

PETITIONER:
BABU LAL

Vs.

RESPONDENT:
VINOD KUMAR & ANR.

DATE OF JUDGMENT: 01/11/2000

BENCH:
D.P. Mohapatra & Y.K. Sabharwal.

JUDGMENT:

Y.K.SABHARWAL, J.

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T...J

The tenant is the appellant. By the impugned judgment the second appeal filed by him has been dismissed by the High Court at the admission stage finding that no substantial question of law is involved. The facts in brief are as follows:

A petition for eviction on various grounds was filed against the appellant in the year 1979. The ground of eviction relevant for the present purposes is only the bona fide need of the respondents under clause (h) of sub-section (1) of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. Under the said provision the Court on being satisfied that the premises are required reasonably and bona fide by the landlord for the use or occupation of himself or his family members could pass a decree in favour of the landlord directing the eviction of the tenant. In the present case, a decree for eviction was passed against the appellant on 12th February, 1986. The first appeal filed by the appellant was dismissed by an Additional District Judge on 6th May, 1993. The decree of the trial court and the order in appeal were, however, set aside by the High Court in second appeal preferred by the appellant. In terms of the decision dated 21st December, 1993, the High Court, inter alia, noticed that one of the grounds taken by the tenant that another house was available for the residence of the respondents and the said house had come in their occupation after the decision of the suit by the trial court had not been considered. In this view and also keeping in view the fact that counsel for the respondents did not dispute that the appellant was entitled to be granted an opportunity to amend the written statement so that the subsequent events can be brought on record, setting aside the judgment and decree of the courts below, the High Court remanded the case for fresh decision of the trial court directing the trial court to allow the appellant to amend the written statement to bring on record the subsequent events of construction of a house and same being available to the respondents/their father and other family members and to allow the respondents to file replication, if any, to the amended written statement to be filed by the appellant and to decide the matter afresh after allowing the

parties to lead additional evidence on this point and taking into consideration the evidence already recorded during the trial. After remand two additional issues were framed by the trial court which read as under:

Issue No.1-A: Whether, after construction of the house bearing No.53-A, Ranjit Nagar, Bharatpur by the mother of the plaintiffs, the plaintiffs have no requirement of the disputed Nauhra to get the same vacated in good faith, and on this ground the suit of the plaintiffs is fit to be dismissed?

Issue No.8-A: Whether in view of the statement contained in para No.8 of the written statement filed during the pendency of the suit, the plaintiffs are left with no requirement of the suit premises?

The trial court on consideration of the matter afresh by judgment and decree dated 19th December, 1996, inter alia held that the respondents have 27 members of their family and there are only 13 rooms available to them and they require the premises in dispute in good faith for their residential use. The plea that after construction of House No.53-A in Mohalla Ranjit Nagar by the mother of the respondents they were left with no requirement of the disputed house was negatived. The issue of comparative hardship was also decided in favour of the respondents holding that the appellant is not likely to suffer any hardship if the disputed premises is got vacated from him and that the respondents shall suffer more hardship in comparison to the appellant if the disputed premises is not vacated by the appellant. The judgment and decree of the trial court was affirmed in appeal by the learned District Judge in terms of the judgment dated 17.12.1999. The second appeal having been dismissed, the tenant has filed the present appeal. The litigation has already taken nearly 21 years.

Having heard learned counsel for the parties, we do not find any ground to interfere with the concurrent findings recorded by all the courts. Dr.Rajiv Dhawan, learned counsel for the appellant, however, contends that it was a case of an open remand in terms of the decision of the High Court dated 21st December, 1993 and has been wrongly treated as a case of limited remand by the trial court. On the facts and circumstances of the case it is not necessary to go into this aspect. We would assume that it was a case of open remand to reconsider afresh the ground of eviction for the personal need of the respondents. Even so we find that on consideration of the evidence, the trial court rightly decreed the suit. There is also no merit in the other contention that comparative hardship aspect has not been taken into consideration by the trial court. As already noticed, the trial court has held that the respondents shall suffer more hardship in comparison to the appellant in case the disputed premises is not vacated by the appellant. We find no ground to interfere with the said findings.

There is no ground to interfere with the impugned judgment. However, having regard to the facts and circumstances of the case, the time to vacate the premises is extended upto 31st December, 2001 instead of 30th June, 2001 as granted to the appellant by the High Court subject to the appellant's filing usual undertaking in this Court within a period of four weeks.

Subject to the above variation, the appeal is dismissed leaving the parties to bear their own costs.

JUDIS