

CIVIL APPEAL

Present: The Hon'ble Justice Tapan Kumar Dutt

Judgment on 25.08.2010

S.A. No. 488 of 2006

Sri Rameswar Tewari

Vs.

Champa Devi

Points:

Concurrent finding- Concurrent finding of fact whether can interfere in second appeal- Code of Civil Procedure, 1908 S.100

Facts:

Suit for reasonable requirement of the plaintiff for her own use and occupation for business of her younger son decreed by trial court as well as by the first appellate court.

Held:

In the facts and circumstances of the instant case this court is of the view that the concurrent findings of facts recorded by the Learned Courts below should not be interfered with by this court as there is no proper and cogent ground for such interference. The Learned Courts below took into consideration the Learned Commissioner's report and came to the conclusion that the suit premises would be the fit and proper place wherefrom the plaintiff's youngest son can run his business. The Learned Courts below also found that the present place from where the plaintiff's youngest son is running his business is not a proper place to run the said kind of business. The Gali path is not a motorable road and is only six to seven feet in width. The Learned Courts below have found that mini oil mill

cannot be run well from the said place. The defendant/appellant has not been able to prove that the plaintiff/respondent has any suitable sufficient accommodation elsewhere, apart from the suit premises, wherefrom the plaintiff's youngest son can run his business. The Learned Courts below considered the materials on record including evidence and came to their findings. Considering the materials on record, this court is of the view that the plaintiff/respondent's requirement of the suit premises is reasonable and bona fide. It cannot be said that the impugned judgement suffers from any infirmity. Para 19

Cases cited:

AIR 1974 Supreme Court 1596 (Mattulal - vs. - Radhe Lal); AIR 1999 Supreme Court 2226 (Dattatraya Laxman Kamble - vs. - Abdul Rasul Moulali Kotkune and another); AIR 1998 Supreme Court 994 (Sri Balaji Krishna Hardware Stores - vs. - Srinivasaiah.); AIR 1999 Supreme Court 3864 (Raghunath G. Panhale (dead) by LRs. - vs. - M/s. Chaganlal Sundarji and Co.); AIR 1979 Supreme Court 272 (Mst. Bega Begum and others - vs. - Abdul Ahad Khan (dead) by L.R's and others); AIR 1991 Supreme Court 353 (Shyamlal Agarwal - vs. - Ratanlal Malviya (dead) by Lrs.);

Mr. Satyajit Talukdar.for the Appellant

Mr. S. P. Roy Chowdhury, Mrs. Sulekha Mitra.for the Respondent

TAPAN KUMAR DUTT, J.

This Court has heard the Learned Advocates for the respective parties.

2. It appears that the plaintiff/respondent filed a suit against the defendant/appellant being Title Suit No. 34 of 1994 in the Court of the Learned Civil Judge (Jr. Divn.), Additional Court, Suri, praying for a decree

for recovery of possession and mesne profits. The plaintiff/ respondent's case was that the defendant was a monthly tenant in respect of the suit premises, but the defendant defaulted in payment of monthly rents for the period from May, 1970 to August, 1991. The plaintiff also alleged that the suit property is required for the running of a mini oil mill by her son, which has been started during the pendency of the suit at the back portion of the suit premises but such mini oil mill is run by the son of the plaintiff on the side of a Galipath where the business cannot run well. Accordingly, the plaintiff has alleged that the suit premises is required on the ground of reasonable requirement for own use and occupation. The plaintiff, through her Learned Advocate, served a combined notice under Section 13(6) of the West Bengal Premises Tenancy Act read with Section 106 of the T.P. Act and such notice was received by the defendant.

3. The defendant contested the suit by filing written statement denying the material allegations made in the plaint. It is the defendant's case that the relationship between the parties was very cordial and as such, the plaintiff never gave any rent receipt to the defendant except on certain occasions. The defendant's case is that the plaintiff and her husband are very rich and influential persons of Suri town and they have many businesses like grocery, stationery shop, ata chaki mill, coal business and other business at Suri town. The defendant is running a tea stall with a sweet shop in the suit premises and he was inducted by the plaintiff about 30 years ago. The defendant denied the allegations of default in payment of rent and reasonable requirement of the plaintiff. The suit came up for hearing and the Learned Trial Court, by its judgment and decree dated 24th January, 2001, decreed the said suit on contest and passed a decree of recovery of possession of the suit premises in favour of the plaintiff and directed that the plaintiff will be

at liberty to take possession of the suit property after the expiry of four months by way of filing execution case through Court. The Learned Trial Court also granted a decree of mesne profits at the rate of Rs. 3/- per diem till the date of delivery of possession of the suit premises.

4. The Learned Trial Court found that the notice of ejectment was valid, legal and sufficient and it was properly served upon the defendant. It appears from the Learned Trial Court's order that there was no dispute with regard to the relationship of landlord and tenant between the parties. It further appears from the Learned Trial Court's order that the defendant had complied with the directions for payment of the arrear rents with instalments and the Learned Trial Court found that the defendant is not a defaulter in payment of rent in respect of the suit premises. The Learned Trial Court further found that the oil mill business of the youngest son of the plaintiff is on the Galipath, which is 6 to 7 feet in breadth and the said youngest son of the plaintiff had to start his business at the back side of the suit premises after completion of his study during the pendency of the suit, having no other alternative, the said Galipath is not a motorable road. According to the Learned Trial Court, the plaintiff should get a decree on the ground of reasonable requirement because of the fact that oil mill is situated in such a place wherefrom the said business of oil mill cannot be run well.

5. The defendant/appellant filed Title Appeal No. 37 of 2001 challenging the judgment and decree of the Learned Trial Court. The Learned Civil Judge (Sr. Divn.), Suri, Birbhum, by judgment and decree dated 9th September, 2004 dismissed the said appeal. The defendant/ appellant has got the protection under the provisions of Section 17(4) of the West Bengal Premises Tenancy Act and the notice under Section 13(6) of the West Bengal Premises Tenancy Act and Section 106 of the Transfer of Property

Act served upon the defendant has been proved and no argument in this regard was made by the Learned Lawyer for the defendant/ appellant.

6. The Learned Lower Appellate Court found that from the oral and documentary evidence on record it could not find any case from the side of the defendant/appellant which can establish that the plaintiff has sufficient accommodation for running of the oil mill business of her younger son. He has also found that P.W. 1 has stated that the oil mill business run by the younger son of the plaintiff is situated inside the "Gali Rasta" and the suit premises is situated in front of the Station Road and the suit premises is fit and proper for running of the oil mill business of the younger son of the plaintiff. It also appears that the Learned Lower Appellate Court also took into consideration the local inspection that was held in the said proceedings. Learned Lower Appellate Court found that the Learned Trial Court has not committed any mistake in decreeing the suit in favour of the plaintiff/respondent.

7. Challenging the aforesaid judgment and decree passed by the Learned Lower Appellate Court the defendant/appellant has preferred the instant appeal.

8. The Learned Advocate for the appellant has argued that the ground of reasonable requirement for own use and occupation was introduced by the plaintiff/respondent after six years from the time when the suit was filed and such introduction of the ground of reasonable requirement is not bona fide. He submitted that the plaint was amended after six years to introduce the ground of reasonable requirement for own use and occupation. It appears from records that such submission made on behalf of the appellant is not wholly correct. It will appear from the plaint itself that when the suit was filed in the year 1992 the plaint did contain the ground of reasonable

requirement. In paragraph 4 of the plaint the plaintiff had stated that the suit premises is required by the plaintiff for the running of the business of her unemployed sons and she is not in possession of any accommodation for running of such business of her sons. The plaintiff had further stated in the plaint that the plaintiff has two sons and out of them one is an educated unemployed son and the suit premises is reasonably required for running of the business of the said educated unemployed son of the plaintiff. Such allegations were there in the original plaint itself. It appears from records that in the year 1998 an amendment was made to the plaint to the effect that subsequent to the filing of the suit the plaintiff's son Sib Shankar Kejriwala has started a mini oil mill for selling oil in retail and such mini oil mill was being run in a premises situated on the back side of the suit premises and which is situated on the side of a "Gali path" and not by the side of a main road and in such circumstances the said mini oil business cannot run well. The plaintiff further amended the plaint to the effect that the suit premises is situated to the contiguous east of the station road/R.N. Tagore Road and the suit premises is reasonably required by the plaintiff for the running of the said business of her said son. Thus it will appear that the ground of reasonable requirement was not really introduced for the first time after six years of the filing of the suit. It may be that some additional facts and/or subsequent events were stated in the plaint by way of amendment of the plaint.

9. It will appear from the Learned Commissioner's report that plaintiff's son Shib Shankar Kejriwala is running the said mini oil business at a place which is on the southern side of a "Gali path" and the suit premises is on the eastern side of R.N. Tagore Road. It will further appear that the width of the said Galipath is about six feet. It will thus appear that the findings of the

Learned Courts below with regard to the topography of the place where the plaintiff's son is running a mini oil business and that of the suit premises is supported by the materials on record.

10. The Learned Advocate for the defendant/ appellant has submitted that two basic conditions must be fulfilled for a party to succeed in a suit for eviction on the ground of reasonable requirement for own use and occupation. As submitted by the said Learned Advocate the requirement of the landlord should be reasonable and bona fide and it has to be proved that landlord has no other suitable accommodation. In the present case the plaintiff/respondent has already stated in her plaint that she has no suitable alternative accommodation. The defendant/appellant could not bring on record the particulars of any property which could be said to be owned by the plaintiff/respondent and which could provide a suitable accommodation to the plaintiff for meeting her needs for the purpose of the running of the said mini oil business of her son. On the contrary, the materials on record indicate that where the plaintiff's said son is running the mini oil business is not at all conducive for the purpose of running such business. The suit property appears to be on the side of the Station Road and it is the plaintiff's case that the said mini oil business can be run in a better and proper way in the suit property. Both the Learned Courts below have found that the plaintiff/respondent reasonably required the suit property for her own use and occupation by way of enabling her son to run the mini oil business. There is nothing on record to indicate that the case of reasonable requirement made out by the plaintiff is not a bona fide one. The Learned Advocate for the appellant has submitted that the Learned Appellate Court below ignored the fact that two vacant rooms are in the occupation of the eldest son of the plaintiff. Since such rooms are in occupation of the eldest

son of the plaintiff it cannot be said that such alleged vacant rooms can be used by the younger son of the plaintiff. That apart, the suitability of the rooms will have to be taken into consideration. Both the Learned Courts below have found that the suit property is on the side of the Station road and considering the nature of business of the younger son of the plaintiff the suit property is suitable for the purpose of running of such business. The Learned Trial Court did consider the allegation with regard to the two vacant rooms and the findings of the Learned Trial Court have been affirmed by the Learned Lower Appellate Court by the impugned judgement.

11. It appears that in Title Suit No. 113 of 1988 in the court of the Learned Munsif, Suri, Birbhum it was decided that the defendant/appellant was occupying of the suit premises as a tenant and not as a licensee even though the plaintiff had tried to make out a case of license in the said suit. The said Judgement cannot have any adverse effect upon the plaintiff's case in the present suit which is a suit for eviction of a tenant. The certified copy of the judgement in the said suit has been marked as Ext. B in the present suit.

12. The Learned Advocate for the defendant/ appellant has cited a judgement reported at **AIR 1974 Supreme Court 1596** (Mattulal - vs. - Radhe Lal). In paragraph 10 of the said reports the Hon'ble Supreme Court was pleased to observe that *"It is settled law that the High Court in second appeal cannot reappreciate the evidence and interfere with findings of fact reached by the lower appellate Court. The lower appellate court is final so far as findings of fact are concerned. The only limited ground on which the High Court can interfere in second appeal is that the decision of the lower appellate Court is contrary to law. It is only an error of law which can be corrected by the High Court in exercise of its jurisdiction in second appeal.*

If the finding recorded by the lower appellate Court is one of law or of mixed law and fact, the High Court can certainly examine its correctness, but if it is purely one of fact, the jurisdiction of the High Court would be barred and it would be beyond the ken of the High Court unless it can be shown that there was an error of law in arriving at it or that it was based on no evidence at all or was arbitrary, unreasonable or perverse.”

13. He cited another judgement reported at **AIR 1999 Supreme Court 2226** (Dattatraya Laxman Kamble - vs. - Abdul Rasul Moulali Kotkune and another) in support of his contention that the requirement of the landlord must be really genuine by any reasonable standard. The Hon'ble Supreme Court was also pleased to observe in the said reports that the genuineness of the requirement is not to be tested on a par with dire need of a landlord because the latter is a much greater need.

14. The said Learned Advocate cited another decision reported at **AIR 1998 Supreme Court 994** (Sri Balaji Krishna Hardware Stores - vs. - Srinivasaiah). In paragraph 6 of the said reports the Hon'ble Supreme Court was pleased to find in the facts and circumstances of the said case that the Learned Courts below concerned ought to have come to the conclusion that the action of the landlord in not using the shop behind the appellant's shop in the said case which so fell vacant for his son's business and in allowing his daughters-in-law and other sons to use the same, was not a bona fide one. It appears that the facts and circumstances of the present case is quite distinguishable from the facts and circumstances of the said reports. In the present case the findings by the Learned Courts below are that the mini oil mill business is being carried on by the youngest son of the plaintiff at a place which is by the side of a 'Gali path' and such 'Gali Path' is about six to seven feet in width. It further appears that the said Gali path is not a

motorable road. It further appears from the findings made by the Learned Courts below that the said mini oil business cannot be properly run in its present place and that the suit property which is by the side of the Station road would be an appropriate and more convenient place wherefrom the said business may be run.

15. The said Learned Advocate cited another decision cited at **AIR 1999 Supreme Court 3864** (Raghunath G. Panhale (dead) by LRs. - vs. - M/s. Chaganlal Sundarji and Co.) in support of his contention that the word 'reasonable' connotes that the requirement or need is not fanciful or unreasonable and it should not be a mere desire. The Hon'ble Supreme Court was pleased to observe in the said reports that the word 'requirement' coupled with the word 'reasonable' means that it must be something more than a mere desire but need not certainly be a compelling or absolute or dire necessity.

16. The Learned Advocate for the respondents submitted that the requirement is for the business of the plaintiff's youngest son and the dispute between the parties depends purely upon evidence and facts. He has further submitted that even if it is assumed for the sake of argument that there is any vacant room one has to come to the conclusion that such vacant room is suitable for such business; otherwise, mere existence of a vacant room will not be enough for any court to say that the plaintiff's requirement can be met by using such vacant room. However, in the instant case it has been found that the rooms which have been described to be vacant by the defendant are really in occupation of the eldest son of the plaintiff. The Learned Lower Appellate Court has found that the defendant could not prove that the plaintiff has sufficient accommodation to enable her youngest son to run the oil mill business and the said Court has also found that the suit premises is

situated in front of the Station road and it is fit and proper for running the said business of the youngest son of the plaintiff.

17. The said Learned Advocate for the respondents cited a decision reported at **AIR 1979 Supreme Court 272** (Mst. Bega Begum and others - vs. - Abdul Ahad Khan (dead) by L.R's and others). In paragraph 13 in the said reports the Hon'ble Supreme Court was pleased to observe that the connotation of the term 'need' or 'requirement' should not be artificially extended nor its language so unduly stretched or strained so as to make it impossible or extremely difficult for the landlord to get a decree for eviction.

18. The said Learned Advocate also cited a decision reported at **AIR 1991 Supreme Court 353** (Shyamlal Agarwal - vs. - Ratanlal Malviya (dead) by Lrs.) in support of his contention that the concurrent findings of facts by the Learned Court below cannot be interfered with unless there are very strong and cogent grounds for such interference.

19. There cannot be any dispute with regard to the propositions of law laid down in the said reported cases. But in the facts and circumstances of the instant case this court is of the view that the concurrent findings of facts recorded by the Learned Courts below should not be interfered with by this court as there is no proper and cogent ground for such interference. The Learned Courts below took into consideration the Learned Commissioner's report and came to the conclusion that the suit premises would be the fit and proper place wherefrom the plaintiff's youngest son can run his business. The Learned Courts below also found that the present place from where the plaintiff's youngest son is running his business is not a proper place to run the said kind of business. The Gali path is not a motorable road and is only six to seven feet in width. The Learned Courts below have found that mini oil mill cannot be run well from the said place. The defendant/appellant has

not been able prove that the plaintiffs/respondent has any suitable sufficient accommodation elsewhere, apart from the suit premises, wherefrom the plaintiff's youngest son can run his business. The Learned Courts below considered the materials on record including evidence and came to their findings. Considering the materials on record, this court is of the view that the plaintiff/respondent's requirement of the suit premises is reasonable and bona fide. It cannot be said that the impugned judgement suffers from any infirmity.

20. In view of the discussions made above this court does not find any merit in the instant appeal which is, accordingly, dismissed.

21. There will, however, be no order as to costs.

22. Urgent Xerox certified copy of this judgment, if applied for, shall be given to the parties on compliance of usual formalities.

(TAPAN KUMAR DUTT, J.)

