



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil First Appeal No. 680/2004

1. Mahendra Yadav

(Since deceased during pendency of First Appeal)

2. Smt. Uma Yadav

-----Appellants

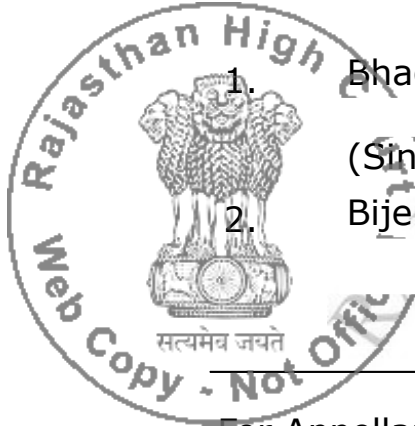
Versus

1. Bhagwan Devi

(Since deceased during pendency of First Appeal)

2. Bijendra Sharma

-----Respondents



For Appellant(s) : Mr.M.M. Ranjan, Senior Advocate with
Mr. Aman Pareek

For Respondent(s) : Mr. R.K. Mathur, Senior Advocate with
Mr. Aditya Kiran Mathur
And Mr. Kritin Sharma

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

JUDGMENT RESERVED ON : 27/04/2022
JUDGMENT PRONOUNCED ON : May _5th_ , 2022

BY THE COURT:

REPORTABLE

1. Appellant-defendants-tenant (hereinafter referred as "tenant") have preferred this first appeal under Section 96 CPC, assailing judgment and decree dated 17-8-2004 in Civil Suit No.2/2003 passed by Additional District Judge (Fast Track), No.2, Alwar whereby and whereunder suit for eviction and recovery of rent has been decreed.

2. The facts of the case are that rented premises a house No.308, Arya Nagar measuring 761 Sq. Yards comprising of four



rooms, kitchen, toilet, 2 warrandah, gallery etc., was let out by original plaintiff Krishan Sharan Sharma to original tenant Ghasi Ram Yadav way back in July, 1967 at the rate of Rs.140/- per month for the purpose of residence. Since the original tenant committed default in payment of rent and the original plaintiff landlord required the house for his own family hence a civil suit for eviction invoking the provisions of Section 13(1)(a) and (h) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereafter 'the Rent Act') was filed on 25-11-2000. At the time of institution of suit for eviction the original tenant Ghasi Ram Yadav had passed away hence the suit was filed against (i) Mahendra Yadav (younger son) and (ii) Uma Yadav (widow of elder son Ram Singh Yadav), impleading them as defendants No.1 and 2, who were stated to be in possession of the rented house. During pendency of suit, the original plaintiff Krishan Sharan Sharma also passed away, hence his wife and son were allowed to continue proceedings of the suit for eviction. The trial court after recording evidence of both parties and holding a full fledged trial recorded findings of fact that the tenant has committed default in payment of rent for more than six months, however, the benefit of first default was extended. The trial court found that the rented house is required to plaintiff landlord for residence of his own family and the need of plaintiff is bonafide and reasonable, hence, the suit for eviction was decreed on ground of personal and bonafide necessity of the plaintiff landlord vide judgment dated 17-8-2004.

3. Before entering into merits of the judgment of trial court on grounds challenged by appellants, since some subsequent developments have occurred during pendency of first appeal,



which are undisputed and in the opinion of this court have material bearing on merits of appeal hence it is necessary to consider the effect of these undisputed subsequent facts first.

Since appellant No.1 Mahendra Yadav passed away on 29-10-2019, thereafter, the appellant No.2 Uma Yadav is pursuing the first appeal. After going through the entire pleadings, facts and circumstances of the case and hearing the arguments of counsel for both parties, this court is prima facie of the opinion that the pursuasion of first appeal by appellant No.2 is unwarranted, rather it can be assumed that it is just to gain ulterior motive and is malafide. There is no hesitation to observe that the pursuasion of the first appeal by appellant No.2 is superfluous and can be termed as unscrupulous litigation. There seems no bonafide on the part of appellant No.2, what to say for protection of her right as tenant under the provisions of the Rent Act. The aim an object of the rent control legislation is intended to save harassment of tenant, but it does not deprive the landlord of their properties for good. For such reasons, this court is first dealing with subsequent events coupled with basic pleadings of parties, which are undisputed, to show that appellant No.2 seems to be desperate not to vacate and hand over the vacant possession of rented house to respondent voluntarily and adamant to pursue the first appeal stacking the high court to pass judgment on merits:-

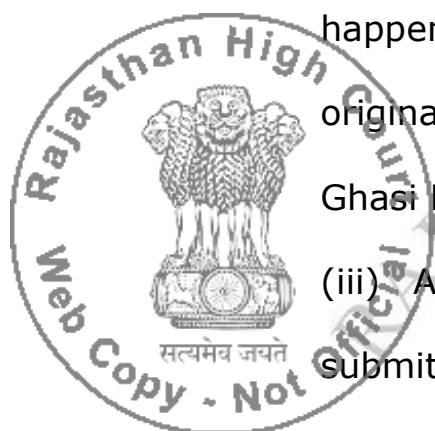
(i) It is an admitted fact that the rented house was let out to original tenant Gahsi Ram Yadav in July,1967, and after his death the eviction suit was filed on 25-11-2000 against appellants No.1&2 impleading them as defendants No.1&2 in suit stating that both defendants No.1&2 are legal heirs



and in possession of rented house. The tenancy in the name of Ghasi Ram Yadav is not in dispute, similarly, his death prior to filing of suit is also not in dispute.

(ii) Appellant No.1 (defendant No.1) Mahendra Yadav happens to be son of deceased original tenant Ghasi Ram Yadav, and appellant No.2 (defendant No.2) Uma Yadav happens to be widow of elder son Ram Singh Yadav of the original tenant and daughter-in-law of deceased tenant Ghasi Ram Yadav,

(iii) Appellant No.1 (defendant No.1) Mahendra Yadav submitted his written statement on 5-7-2001 stating that he alone acquires tenancy right of his deceased father as he has actual possession of the rented house as a whole. It was contended in para No.3 of the written statement in explicit and clear terms that the appellant No.2 (defendant No.2) Uma Yadav is not in possession of rented house as she lives with her husband at Jaipur. It was further contended that after death of her husband in the year 1990, she got compassionate appointment and reside at SR-1, JDA Shopping Centre, Bajaj Nagar, Jaipur. Thus the status of Appellant No.2 (defendant No.2) Uma Yadav as having devolved tenancy rights of deceased original tenant Ghasi Ram Yadav was disputed by appellant No.1 (Defendant No.1) himself, rather it was admitted that even during life time of original tenant Ghasi Ram Yadav, she was living at Jaipur with her husband prior to 1990 and thereafter also. On the date of filing the suit for eviction dated 25-11-2000, though the plaintiff claimed that defendant No.2 Uma Yadav





has also possession of rented house being one of natural heir of deceased tenant, however, in the written statement filed by defendant No.1 Mahendra Yadav was categorically denied and contended that she does not have any possession over the rented house, much prior to filing of suit and as a natural corollary consequence is that defendant No.2 (appellant No.2) Uma Yadav does not fall within the purview of tenant. It is worth to mention that in special plea of the written statement of defendant No.1, he specially contended that his three sisters and Bhabhi (defendant No.2) visit at Alwar in rented house for temporary stay on few occasions of family's sorrow and happy events.

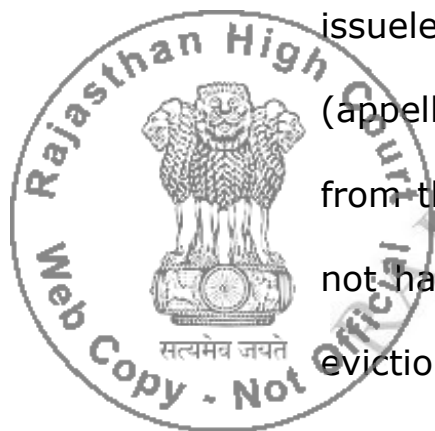
(iv) It is more important to note that the appellant No.2 (defendant No.2) Uma Yadav herself adopted the written statement of defendant No.1, as transpired from order-sheet of trial court dated 13-8-2001. This fact itself leads to a conclusion rather admission by defendant No.2 that she, although was made party being one of surviving legal heir of deceased original tenant, but indeed she did not reside or possess over rented house as admittedly she resided at Jaipur prior to 1990 with her husband and continuously resided at Jaipur post 1990 after death of her husband. It may also be noticed that appellant No.2 (defendant No.2) Uma Yadav did not appear as a witness and nowhere she stated that she acquired tenancy rights in rented house after or prior to death of original tenant Ghasi Ram Yadav and that she has possession over rented house.



(v) During pendency of the first appeal the respondent-plaintiff filed an application under Order 41 Rule 27 CPC for taking on record subsequent facts of rented house. The Appellant No.1 (defendant No.1) Mahendra Yadav filed reply to the application on 29-4-2011 and in para No.4 he admitted that he alone reside in the rented house as he is issueless. Thus as per pleadings of both defendants (appellants herein) it is clear position of fact, as reveals from the record, that appellant No.2 (defendant No.2) does not have possession of rented house from prior to filing of eviction suit. She was impleaded as defendant No.2 just being daughter-in-law and wife of deceased elder son of the original tenant, being a natural heir.

(vi) It is an admitted fact that during pendency of first appeal the appellant No.1 (defendant No.1) Mahendra Yadav passed away on 29-10-2019. It is not in dispute that the appellant No.1 died issue less without leaving any natural heir. Though by way of application under Order 22 Rule 3 CPC an attempt was made to claim that appellant No.1 had entered into second marriage, but this fact was not substituted in any manner, hence such application was dismissed by this court on 9-3-2022, and thus, no legal representative of deceased appellant No.1 Mahendra Yadav have come on record of the first appeal.

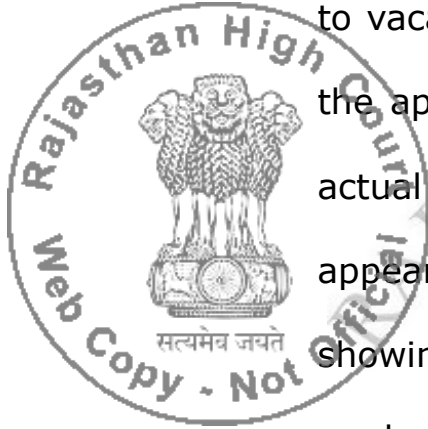
(vii) This first appeal remain alive on board for the reason that appellant No.2 (defendant No.2) Uma Yadav is party in the appeal.





(viii) In such backdrop of facts, when appellant No.2 (defendant No.2) in her written statement, while adopting written statement of defendant No.1, as per order-sheet dated 13-8-2001 has admitted that she does not have possession over the rented house right from prior to institution of the suit, she could have made a voluntary offer to vacate the rented house, more particularly after death of the appellant No.1 Mahendra Yadav, who is stated to be in actual possession after death of original tenant. But, it appears that the appellant No.2 (defendant No.2) instead of showing her bonafides, wanted to continue the litigation and made a vague statement in the application under Order 22 rule 3 CPC that after her retirement from service she left Jaipur and has started to reside at Alwar in rented house. But, surprisingly in amended cause title of the first appeal, she continued to mention her address of Jaipur itself. Otherwise also, such bald statements without any detail and substantive evidence is not believable, more particularly when such statement is contradictory to her own pleadings. This court prima facie is of the opinion that (in view of aforesaid facts) at least after death of appellant No.1 Mahendra Yadav, who died leaving behind no legal heir, continuation of first appeal at the behest of appellant No.2 is a sheer misuse of process of law. The present litigation at the behest of appellant No.2 can be termed as superfluous, unscrupulous and unwarranted litigation.

(ix) Be that as it may, the appellant No.2 (defendant No.2) has opted to pursue the first appeal on merits, and her





counsel has argued the first appeal on merits to contend that the decree for eviction passed against appellants on the ground of bonafide and reasonable necessity is bad on facts and law, therefore, this court is dealing with the first appeal on merits as well.

4. Relevant facts of the present appeal are, which may be recapitulated, as under:

(i) The original plaintiff Krishan Sharan Sharma filed a suit for recovery of due rent and eviction on 25-11-2000 claiming that the rented house was let out to tenant Gashi Ram Yadav in July, 1967. He claimed that monthly rent of rented house was agreed to be Rs.2,500/- with effect from 1-4-1999 and prior to that the rent was Rs.2000/- per month. It was claimed that the original tenant Gashi Ram Yadav passed away and after his death defendants No.1&2 (appellants in first appeal) are in possession of the rented house.

(ii) It was contended that rent of the rented house was not paid for many years, however, he claimed arrears of only for three years preceding to the date of filing the suit i.e. for 17 months Rs.2000/- prior to 1-4-1999 and for 19 months after 1-4-1999 to 31-10-2000 at the rate of Rs.2,500/- per month. Thus, total due arrears Rs.81,500/- were claimed alleging to be due against defendants as they committed default in payment of rent for more than six months.

(iii) It was further claimed that the plaintiff landlord required the rented house for residence of his family, as the plaintiff has no other residential house of his own in Alwar and his family members are facing hardship. Whereas the rented



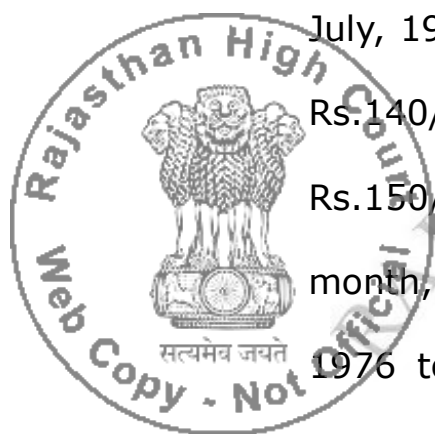
house usually remain closed and unused. The plaintiff landlord has also issued legal notice dated 6-7-2000 to defendants for vacating the rented house and to pay due arrears.

(iv) The defendant No.1 filed written statement and admitted the fact that house in question was let out to his father in July, 1967. he stated that at that time the monthly rent was Rs.140/- per month, which was increased in 1969 to Rs.150/-. It was further increased in 1971 to Rs.160/- per month, in the year 1973 to Rs.170/- per month, in the year 1976 to Rs.190/-, in the year 1981 Rs.220/-, in the year 1990 Rs.250/-, and in the year 1993 Rs.270/- per month. He denied the monthly rent to be Rs.2000/- or Rs,2,500/-.

(v) He contended that till October, 1998 his father Ghasi Ram Yadav paid rent, thereafter the rent was paid by him in presence of Jagdish Prasad, Rajesh Kumar and Pramod Kumar. He further contended that since the plaintiff wanted to increase rent Rs.1000/- per month, for which defendant did not agreed, hence, present suit creating false ground of default in payment of rent and necessity has been filed.

(vi) He contended that plaintiff does not require the rented house for residence of his family as the plaintiff has his own house at Sethi Colony Jaipur and a big building of Govind Dev ji temple in Alwar.

(vii) The defendant No.1 further contended that he alone is in possession of the rented house after death of his father. The defendant No.2 is not in possession of the rented house, as she resided at Jaipur with her husband (elder brother of





defendant No.1) and after death of her husband the defendant No.2 got job in Jaipur and resided at Jaipur. As such possession of defendant No.2 in rented house was denied by defendant No.1 himself.

(viii) The defendant No.1 denied any arrears of rent and claimed that the plaintiff has no bonafide necessity of the rented house, rather the suit has been filed with oblique motive to create pressure upon defendant No.1 for increasing the rent.

(ix) The defendant No.2 did not file her own separate written statement and adopted the written statement filed by defendant No.1, as transpires from order-sheet dated 13-8-2001.

5. During the course of trial, the trial court on 10-10-2001 determined the provisional rent under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereafter 'the Rent Act') as Rs.2000/- per month and directed the tenant to deposit Rs.1,02,350/-. The said order was challenged by the tenant by filing Misc. Appeal No.2173/2001 before the High Court, which was allowed on 4-1-2002 and the tenant was directed to pay Rs.1000/- per month and to deposit 50% of arrears of rent, which order has been complied with by the tenant.

6. It is also worth to take note of the fact that during pendency of first appeal the defendant committed default in depositing rent for three months and the same was deposited after delay.



Therefore, the High Court vacated the stay vide order dated 9-7-2012. However, appellants approached the Hon'ble Supreme Court, who vide order dated 14-8-2014, while staying the execution of eviction decree, asked the High Court to decide the first appeal within six months.

7. The trial court on the basis of rival pleadings of both parties

framed following issues:-

1. Whether the defendants have committed default in payment of rent for the rented house?
2. Whether the plaintiff has reasonable and bonafide need of the rented house for residence of his family?
3. Whether the plaintiff is entitled for decree of Rs.81,500/- as arrears of rent?
4. Whether the plaintiff would suffer more hardship in comparison to defendant in case of not vacation of rented house?
5. Whether the plaintiff's need can be satisfied by partial eviction of defendants from the rented house?
6. Relief?

8. Heard learned counsel for parties and perused the impugned judgments and other material available on record.

Issues No.1&3:

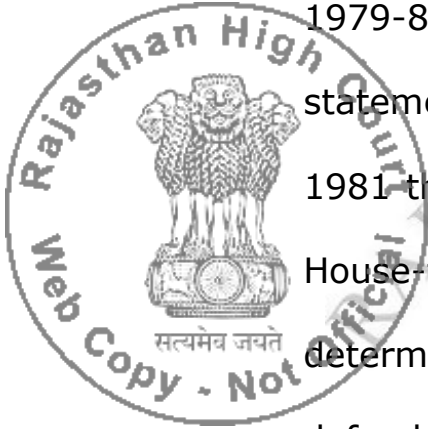
9. Issues No.1&3 pertaining to default in payment of rent. During course of arguments it has not been disputed that in view of default committed by defendants benefit of first default has already been extended to defendants and no decree on the ground of default has been passed against defendants. Hence, it is not required to discuss findings of default on these issue and same are affirmed.

- a) Claiming arrears of rent Rs.81,500/- the plaintiff claimed that the rent prior April,1999 was Rs.2,000/- per month for 17 months and from April,1999 to 31-10-2000 Rs.2,500/- for 19 months. In counter, the defendant No.1



claimed the last paid rent Rs.270/- per month. In the present case neither any rent note nor any rent receipts were issued. The plaintiff and his witnesses have stated that rent agreed to pay at the rate of Rs.2,500/- after 1-4-1999, has not been paid. In rebuttal, the defendant produced document of house-tax (Ex.A-1) to show that in the year 1979-80 the monthly rent was Rs.150, whereas in written statement itself the defendant admitted that in the year 1981 the monthly rent was Rs.220/-. Thus, the document of House-tax was not treated as conclusive evidence to determine the correct rent. One of the witnesses of defendant Dw.2 Girraj Prasad in his evidence stated that in October, 1998 the monthly rent was Rs.800/- per month. Therefore, the trial court considering overall evidence of both the parties and the area and rooms of rented house assessed the monthly rent as Rs.1000/- per month.

b) It may be noticed that during course of trial when provisional rent was determined by the trial court at the rate of Rs.2,000/-, however, the High Court interfered with the said order and directed defendant to pay Rs.1000/- per month. Since trial court in its final judgment assessed the monthly rent as Rs.1,000/- per month, which was being paid by defendant, hence, the decree for recovery of Rs.81,500/- was not passed and defendant has been directed to pay Rs.1000/- per month as mesne profits until vacation of rented house.





This court is of the opinion that decision of issue No.3, in aforesaid manner is just, proper and reasonable and do not call for any interference.

c) Here it may be noticed that counsel for appellant defendant attempted to argue that the plaintiff arbitrarily claimed monthly rent as Rs.2,500/-, whereas the trial court has assessed the monthly rent as Rs.1000/- per month, therefore, the suit could not have been decided by the court of Additional District Judge as it was not having pecuniary jurisdiction. This court finds that firstly the court of Additional District Judge has the jurisdiction to entertain, hear and decide the suit and on the issue of pecuniary jurisdiction, no such objection was raised by the defendant in the written statement. Secondly, as per valuation assessed by the plaintiff the suit was well within pecuniary jurisdiction of the court of District Judge. Thus, the argument raised by counsel for appellant defendant cannot be appreciated in the backdrop facts of the case, more particularly at the appellate stage.

In such view of the matter, findings of issues No.1& 3 do not call for any interference and the same are affirmed.

Issue No.2:

10. Issue No.2 pertains to bonafide and reasonable necessity of rented house to plaintiff for his family. The plaintiff appeared as Pw.1 and stated that he has retired from service and has no house in Alwar except the rented house. He stated that in Alwar there is a temple of Govind Dev ji, wherein he and his wife reside along



with his brother. He stated that in temple the residence is at first floor, where he and his wife face great hardship and inconvenience to step up and down the stairs. He stated that the rented house is required for residence of his family. In cross examination he admitted that he has another house at Sethi Colony, Jaipur, where his son resides. He admitted that for some times he and his wife also reside at Jaipur and for some time, they reside in Alwar in the temple premises. In his cross examination he admitted that there is no other residential house in Alwar other than the rented house. He stated that because of good relations with the original tenant, who was ex-MLA, Ex.MP from Alwar Constituency, during his life time he did not file the suit for eviction, and after his death when his son Mahendra Yadav did not reside in rented house nor paid rent, he filed the present eviction suit. Statements of Pw.1 have been corroborated by Pw.2 Shubh Ram, Pw. 3 Ram Sharan and Pw.4 Brijendra Sharan Sharma, son of plaintiff. These witnesses have also stated that plaintiff and his wife face great hardship in residing in temple at the first floor. They further stated that plaintiff and his wife usually visit and stay in Alwar as well.

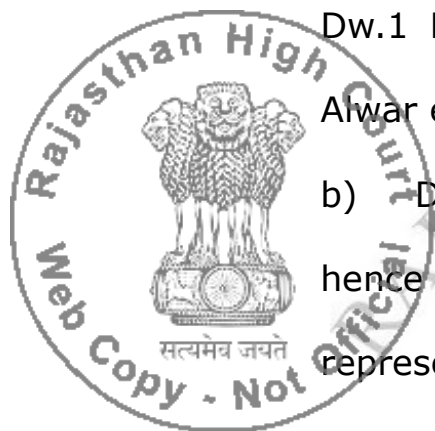
a) In rebuttal the defendant No.1 has stated that he reside in the rented house after death of his father. He admitted that defendant No.2 reside in Jaipur in her own house. He admitted that the plaintiff is bonafide resident of Alwar, but he reside at Jaipur and when come to Alwar, he reside in Temple, which is his personal premises. He further admitted that the plaintiff has no other house in Alwar except the rented house. The Defendant No.1 claimed that he is an Advocate and reside in rented house. He admitted



that although he completed his degree of LLB in the year 1978, but he got himself enrolled as an Advocate in the year 1995 and became member of Alwar Bar in the year 2000. However, he did not contest any legal case of any client. Defendant's witnesses Dw.2 Girraj Prasad, Dw.3 Pramod Kumar and Dw.4 Jagdish Prasad supported statements of Dw.1 Mahendra Yadav that he has no house to reside in Alwar except the rented house.

b) During course of trial the original plaintiff passed away, hence his wife and son were substituted as his legal representative. And during pendency of first appeal, the wife of plaintiff also has passed away. Counsel for defendant-appellant tried to make out a case that since original plaintiff and his wife have passed away, therefore, the bonafide need of rented house has come to an end in view of subsequent event and decree for eviction be quashed.

c) On perusal of findings of issue No.2, it transpired that the trial court after considering statements of plaintiff and his witnesses has concluded that plaintiff needed the rented house for his family and the he has no residential house other than the rented house and the temple. The premises of temple is neither suitable, nor plaintiff can be forced to live in the temple despite having his own house which is the rented house. The trial court on the strength of judgments of Hon'ble Supreme Court concluded that the landlord is free to seek his comfort and has a choice to live in his own house. Even if, the original landlord has passed away, the need of residence in rented house for his family does not

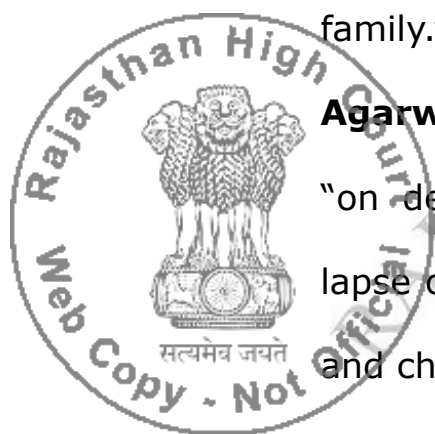




adversely affect. Reliance was placed on **Shantilal Vs. Chimanlal Maganlal Telwala [AIR 1976 SC 2358]** wherein this court held that "after the death of original landlord, the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and the occupation of other members of his family." In **Kamleshwar Prasad Vs. Pradumanju Agarwal [1997 DNJ (SC) 196]** wherein it was held that "on death of landlord bonafide necessity does not stand lapse on death of landlord and the same would be of widow and children. The crucial date is of filing the application".

The trial court concluded that the plaintiff cannot be compelled to live either at Jaipur or in the temple premises, when he wants to live in his own house in Alwar.

d) This court firstly finds that the trial court has not committed any jurisdictional error in appreciation of evidence on record to conclude the issue of bonafide and reasonable necessity in favour of plaintiff. It is settled proposition of law in umpteen number of judgments of Hon'ble Supreme Court that the landlord is the best judge for his need and neither the tenant nor the court can compel the landlord to compromise with his comfort. It is open for the landlord to look for his comfort and need not any sacrifice. In the instant case the plaintiff had no other house other than the rented house. The house at Jaipur and the temple in Alwar may not be termed as alternative premises available to plaintiff. Undisputedly the plaintiff's house on rent was needed for residence of his family. The need of the





rented house by the plaintiff landlord has not been found to be malafide or with oblique motive.

e) It is no more res integra that need of plaintiff landlord has to be examined on the date of institution of the suit and although subsequent events may be taken into consideration but mere death of plaintiff landlord and his wife does not lead to inference that need of plaintiff for residence of his family would come to an end particularly when the original tenant and his legal representative, the appellant No.1, determining rights of the tenant, who resided in the rented house have passed away.

f) In **Mahendra K. Agarwal Vs. Vinay Kumar Gupta [(2010)15 SCC 574]** The Apex Court observed that need of family members of landlord is included the bonafide need of landlord and no distinction can be made between residential and non residential premises in that regard.

g) In **D. Sasi Kumar Vs. Soundararajan [(2019)9 SCC 282]** the Apex Court held that "once landlord established bonafide requirement of rented premises on the institution of case, it subsists irrespective of the time lapse in the judicial process coming to an end. The landlord should not be penalised for the slowness of the legal system and the crucial date for deciding the bonafide requirement of landlord is the date of application for eviction, which were hereby reiterate."

h) Landlord relied on **Pratima Devi Vs. T.B. Krishnan [(1996)5 SCC 353]** to content that the landlord is best



judge of his residential requirement. Judgment in case of **Atma S.Berar Vs. Mukhtiar Singh [AIR 2003 SC 624]** has been relied to contend that the landlord for his own occupation of property is entitled to eviction decree. **Anil Bajaj Vs. Vinod Ahuja [2014 SAR (Civil) 660]** has been relied to contend that doing business from other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business. **Kamleshwar Prasad Vs. Pradumanju Agarwal (AIR 1997 SC 2399)** has been relied to contend that bonafide need for starting business does not lapse on death of landlord, as business can be carried on by his widow.

i) In counter to aforesaid factual and legal proposition the contention of counsel for appellant is that once the plaintiff had alternative premises in temple of Govind Dev ji his need for residence of his family in rented house cannot be treated as bonafide, does not have any importance in view of judicial pronouncements of the Apex Court. The trial court has rightly declined such contention and this court also does not find any force in such arguments. The premises of temple firstly cannot be treated as alternative premises for residence. Secondly, the plaintiff and his witness have stated that there was discomfort for plaintiff and his wife to reside in temple at the first floor.



j) As far as subsequent events of death of plaintiff and his wife are concerned, the need for the rented house for plaintiff's family includes for his son also. Hence, the need as existed on the date of filing the suit cannot be treated as extinguished by subsequent events. The defendant cannot be allowed to take advantage of slowness of legal process, more particularly, in the present case when in fact the appellant- defendant No.1 has passed away. And the appellant- defendant No.2 did not have possession of rented house, as discussed, hereinabove.



Thus, the outcome of the aforesaid discussion is that the decree for eviction passed by the trial court on the ground of bonafide and reasonable necessity of plaintiff landlord for his family is just and proper and the same requires no interference. The same are affirmed.

Issue No.4:

11. Issue No.4 pertaining to comperative hardship has been decided by the trial court in favour plaintiff landlord. It has come on record that defendan No.1 Mahendra Yadav's wife was in job at Uttar Pradesh, and defendant No.1 also reside with his wife. The defendant No.1 tried to justify his need of rented house by claiming that he is Advocate at Alwar, but such fact was not proved as he admitted that he did not contest any case of any client in Alwar. On the contrary it has come on record that plaintiff has no other alternative house in Alwar except the temple premises, where he and wife reside at first floor. That apart, it is also relevant factor that the defendant No.1 did not reside in rented house for long time and had not cared to look after the



rented house. Once the need of plaintiff has been found bonafide and reasonable, comparative hardship is also stand in favour of plaintiff in backdrop of facts and circumstances of the case. The trial court has not committed any illegality or jurisdictional error while deciding this issue in favour of plaintiff. The same are affirmed.

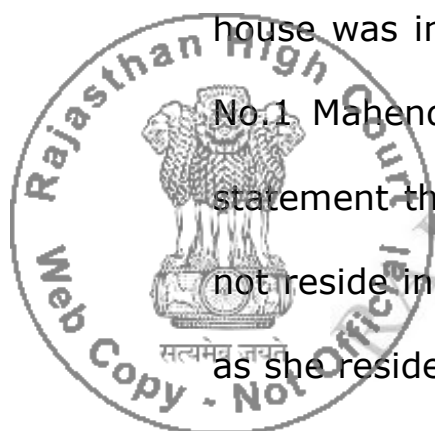
Issue No.5:

12. Issue No.5 pertains to partial eviction of defendant from the rented house. Firstly the plaintiff landlord adduced evidence to the effect that the partial eviction of defendant from the rented house would not meet the need of the plaintiff. Secondly, the defendants have not adduced any evidence to rebut plaintiff's contention. It has come on record that though there were good relations between original plaintiff and the original tenant, however, initiation of legal proceedings the bitterness may be assumed to cropped up between parties. There is one common entrance to residential house and according to size of the residential house the trial court has rightly declined the partial eviction to meet the needs of the plaintiff. More so, in view of subsequent events that defendant No.1 has passed away, and defendant No.2 does not reside in the rented house, the issue of partial eviction becomes redundant. In view of holding the need of plaintiff as bonafide and reasonable and comparative hardship in favour of plaintiff, the issue of partial eviction also decided in favour of the plaintiff.

13. From the record it transpires that respondent plaintiff filed an application under Order 41 Rule 27 CPC to place on record additional documents i.e. photo copy of reading of electricity



meter of rented house and photographs of rented house to show that the rented house was not used for long and it reached to a dilapidated condition. Although the application has been replied by appellant defendant denying averments of the application, however, the defendant has not produced any counter document to prove consumption of electricity or to prove that the rented house was in use and in proper useable condition. The defendant No.1 Mahendra Yadav has passed away, and although in written statement the defendant No.2 Uma Yadav admitted that she does not reside in rented house and was not in possession of the same as she reside at Jaipur, however, in her application under Order 22 Rule 3 CPC she claimed that after retirement she had started to reside in rented house, same cannot be believed without particulars and substantive facts. The plea taken by defendant No.2 Uma Yadav contrary to her written statement is not acceptable. Thus, after death of defendant No.1 Mahendra Yadav, there are circumstances to assume that residential house is lying closed without any use. As far as additional documents produced by plaintiff landlord are concerned the same cannot be treated as admissible in evidence, however, in the present case there is no issue of non user of rented house, the issue of comparative hardship has already been discussed and decided in favour of plaintiff landlord. The additional documents are not admissible in evidence primarily. Looking to the inadmissibility of documents, this court is not inclined to allow the application under Order 41 Rule 27 CPC and the same is dismissed.





14. At this juncture this court intends to discuss the aim and object of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, which was promulgated as a piece of social legislation with the aim to protect tenant from frivolous eviction. At the same time in order to do justice to landlord and to avoid restriction on their right to eviction of tenant as to dispute on legal right to certain salutary provisions have been made by the legislation which give relief to landlord. The Rent Control legislation was intended to strike a reasonable balance between requirements of tenants for adequate protection against the aggressive designs of greedy landlord to evict the tenant or to increase rates of rent to an exorbitant limit.

In case of **Shakuntala Bai Vs. Narayan Das [(2004)5 SCC 772]** while dealing with Madhya Pradesh Accommodation Control Act, 1961 observed that there is no warrant for interpreting the Rent Control legislation in such a manner, the basic object of which is to save harassment of tenants from unscrupulous landlords. The object is not to deprive the landlords of their properties for all times to come.

In **Satyavati Sharma Vs. Union of India [(2008)5 SCC 287]** the Apex Court observed that "it is trite to say that a legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/ or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the court may, in subsequent litigation, strike down the same if it is found that the



rationale of classification has become non-existent". In para 12 of the judgment the Apex Court observed thus:-

"12. Before proceeding further we consider it necessary to observe that there has been a definite shift in the court's approach while interpreting the rent control legislation. An analysis of the judgments of 1950s to early 1990s would indicate that in majority of cases the courts heavily leaned in favour of an interpretation which would benefit the tenant—**Mohinder Kumar Vs. State of Haryana [(1985)4 SCC 221]** **Prabhakaran Nair Vs. State of T.N. [(1987)4 SCC 238]**, **D.C. Bhatia Vs. Union of India [(1995)1 SCC 104]** and **C.N. Rudramurthy Vs. K. Barkathulla Khan [(1998)8 SCC 275]**. In these and other cases, the court consistently held that the paramount object of every rent control legislation is to provide safeguard for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute scarcity thereof. However, a different trend is clearly discernible in the later judgments."

Aforesaid judgment has been followed in **State of**

Maharashtra Vs. Super Max International Private Limited

[(2009)9 SCC 772] and it has been held that "we reaffirm the

views expressed in **Satyawati Sharma (supra)** and emphasise

the need for a more balanced and objective approach to the

relationship between the landlord and tenant. This is not to say

that the Court should lean in favour of the landlord but merely

that there is no longer any room for the assumption that all

tenants, as a class, are in dire circumstances and in desperate

need of the Court's protection under all circumstances."

15. Having considered the aim and object of the Rent Act, this

court finds that in given facts and circumstances of the case the

appellant No.2 (Defendant No.2) Uma Yadav, who admitted in her

written statement that she does not reside in the rented house

and not in possession, need no protection of the Rent Act. This



court deprecates her pursuation of first appeal on merits. There is nothing wrong to have a legitimate expectation from the learned Members of the Bar to convince such type of litigants not to pursue the unwarranted litigation before any court of law. If any litigation, with passage of time or due to prolonged life of the litigation have lost its merits, the parties should be advised not to pursue such lumber litigation unwarrantedly on merits, taking immense judicial time of courts for no good results. Prestigious and valuable time of judicial courts should be utilized for deciding bonafide and legitimate disputes instead of deciding superfluous litigation like present one. Although, this present first appeal deserves to be dismissed with costs, however, being the present appeal in the nature of first appeal, this court is refraining itself to impose any costs.

16. As a result of discussion made hereinabove, this present first appeal is without any force and devoid of any merit, as such the same is dismissed without any order to cost.

17. Stay application and any other pending application(s), if any, also stand(s) disposed of.

18. Record of the court below be sent back forthwith.

(SUDESH BANSAL),J

Arn/77