. The question must arise in fact and in the case and must come out from the record. It is required to be satisfied that these are the questions require consideration and *prima facie* if they are decided in favor of the appellant, the decision of the Court below will be reversed then and then only the appeals can be admitted. Here in this case, the points were raised on the basis of the judgments of the Hon'ble Supreme Court but I do not find that on facts, those judgments have any application to the case in hand, which is clear from the reasons given in the preceding paras. The Court below has not either misread the evidence nor ignored the evidence nor the first appellate Court has considered the reasons given by the trial Court or the first appellate Court had no grip over the facts of the case as well as the approach of the first appellate Court cannot be found wrong. Therefore, though there is no substantial questions of law involved in this appeal, but since the learned counsel for the appellant tried his best to make out a case on the basis of the factual aspect, therefore, this Court examined the entire record and found that on facts as well as on law, no question of law is involved in this appeal and all the points have already seen settled by the Hon'ble Supreme Court.

28. In view of the appeal, I do not find any force in the appeal and the same is dismissed with costs.

Appeal dismissed.

Cases Referred.

1. AIR 1981 SC 1113
2. AIR 1987 SC 741
3. (1999) 2 JT (SC) 183: (AIR 1999 SC 1441)
4. AIR 1999 SC 2216
5. AIR 1963 SC 302
6. (2000) 1 Ren CJ (SC) 68: (AIR 1999 SC 3089)