

CASE NO.:
Appeal (civil) 3695 of 2001

PETITIONER:
HAMIDA & OTHERS

Vs.

RESPONDENT:
MD. KAHLIL

DATE OF JUDGMENT: 08/05/2001

BENCH:
D.P. Mohapatra & Shivaraj V. Patil

JUDGMENT:

Shivaraj V. Patil J.

Leave granted.

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This appeal is by the legal representatives of the plaintiff in title suit no. 13/84 filed for eviction of the defendant from the suit premises. The plaintiff filed the said suit stating that the suit premises was let out to the defendant as a tenant on a monthly rent of Rs. 125/- in the year 1972; the defendant failed to pay the rent from October, 1983; he required the suit premises reasonably and in good faith for accommodation of large number of members of his family; he has six sons, two of whom were unemployed youth and has also a grown-up unmarried daughter besides his nephew who was also unemployed. He wanted to open a shop in the outer room of suit premises just to engage his sons and nephew in the business and that he had no house in that town. The defendant had filed a suit for specific performance in respect of the same property.

The trial court dismissed the suit filed by the plaintiff for eviction and decreed the suit of the defendant filed for specific performance. The plaintiff filed appeals against judgments and decrees passed in both the suits. The first appellate court reversed them. In other words, decreed the suit of the plaintiff filed for eviction and dismissed the suit filed by the defendant for specific performance. Aggrieved by the same, the defendant filed second appeals before the High Court. The High Court confirmed the judgment of the first appellate court dismissing the suit filed by the defendant for specific performance; however, allowed the second appeal from appellate decree No. 113/91(R), in effect, dismissing the suit filed by the plaintiff for seeking eviction of the defendant. Hence this appeal.

The learned counsel for the appellants contended that the High Court has manifestly erred in interfering with the judgment and decree of the first appellate court merely re-appreciating the evidence in the absence of any

substantial question of law arising for consideration between the parties as required under Section 100 of the Code of Civil Procedure; the High Court could not have reversed finding of fact recorded by the first appellate court even assuming that one other view was possible to be taken; the finding of the first appellate court was based on proper appreciation of evidence and on objective assessment of the same. The learned counsel for the respondent made submissions supporting the impugned judgment.

While narrating the facts of the case, we have already noticed that the suit filed by the defendant for specific performance stood dismissed. The defendant in his written statement claimed that although he was a tenant of the suit premises, subsequently there was an agreement to sell the same to him by the plaintiff and as such their relationship as tenant and landlord came to be terminated. However, he continued to pay rent to the plaintiff even after the said agreement of sale on compassionate ground as the plaintiff was very poor and needy person. The suit for specific performance was filed by the defendant in 1987. In view of the dismissal of the said suit, there is no need to say anything more on this aspect. The first appellate court has noticed that the plaintiff in support of his contention of reasonable and bona fide need in his evidence stated that he has got six sons, a nephew, a daughter and his wife whereas he has got only three rooms for residence; his two sons and a nephew were grown up and unemployed for whom he wanted to establish a shop in the outer portion of the suit premises and wanted to use the rear portion for his residential purposes. This evidence of the plaintiff was supported by the evidence of his nephew and also one more witness, the next door neighbour. The defendant in his evidence stated that the eldest son of the plaintiff got married a month back (in April, 1997) and he was residing in the same house in which the entire family of the plaintiff resides. The first appellate court has also observed that the only ground of defence taken by the defendant was the existence of the agreement to sell and that there was no other evidence on behalf of the defendant to meet the averments made in the plaint. The first appellate court on the basis of the pleadings and on proper appreciation of the evidence held that the requirement of the premises by the plaintiff was both reasonable and bona fide, adding that the need was further intensified and grown in magnitude by the efflux of time as it was very difficult for the plaintiff to accommodate a newly married couple and seven grown up children with himself and his wife in a small house of three rooms by maintaining the secrecy and decency as expected in a middle class family. It is to be mentioned here that the original plaintiff expired on 19.11.1992. The present appellants have come on record as his legal representatives. Having regard to large number of members of the family which has grown in course of time, even after the death of the original plaintiff, the bona fide and personal need of the premises for the family members continued.

The High Court has upset the finding of fact recorded by the first appellate court, taking a different view merely on re- appreciation of evidence in the absence of valid and acceptable reasons to say that the findings recorded by the first appellate court could not be sustained either they being perverse or unreasonable or could not be supported by any evidence. The High Court neither framed a substantial

question of law nor any such question is indicated in the impugned judgment as required under Section 100 of the Code of Civil Procedure. The approach of the High Court, in our view, is clearly and manifestly erroneous and unsustainable in law. Para 10 of the impugned judgment reads :-

The appellate court although has decided the issue of personal necessity but from the judgment it appears that the appellate court has not decided this issue in its correct perspective. Since the trial court has not recorded any finding on the issue of personal necessity, the finding recorded by the appellate court cannot be said to a concurrent finding of fact. I am, therefore, of the definite view that in such circumstance, this court can re-appreciate the evidence and scrutinize the findings recorded by the appellate court under section 100 C.P.C. when admittedly this issue was not decided by the trial court.

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The sons of the plaintiff for whose requirement the plaintiff sought eviction, have not been examined. The nephew of the plaintiff was examined as a witness who supported the case of the plaintiff. The plaintiff has also not led any evidence to the effect that the house property where the plaintiff resides, is not sufficient for their own use and occupation. There is also no evidence to the effect that suitable alternative accommodation is not available to the plaintiff for meeting the requirement. I am, therefore, of the view that the finding recorded by the appellate court on the issue of personal necessity cannot be sustained in law for want of sufficient evidence.

As can be seen from the para extracted above, the High Court thought that it could re-appreciate the evidence and scrutinize the findings recorded by the first appellate court under Section 100 CPC. This approach is plainly erroneous and against law. The High Court was also wrong in saying that the plaintiff did not lead sufficient evidence to establish his bona fide requirement. As observed by the first appellate court and noted above already, there is evidence of the plaintiff, his nephew and the neighbour. The finding of fact recorded by the first appellate court based on evidence could not be interfered with by the High Court, that too in the absence of any substantial question of law that arose for consideration between the parties.

We repeat and reiterate this position as stated by this Court time and again. In one such judgment in Satya Gupta (Smt) Alias Madhu Gupta vs. Brijesh Kumar [(1998) 6 SCC 423], this Court, in para 16, has stated thus: -

16. At the outset, we would like to point out that the findings on facts by the lower appellate court as a final court of facts, are based on appreciation of evidence and the same cannot be treated as perverse or based on no evidence. That being the position, we are of the view that the High Court, after reappreciating the evidence and without finding that the conclusions reached by the lower appellate court were not based on the evidence, reversed the conclusions on facts on the ground that the view taken by it was also a possible view on the facts. The High Court, it is well settled, while exercising jurisdiction under Section 100 CPC, cannot reverse the findings of the lower appellate

court on facts merely on the ground that on the facts found by the lower appellate court another view was possible.

In this view, we find it difficult to sustain the impugned judgment. Hence the appeal is allowed. The impugned judgment and decree are set aside and that of the first appellate court are restored. The defendant (respondent herein) shall pay cost of Rs. 5,000/- to the plaintiff (appellants herein).

JUDIS