

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5310 OF 2011
(Arising out of SLP(C) No.13686/2011)

DHAN RAJ

Appellant(s)

:VERSUS:

LEGAL REPRESENTATIVES OF NEMI CHAND

Respondent(s)

O R D E R

Leave granted.

1. Brief facts which are necessary to dispose of this appeal are recapitulated as under:-

One Nemi Chand (now deceased) represented through his legal representatives and the respondent in this appeal took a shop from the father of the appellant on a monthly rent of Rs.75/- in the year 1983 and executed a tenancy agreement.

2. The appellant filed a suit for eviction on the ground of bona fide need, default, non-user of the

premises and comparative hardship. The suit was decreed by the learned Additional Civil Judge (Junior Division), Barmer.

3. The respondent tenant, aggrieved by the said judgment preferred an appeal before the learned Additional District Judge, Barmer. The learned Additional District Judge allowed the appeal which was upheld by the High Court.

4. The appellant is aggrieved by the impugned judgment of the High Court by which the High Court upheld the judgment of the learned Additional District Judge, Barmer. The appellant submitted that the First Appellate Court and the High Court erred in setting aside a well-reasoned judgment delivered by the learned Additional Civil Judge (Junior Division) Barmer in Civil Suit No.41 of 1993.

5. The appellant submitted that the High Court and the Additional District Judge did not take into consideration the fact that the appellant has only this shop in question in his name and he wants to start his business independently. According to him, even the comparative hardship issue ought to have been decided in his favour. According to the appellant he cannot be forced to carry

on business jointly with his brother. The appellant also submitted that with the passage of time, family has also increased and it is difficult to run the business jointly.

6. The appellant also submitted that the High Court and the learned Additional District Judge failed to take into consideration that the respondent has got another shop at Village Fagalia.

7. The appellant further submitted that the respondent in fact is not using the disputed shop regularly.

8. We have heard the learned counsel for the parties at length. It is quite evident that the learned Additional District Judge has not considered the case of the appellant in proper perspective while reversing the decree dated 30.11.1998 passed by the learned Additional Civil Judge, Barmer and the High court erroneously upheld the judgment in favour of the respondent.

9. On evaluation of pleadings, documents and evidence on record, it is abundantly clear that the appellant has a genuine and bona fide need of the shop in question to carry on independent business.

10. The learned Additional District Judge did not appreciate that the respondent has another ration shop at Village Fagalia whereas the appellant has no other shop from where he can carry on his business independently. The appellant would have greater hardship if the said shop is not made available to him. The issue of comparative hardship ought to have been decided in favour of the appellant.

11. The appellant cannot be forced to carry on business jointly with his brother. Consequently, the judgment of the High Court and the judgment of the learned Additional District Judge, Barmer are set aside and the judgment of the learned Additional Civil Judge, Barmer is restored.

12. On consideration of the totality of the facts and circumstances and in the interest of justice, we deem it appropriate to grant time upto 31st December, 2012 to the respondents to vacate the premises in question upon filing the usual undertaking in the registry of this court within four weeks from today.

13. This appeal is allowed. The parties are directed to bear their own costs.

.....J
(DALVEER BHANDARI)

.....J
(DEEPAK VERMA)

New Delhi;
July 5, 2011.

