

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 849 OF 2002

Gulab Chand Pukhraj

.. Appellant

Versus

R.B. Jinender Raj & Another

.. Respondents

J U D G M E N T

Dalveer Bhandari, J.

1. This appeal is directed against the judgment of the High Court of Andhra Pradesh at Hyderabad dated 26.4.2001 delivered in Civil Revision Petition No.4009 of 1998.

2. The short question which arises for consideration in this appeal is – whether a co-owner occupying a non-residential premises can seek eviction of a tenant in possession of another non-residential premises for his bona fide requirements?

3. The appellant is a tenant of the premises bearing No.7-2-764 situated at Pot Market, Secunderabad, Andhra Pradesh. The respondents are the co-owners of two non-residential premises bearing Municipal Houses Nos.7-2-763 and 7-2-764 situated at Pot Market, Secunderabad. These two non-residential premises fell to their share by virtue of the 'Will' executed by their father. The respondent landlords have been conducting the business in one shop only. The First respondent has been carrying on business of money lending in a portion of the premises 7-2-763 and the second respondent has been conducting a business in jewellery in the remaining portion of the same shop. It was the case of the second respondent that he required the premises (shop) in question from the tenant for starting the business exclusively for jewellery in a separate shop.

4. The respondent landlords filed a claim petition before the Rent Controller in R.C. No.231 of 1994 under section 10(3)(a)(iii) of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 [hereinafter referred to as "the 1960 Act"] seeking eviction of the appellant tenant from the scheduled

premises namely 7-2-764 situated at Pot Market, Secunderabad.

5. The appellant contended that the landlords are already in possession of a non-residential premises and, therefore, their petition seeking eviction of another non-residential premises is not maintainable in law.

6. The parties led evidence before the Rent Controller. The Rent Controller after recording the evidence held that the landlords are the joint owners of non-residential premises bearing nos.7-2-763 and 7-2-764. However, the landlords are in possession of only one shop in the premises bearing no.7-2-763. The Rent Controller relying on the decision of the Full Bench of the High Court in **Vidya Bai & Another v. Shankerlal & Another** AIR 1988 AP 184 held that since the landlords are already in possession of one non-residential premises, they cannot seek eviction of tenant from another non-residential premises. The petition filed by the respondent landlords was dismissed by an order dated 4.12.1995.

7. The respondent landlords carried the matter in appeal in R.A. No.10 of 1996. The First Appellate Court held that the

respondents landlords have proved the bona fide requirement for starting business in jewellery and also held that second respondent is a co-owner and not an exclusive owner and hence not entitled to maintain application for eviction of another residential premises. The First Appellate Court allowed the appeal and set aside the order of the Rent Controller.

8. The appellant tenant aggrieved by the order of the First Appellate Court in RA No.10 of 1996 preferred a Civil Revision Petition No.4009 of 1998 before the High Court.

9. The plea taken by the appellant tenant is that the respondent landlords are the co-owners of one non-residential premises and, therefore, they are not entitled to seek eviction of the appellant tenant occupying another non-residential premises. The appellant relied on the decision of this court in ***Super Forgings & Steels (Sales) Pvt. Ltd. v. Thyabally Rasuljee*** (1995) 1 SCC 410 and ***Vidya Bai*** (*supra*). On the other hand, the respondent landlords placed reliance on ***Boorgu Jagadeshwaraiah & Sons v. Pushpa Trading Co.*** (1998) 5 SCC 572, according to which a landlord is not

precluded to seek eviction of tenant from any non-residential building even if he is having another non-residential building. Reliance has been also placed on ***Rasik Auto Stores & Others v. Navin V. Hantodkar & Another*** (1998) 8 SCC 177 and ***Om Prakash v. Basanthilal*** (1999) 9 SCC 618.

10. The issue that arises for consideration is – whether under section 10(3)(a)(iii) of the 1960 Act, the co-owner can be treated as owner of the premises and whether he is entitled to seek eviction of tenant from another non-residential premises?

11. For proper appreciation of law, it is necessary to set out section 10 (3)(a) of the 1960 Act as under:

“10(3)(a) A landlord may subject to the provisions of clause (d), apply to the controller for an Order directing the tenant to put the landlord in possession of the building-

(i) & (ii) x x x x x

(iii) in case it is any other non-residential building, if the landlord is not occupying a non-residential building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise-

a) for the purpose of a business which he is carrying on, on the date of the application, or

- b) for the purpose of a business which in the opinion of the Controller, the landlord bona fide proposes to commence.”

12. In **J. Pandu v. R. Narsubai** (1987) 1 SCC 573, this court held that a landlord, notwithstanding his occupation of a non-residential building, can still seek eviction of his tenant from his business premises if the landlord is able to satisfy that the non-residential building occupied by him is not sufficient and suitable for the purpose of expansion of his business or for the purpose of a new business which he bona fide proposes to commence or that the shifting of his business has become inevitable. This Court has taken the same view in **Saroj Kumar Das (Dr.) v. Arjun Prasad Jogani** (1987) 4 SCC 262.

13. It may be pertinent to mention that this court in **D. Devaji v. K. Sudarashana Rao** 1994 Supp. (1) SCC 729 had an occasion to deal with section 10(3)(a)(iii) of the 1960 Act. In that case, this court took a contrary view and categorically held that a landlord in possession of other non-residential buildings is not entitled to evict tenant from a non-residential building.

14. Obviously, there is clear conflict of opinions of this court in the aforementioned cases. In **Boorgu Jagadeshwaraiah & Sons** (*supra*), a three-Judge Bench of this court examined all these three decisions given in **D. Devaji** (*supra*), **Dr. Saroj Kumar Das** (*supra*) and **J. Pandu** (*supra*) and came to the conclusion that the aspects of quality, size and suitability of the building have been totally put out of consideration. Non-consideration of the quality, size and suitability of the building would be to frustrate the purposes of the Act. The Court observed as under:

“5. The expression “reasonably suitable accommodation” is the pivot of the provision permitting the court going into the question whether the premises involved were reasonably suitable for the purpose. It is on that count that **Dr Saroj Kumar Das case** was decided by making the following observation:

“So far as the law on the question is concerned it is well settled that the alternative accommodation must be reasonably suitable and if it is not so then mere availability of alternative accommodation will not be a ground to refuse a decree for eviction if otherwise the courts are satisfied about the genuine requirement of the landlord and to this counsel for both the parties also agreed but the main contention was that on the facts appearing in evidence in this case whether the inference could be drawn that the flat on the thirteenth floor in South Calcutta was reasonably suitable to satisfy the need of the appellant-landlord.”

6. *J. Pandu* case is closer being one under Section 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 which we are examining. That case apparently was decided on its own facts as would be evident from the finding culled therefrom:

“The fact that the respondent has been using the entire house purchased in 1970 i.e. including the ‘malgis’ for residential purposes and that the respondent is forced to run the family business in a rented premises in the same locality where the lease premises are situate have weighed with the Rent Controller and the appellate authority to concurrently hold that the respondent’s requirement of the building is undoubtedly bona fide. The findings have been sustained by the High Court as well. We cannot, therefore, accept the argument of Mr. Subba Rao that the order of eviction passed by the courts below and affirmed by the High Court is vitiated because of the ownership of four ‘malgis’ by the respondent. The ‘malgis’ have ceased to be non-residential premises from 1970 onwards and hence their mere ownership cannot preclude the respondent from seeking the eviction of the appellant under Section 10(3)(a)(iii).”

7. It, thus, becomes evident that there is no conflict as such between the said decisions and they have gone on in the context of their own facts and the provisions of law. Even so, the argument of the appellant’s learned counsel carries weight that the intention of the legislature in ***D. Devaji*** case has been scuttled by putting an extremely narrow and literal construction on the provision. It has been observed therein as under: (SCC p. 732, para 4)

“The landlord should not be in possession of another non-residential building or of which he is entitled to be in possession in the city, town or village concerned. The intendment of the legislature thereby is clear that a landlord who is in occupation of a non-residential building which is his own or to the possession of which he is entitled to under the Act or any other law should not be permitted to recover possession of another non-residential building belonging to him by evicting the tenants therefrom.”

8. The aspects of quality, size and suitability of the building have been totally put out of consideration. We think this would frustrate the purposes of the Act. Here was a claim set up by the landlord that the non-residential premises he owned did not serve the purpose of his need of setting up a textile and cloth business and that the need could only be met in seeking eviction of the tenant from the premises sought. As we view it there is no difficulty in **D. Devaji** case standing in the way of the landlord-appellant to have the issue examined from the point of view which would carry out the purposes of the Act. We refrain from mentioning any facts on the basis of which the landlord's claim is based lest the manner they are recounted cause prejudice to either of the parties.”

15. In **Boorgu Jagadeshwaraiah & Sons** (*supra*), this court was clearly of the opinion that the aspects of quality, size and suitability of the building cannot be out of consideration and doing so would be to frustrate the purposes of the Act. In the said case, the court remitted the matter to the High Court for

considering the objection of the tenant as to the claim of the landlord.

16. The three-Judge Bench decision in ***Boorgu Jagadeshwaraiah & Sons*** (*supra*) seems to be a reasonable view and of course is binding on us.

17. Consequently, we allow the appeal and set aside the impugned judgment and remit the matter to the Rent Controller for considering the objection of the tenant as well as the claim of the landlords. The Rent Controller may permit the parties to lead additional evidence.

18. In the facts and circumstances of this case, we deem it appropriate to request the concerned Rent Controller to decide the case as expeditiously as possible. We direct the parties to bear their own costs.

.....J.
(Dalveer Bhandari)

.....J.
(Harjit Singh Bedi)

**New Delhi;
August 27, 2009.**