

PETITIONER:
DR. RANBIR SINGH

Vs.

RESPONDENT:
ASHARFI LAL

DATE OF JUDGMENT 21/09/1995

BENCH:
FAIZAN UDDIN (J)
BENCH:
FAIZAN UDDIN (J)
KULDIP SINGH (J)

CITATION:
1995 SCC (6) 580 JT 1995 (6) 668
1995 SCALE (5) 470

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Faizan Uddin, J.

1. The material facts leading to this appeal are that Maharaja Rana Udaibhan Singhji of the erstwhile State of Dholpur died in the year 1954 leaving behind him his widow Smt. Malvender Kaur and daughter Smt. Urmila Devi. Late Maharaja Udaibhan Singh had no natural male child and according to the appellant the late Maharaja Udaibhan had great attachment with Shri Hemant Singh the son of his only daughter and during his life time had expressed his wish to adopt Shri Hemant Singh as a son to him and had advised his widow accordingly giving her the authority to adopt Shri Hemant Singh as his son. Consequently, Shri Hemant Singh (s/o Smt. Urmila Devi, daughter of late Maharaja Rana Udaibhan Singh) was adopted by Smt. Malvender Kaur according to the wishes of her late husband vide Deed of Adoption dated 5.11.1954. Further case of the appellant is that a High Power Committee was constituted to examine the contentions of various claimants for succession to the gaddi of Dholpur. The said committee consisting of the then Chief Justice of Rajasthan High Court, Maharaja of Bharatpur and Maharaja of Doongarpur recommended the name of Shri Hemant Singh as a ruler of the erstwhile State of Dholpur. The Government of India accepted the recommendation of the said committee and by letter dated 13/14.12.1956 recognised Shri Hemant Singh the adopted son of late Maharaja Udaibhan as successor to the gaddi of Dholpur with effect from 22.10.1954. The Government of India by another letter dated 13.12.1956 addressed to Smt. Malvender Kaur stating that she has been appointed as the new ruler's adoptive mother to be the natural and legal guardian of Shri Hemant Singh who was then minor with instructions to take care of his interest in every way.

2. The property in dispute in the present appeal was given on rent to the respondent by Smt. Malvender Kaur on a

monthly rent of Rs. 4/- which was inherited by Shri Hemant Singh being the adopted son of late Maharaja Udaibhan Singh. The appellant purchased certain property including the property in dispute in this appeal from Shri Hemant Singh by a registered sale-deed dated 10.10.1972. On such sale being made the rent note executed by respondent in favour of Smt. Malvender Kaur was handed over to the appellant by the landlord Shri Hemant Singh. According to the appellant after he purchased the suit property he immediately intimated the same to the respondent who on demand of enhancement of rent, agreed to pay rent at the rate of Rs. 40/- P.M. of the suit premises. The respondent had paid rent to him for the months of November and December, 1972 but did not pay any rent thereafter. The appellant, therefore, served a notice dated 6.1.1976 to the respondent terminating the tenancy and demanded vacant possession of the suit premises, specifically mentioning that he was the adopted son of late Maharaja Udaibhan Singh of Dholpur. The respondent in his reply dated 30.1.1976 did not dispute the factum of adoption of Shri Hemant Singh but denied the title of the appellant as also any privity of contract of tenancy with him.

3. The appellant filed suit for eviction against the respondent on the grounds of denial of title, bonafide necessity of the premises in suit, default in payment of rent and material alterations. The respondent contested the suit by filing the written statement denying all the grounds of eviction alleged by the appellant. The respondent took the stand that he was the tenant of Smt. Malvender Kaur and that Shri Hemant Singh was not the legally constituted successor to late Maharaja Udaibhan Singh and as Shri Hemant Singh was the son of the daughter of Maharaja Udaibhan Singh, he inherited no interest in the property. The respondent took the stand that on the death of Shri Udaibhan Singh, his widow Smt. Malvender Kaur became successor. He also denied attornment of tenancy by oral notice or that he agreed to pay rent at Rs. 40/- per month to the appellant.

4. The trial Court decreed the appellant's suit on the ground of denial of title and bonafide need by recording findings that Shri Hemant Singh was the legal representative and successor of late Shri Udaibhan Singh and that the plaintiff-appellant had purchased the suit property from Shri Hemant Singh. In appeal preferred by the defendant-respondent, the first appellate Court remanded the case to the trial Court for recording findings on the question of greater hardship. The Trial Court after recording the evidence of the parties held that greater hardship will be caused to the plaintiff-appellant in case the decree for eviction was not passed. Thereafter the first appellate Court dismissed the appeal preferred by defendant-respondent affirming the judgment and decree on the ground of denial of title and bonafide need of the appellant. The respondent went up in Second Appeal before the High Court of Rajasthan, Jaipur Bench. The High Court by the impugned judgment dated 27.5.1992 allowed the appeal of the respondent, set aside the judgment and decree passed by the trial Court and the first appellate Court and dismissed the suit of the plaintiff-appellant by holding that Hindu Law and the Hindu Women's Right to Property Act of 1937 were applicable to the erstwhile State of Dholpur and as the family of late Udaibhan Singh admittedly was governed by Mitakshra rule and therefore, Shri Hemant Singh being daughter's son was not entitled to succeed to late Udaibhan Singh since his widow Smt. Malvender Kaur (since deceased) and daughter Smt. Urmila Devi were alive. On these findings the High Court held that Smt. Malvender Kaur became the sole owner of the

private properties of late Maharaja Udaibhan Singh and Shri Hemant Singh did not become the owner of the properties and, therefore, he acquired no title over the properties so as to entitle him to transfer the suit property in favour of the plaintiff-appellant herein. The High Court further held that the recognition of Rulership by the President would not amount to recognition of any right to private property of the ruler but such recognition only entitles the ruler to the enjoyment of the Privy Purse contemplated under article 291 of the Constitution and the personal rights, privileges and dignities of the ruler of an Indian State. The High Court held that the decision in the case of. Rajendra Singh Vs. Union of India [AIR 1970 SC 1946] is of no help to the appellant on the proposition that Shri Hemant Singh became successor to late Shri Udaibhan Singh in respect of his private properties also. In view of these findings the High Court took the view that the question of denial of title of the plaintiff-appellant did not arise and, therefore, set aside the findings of the two courts below on the question of denial of title. The High Court also set aside the findings of the two courts below with regard to the bonafide necessity of the plaintiff-appellant in respect of the suit premises by holding that sufficient accommodation is available with the plaintiff-appellant and he had failed to establish that his alleged need is genuine or bonafide. On these findings the High Court set aside the Judgment and decree of the two courts below and dismissed the suit of the plaintiff-appellant against which this appeal has been directed.

5. At this stage it may be noted that I.A. No 3 of 1995 has been filed on behalf of the appellant in this Court under Order 47 Rule 27 of Civil Procedure Code read with Rules 1 and 6 of the Supreme Court Rules along with the Certified true copy of the Deed of Adoption dated 5.11.1954. The application is allowed after consideration and the deed of adoption is taken on record.

6. Learned counsel for the plaintiff-appellant vehemently urged that the proof of title is not germane in a suit for eviction between the landlord and tenant but it is the relationship which has to be proved coupled with grounds of eviction provided under the law and, therefore, it is not necessary to make elaborate pleadings with regard to the title in a suit for eviction. He submitted that so far as the question of relationship of landlord and tenant between the appellant and respondent is concerned it has been sufficiently proved by the plaintiff-appellant as held by the trial Court and affirmed by the first appellate Court and the High Court was, therefore, not justified in going into the question of ownership of the suit property as if it was a suit for establishment of title. The appellant has produced a certified copy of the deed of adoption dated 5.11.1954 which has been taken on record and on that basis submitted that having regard to the evidence on record, oral and documentary, it has been sufficiently established that Shri Hemant Singh was not only recognised as ruler of the erstwhile State of Dholpur but he also became the successor and owner of private properties of late Maharaja Udaibhan Singh and as such the High Court committed a serious error in taking a contrary view. He submitted that the sale of the suit property made by Shri Hemant Singh in favour of the plaintiff-appellant was, therefore, legal and valid by all means and the denial of title of the plaintiff-appellant by the respondent constituted a ground for his eviction under the Law. He further submitted that the High Court committed a serious error in reappreciating the evidence and upsetting

the well reasoned Judgments and concurrent findings of fact recorded by the two Courts with regard to the bonafide necessity of the suit accommodation by the plaintiff-appellant which was not permissible by virtue of the mandate contained in the provisions of Section 100 of the Code of Civil Procedure.

7. As against this learned counsel appearing for the defendant-respondent submitted that the plaintiff-appellant did not plead as to how Shri Hemant Singh became the owner of the suit property belonging to late Maharaja Udaibhan Singh and there was no proof that he was adopted as a son to Shri Udaibhan Singh and that by mere recognition of Shri Hemant Singh by the President of India as successor to late Udaibhan Singh, it does not make him successor to personal properties of the late Maharaja. He submitted that in fact the respondent had obtained the suit premises on rent from late Smt. Malvender Kaur, the widow of late Maharaja Udaibhan Singh and there was no privity of any contract between Shri Hemant Singh and the respondent. He also contended that since the view taken by the trial Court and the first appellate Court is contrary to the weight of the evidence on record and perverse and, therefore, the High Court was fully justified in reappreciating the evidence and recording its own findings.

8. After giving our anxious and serious consideration to the aforementioned rival contentions we find considerable force and substance in the submissions made by learned counsel for the plaintiff-appellant.

9. It may be pointed out that it is well settled law that the question of title of the property is not germane for decision of the eviction suit. In a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title is disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties. In *L. I. C. Vs. India Automobiles & Co.* [1990 (4) SCC 286 at para 21] this Court had an occasion to deal with similar controversy. In the said decision this Court observed that in a suit for eviction between the landlord and tenant, the Court will take only a prime facie decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It has been further observed that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bonafide the Court may have to go into tenant contention on the issue out the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bonafide in the circumstances of the case.

10. Here it may be pointed out that Rajasthan Premises (Control of Rent & Eviction) Act, 1950 was also extended and made applicable to Dholpur at the relevant time when the present suit was instituted in the year 1977. Clause (III)

of Section 3 of the said Act defines "landlord" so mean any person who for the time being is receiving or is entitled to receive the rent of any premises, whether on his own account or as an agent, trustee, guardian or receiver for any other person or who would so receive or be entitled to receive the rent, if the premises were let to a tenant. Clause (VII) of Section 3 further defines tenant as the person by whom or on whose account or behalf rent is, or, but for a contract express or implied would be payable, for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by a decree for eviction passed under the provisions of this Act. Having regard to the aforementioned facts and circumstances and the provisions of law it has to be seen whether the plaintiff has been successful in establishing that he is the landlord of the suit premises and the defendant is a tenant thereof.

11. It cannot be disputed that the plaintiff had brought the suit for eviction of the defendant respondent on the basis of tenancy. The plaintiff clearly pleaded that he purchased the suit premises from Shri Hemant Singhji Ex-Ruler of Dholpur and successor of Late Maharaja Udaibhan Singhji on 10-10-1972, which fact was brought to the notice of the defendant who attorned the tenancy and agreed to pay the rent at the rate of Rs. 40/- per month (vide para 2 and 3 of the Plaint). The defendant paid the rent for the months of November and December, 1972 out defaulted thereafter. The plaintiff, therefore, served a notice dated 6.1.1976 on the defendant terminating his tenancy. In the notice it was specifically mentioned that Shri Hemant Singh was adopted as a son of late Maharaja Udaibhan Singh. The defendant gave a reply dated 30.1.1976 to the aforementioned notice of the plaintiff but did not dispute the factum of adoption of Shri Hemant Singh though he denied the title of the plaintiff-appellant and contract of tenancy. These facts and pleadings are reiterated by the plaintiff in his evidence also as PW 1. It may be noted that the defendant admits that he obtained the suit premises from late Smt. Malvender Kaur, the widow of late Maharaja Udaibhan. The evidence of Ramesh Chand. PW 2 reveals that the defendant is the tenant of the plaintiff and that he respondent agreed to pay rent to the plaintiff at the rate of Rs. 40/- per month. There is no rebuttal of this evidence except the statement of the defendant himself which according to us is not trust-worthy as compared to plaintiff's evidence supported by PW 2, from which it is established that the defendant had accepted himself to be a tenant of the plaintiff on a monthly rent of Rs. 40/- and thus there was a privity of contract of tenancy between the plaintiff and the defendant after due attornment. Thus, it has been sufficiently established that the plaintiff is the landlord within the meaning of Clause (III) of Section 3 of the Act and the defendant is tenant within the meaning of Clause (VII) of Section 3.

12. Apart from the facts stated above it may also be noted that the Government of India by its letter dated 13/14th December 1956 addressed to Shri Hemant Singh communicated that the President has been pleased to recognise his succession to the gaddhi of Dholpur with effect from 22.10.1954 and that the same was being published in the Gazette of India for general information. By another letter on 13.12.1956 by the Government of India addressed to late Maharani Malvender Kaur stated that the President has been pleased to recognise Maharaj Kumar Hemant Singh as the ruler of Dholpur in succession to his late Highness Maharaja Udaibhan Singh and said Maharani as the new rulers adoptive

mother will be his natural and legal guardian to take care of the minor ruler's interest in every way as Shri Hemant Singh was then a minor. It was on the basis of these orders of the President of India that Shri Hemant Singh was recognised as successor to the late Maharaja Udaibhan Singh. It is true that his recognition as the Ruler to succeed to the gaddhi of Dholpur was not associated with any act of recognition of right to private properties as held by this Court in *Rajendra Singh Vs. Union of India* (supra) in which Shri Hemant Singh was arrayed as respondent No. 2 being the adopted son of late Ruler of Dholpur. But in the present case, as said earlier, the plaintiff has filed certified true copy of the deed of adoption dated 5.11.1954 which prima facie goes to show that Shri Hemant Singh was adopted as son of late Maharaja Udaibhan Singh. Not only this, but the appellant in his notice served on the respondent terminating his tenancy specifically stated that he was the adopted son of Late Maharaja Udaibhan Singh of Dholpur, which fact was not refuted by the respondent in his reply thereto. That being so prima facie the appellant inherited the private properties of the Late Maharaja besides being his successor to the gaddhi. In these facts and circumstances even if it is accepted that Hindu Law and Hindu Women's Right to Property Act, 1937 were applicable to Dholpur, inheritance of the private properties of Late Maharaja in any case, devolved upon Shri Hemant Singh. Shri Hemant Singh therefore had a right to make a transfer of the suit property to the appellant.

13. Admittedly, the defendant denied the title of the plaintiff in respect of the suit premises, which in the facts and circumstances discussed above, furnished a ground for eviction of the respondent, as such denial of title by the respondent was not bona fide. The trial Court and the first appellate Court on a close analysis of the evidence also recorded a definite finding that the plaintiff's requirement of the suit premises was genuine and bonafide but the High Court set aside the same on unreasonable grounds.

14. Sub-section (1) of Section 100 of the Code of Civil Procedure contemplates that an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. Sub-section (4) of Section 100 further provides that when the High Court is satisfied that a substantial question of Law is involved in any case, it shall formulate that question. But it may be pointed out that the High Court formulated no such question of Law on basis of which it proposed to interfere with the findings of facts. It has been the consistent view of this Court that there is no jurisdiction to encertain a second appeal on the ground of erroneous finding of fact, based upon an appreciation of the relevant evidence. There is a plethora of case law in support of this view. To quote a few references may be made to the decision in *Ramachandra Vs. Ramalingam* [AIR 1963 SC 302] wherein this Court took the view that even if the appreciation of evidence made by the lower appellate Court is patently erroneous and the finding of fact recorded in consequence is grossly erroneous, that cannot be said to introduce a substantial error or defect in the procedure and the High Court cannot interfere with the conclusions of fact recorded by the lower appellate Court. This view has been reiterated by this Court in *Bhagwan Das Vs. Jiley Kaur* [AIR 1991 SC 266]. This being the position, the High Court was not justified in reappreciating the evidence and

substituting its own conclusions for the well reasoned findings recorded by the Courts of fact.

15. As regards the question of comparative hardship the trial Court and the first appellate Court both on appreciation of evidence have taken a consistent view that the hardship to the plaintiff would be greater than the hardship to the tenant as the need of the landlord is greater than that of the tenant. This also being a finding of fact was not open to challenge in the second appeal before the High Court and the High Court should not have interfered with the said finding also on the principles stated above. In Bega Begum Vs. Abdul Ahad Khan [AIR 1979 SC 272] this Court observed that the tenant has to prove that he will not be able to get any accommodation anywhere in the city or town concerned, before it could be legitimately contended that he had a greater hardship as compared to that of the landlord. In the present case there is no such evidence or any material produced by the defendant to show that he will not be in a position to get alternative accommodation in the town of Dholpur for his residence. The two courts below on a careful comparison and assessment of the relative advantages and disadvantages of the landlord and the tenant recorded a clear finding that the hardship of the plaintiff would be greater and the said finding should have been accepted by the High Court.

16. For the reasons stated above the appeal succeeds and is hereby allowed. The impugned judgment and order of the High Court is set aside and the judgment and decree of the trial Court is restored. We, however, make no order as to costs.