

**Udhyog Mandir Khadi Vs. Narsingh Das**

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**Court :** Rajasthan

**Decided On :** Mar-24-1977

**Reported in :** 1977WLN(UC)84

**Judge :** M.L. Jain, J.

**Appeal No. :** S.B. Civil Second Appeal No. 511/1974

**Appellant :** Udhyog Mandir Khadi

**Respondent :** Narsingh Das

**Disposition :** Appeal dismissed

**Judgement :**

M.L. Jain, J.

1. The facts of this appeal are that the respondent Narsingh Das had a shop in Subhash Bazar, Tonk which was rented out to the appellant Udhyog Mandir, Khadi Bhandar, Tonk. The landlord filed a suit for eviction on the ground that the premises were required for settling his grandson Kailash Nath into the business of selling medicines. The learned trial Court by its judgment dated 11th December, 1973, dismissed the suit holding that the premises were not required reasonably and bonafide and it was a mere device to secure an increase in the rent.

2. Upon appeal, the learned Additional District Judge, Tonk, found that the plaintiff had succeeded in establishing that he required the suit shop reasonably, and bonafide for this grandson Kailash Nath to run a medical store. The judgment of the lower court was reversed and the suit of the plaintiff was decreed. It was also observed that the learned Counsel for the defendant respondent had conceded that he had failed to prove any oblique motive on the part of the plaintiff and prayed that the defendant be allowed one year 9 months time for vacating the shop. This appeal has been directed against the decree of the learned Additional District Judge. Since the law was amended meanwhile, this Court framed an additional issue as follows:

Whether having regard to all the facts and circumstances of the case including the question whether any other reasonable accommodation is available to the landlord or the tenant greater hardship would be caused by passing the decree than by refusing to pass it.

The learned lower court was directed to record additional evidence on this issue and returned the evidence along with its finding. The learned lower court after (sic) the evidence returned the finding on 10th August, 1970, that no great hardship will be

caused to the appellants if a decree for eviction is passed.

3. The learned Counsel for the respondent submitted in the first instance that the appellant had conceded the case of the, landlord before the learned Additional District Judge and had asked for time for vacating the premises. In these circumstances Section 115 of the Evidence Act is attracted and the appellant cannot be allowed to approbate and reprobate. Moreover, the High Court cannot change the findings of fact arrived at by the learned lower court. He relied upon *Mattulal v. Radhalal* AIR 1974 SC 1504 in which it is held that the High Court could not interfere in second appeal and set aside the finding of fact so long as there was some evidence to support and it could not be branded as arbitrary, unreasonable or perverse.

4. Now, though the jurisdiction in second appeal is very limited but at the same time it does not appear to be correct to hold that simply because the defendant asked for more time to vacate the premises than allowed by Sub-section (9) of Section 13 of the Rajasthan Premises (Control of Rent and (Eviction) Act, 1950 hereinafter called 'the Act', it does not mean that he can not challenge the decree itself in second appeal. If it is not a consent decree and it was only when the defendant's case did not prevail with the court that the counsel asked for time for vacation of the premises. He is not reprobating anything which he had approbated.

5. The learned Counsel for the appellant challenged the decree of the learned lower court firstly on the ground that Kailash Nath was not a member of the Family of the landlord within Section 13(1)(h) of the Act. He pointed out to the statement of Narsingh dated 13th (October, 1973, that his son lives in a separate portion. 'On 16th March, 1974', he deposed that he had two sons, Madanlal and Dwarkalal both in Government service. He has divided the house between them but himself lives with Dwarkalal (father of Kailash Nath). Both of them have each purchased a shop. He himself sits on the shop of Dwarkalal. 'On 6th August, 1976, he deposed that he runs a partnership business in the shop of his partner. His shop is also used for the purposes of the firm. It was urged that both father and sons held separate properties and were engaged in separate pursuits and therefore the grandson cannot be considered a member of the plaintiff's family. But this point cannot be allowed to be raised at this stage as in the plaint it was pleaded that the family was a joint family, vide para 3 of the plaint. It was not denied that Kailash Nath was a member of the family. The argument therefore, cannot prevail and is hereby rejected.

6. Now, two questions that survive, for determination are whether the alleged necessity was bonafide and reasonable and on which side hardship will be greater if the decree were passed or refused. The plaintiff case has been that the shop was required for the purpose of establishing Kailash Nath in the medicine business. The notice terminating tenancy was given on 28th June, 1972. The learned Munsif pointed out that Kailash Nath has passed his Higher Secondary examination in 1971 and in the year 1972 he was appearing in Second Year Supplement examination. It was not therefore, correct when Kailash Nath stated that since he had failed in the examination two three times, he wanted to give up his studies and run a business. The plaintiff had also admitted that Kailash Nath was reacting in the college. No steps were taken for starting the business such as obtaining a license etc The learned Additional District Judge, however, placed reliance upon the statement of Narsinghdas and Kailash Nath and held that there was a bonafide need on the part of the plaintiff. Since then Kailash Nath has graduated. Narsingh states that he had started a ration shop but it failed. He is at present in service in the Co-operative Bank

on daily wages of Rs. 5/- and now wants to take up the business of selling medicines. Now as to hardship, the learned Additional District Judge was of the view that the appellants were an institution and could even run their business elsewhere and the also could open a sales shop in the premises where they manufacture Khadi, while if the boy is not provided with a shop his life would be ruined. The customers of the shop are the ones devoted to the purchase of Khadi and can easily find the defendant appellant's premises there being an exclusive type of business in which the purchases are also of an exclusive class. The appellant had claimed that they had spent Rs. 10,000/- upon fixing furniture in the shop. The learned Additional District Judge was further of the view that much difficulty would be caused in the removal of this furniture.

7. I have considered over these matters. The first appellate court has found that the need was genuine and reasonable and that hardship on the side of the plaintiff would be greater if the decree of eviction was refused. It appears that the business of the institution no doubt shall be dislocated by change of premises but if the shop is not made available to the plaintiff then, he will be required to take on rent some other premises. The findings of the learned Additional District Judge on both the counts are based upon evidence and I do not see any strong reason for interference with his views in the matter. The findings are findings of fact and involve no question of law. They are neither arbitrary or unreasonable or perverse.

8. I therefore, do not find any force in this appeal and dismiss the same. No order as to costs. The appellants shall, however, get the statutory period of two months for vacation of the premises.

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