



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No.....of 2025
(@ Special Leave Petition (C) No.29500 of 2024)**

Jyoti Sharma

...Appellant

Versus

Vishnu Goyal & Anr.

...Respondents

J U D G E M E N T

K. VINOD CHANDRAN, J.

Leave granted.

2. The successors of the landlord and tenant, which relationship commenced in the year 1953, are the parties to this litigation, the former claiming eviction and possession on *bona fide* need and the latter, seeking retention on the ground of the alleged successor to the landlord having no title over the shop. The suit was dismissed but in first appeal, the judgment of the trial court was reversed, and the suit was remanded for fresh consideration with specific findings on certain issues. In the

second appeal before the High Court, the first appellate court order was set aside, on consent for fresh disposal on all issues. The first appellate court then dismissed the appeal which dismissal was affirmed by the High Court in second appeal.

3. We have heard Mr. Puneet Jain, learned Senior Counsel for the plaintiff/landlord and Mr.N.K. Mody, learned Senior Counsel for the respondents/tenants.

4. For the sake of convenience, the parties are referred to as the plaintiff and the defendants.

5. Admittedly, the shop room, which is the bone of contention was rented out to the father of the defendants by one Ramji Das, the father-in-law of the plaintiff. The father of the defendants Kishan Lal was carrying on a grocery business, which after his death, the defendants, his sons, continued. The husband of the plaintiff carries on a sweets and savouries shop in a part of the building adjacent to the shop room and their family resides on the first floor of the building. The father-in-law of the plaintiff died on 07.08.1999 before which he executed a Will dated 12.05.1999, bequeathing the shop room to his daughter-in-law, the plaintiff. The plaintiff filed the suit for

recovery of rent defaulted, from January 2000, and eviction on the ground of *bona fide* need. The *bona fide* need projected was of joining her husband's business, to expand it to the room rented out. The plaintiff also asserted that the adjacent shop room in which her husband was carrying on business was bequeathed by her father-in-law to her children, who have also joined the business.

6. The defendants disputed the very title of Ramji Das and assailed the Will as a fraudulent one. It was asserted that Ramji Das never had title since the premises belonged to one Sua Lal, the paternal uncle of Ramji Das who died in 1984. The defendants, however admitted that the rent deed was executed by Ramji Das and he was receiving rent from the tenants through his son, the plaintiff's husband, which, the plaintiff asserted was continued for a few months after his death too.

7. The trial court found that after the death of the father-in-law, there was no attornment of tenancy, and the defendants were never informed of the bequest. The trial court expressed suspicion over the Will, based on the comparison of the signatures of the Will with the rent receipt, allegedly issued by

Ramji Das. It was also found that the husband of the plaintiff received the rent after the death of Ramji Das. On these grounds, it was held that the plaintiff failed to prove the ownership of the disputed shop and the landlord-tenant relationship, disentitling the plaintiff from recovery of rent, and eviction on grounds of *bona fide* need. The first appellate court first remanded certain issues but on remand by the High Court, affirmed the findings of the trial court which was affirmed by the High Court in a further second appeal.

8. Before the High Court, the plaintiff produced an order dated 09.02.2018 of the Additional District Judge, probating the Will in Probate Case No.8 of 2013. Though, the said document was sought to be produced under Order 41 Rule 27 of the Code of Civil Procedure, 1908¹, the application was rejected. The High Court found that there was no cause to entertain an application for production of an order, which the applicant did not obtain at any time when the proceedings were pending before the trial court and the appellate court.

¹ for short, 'the CPC'

9. True, the proceedings for probate was itself initiated in the year 2015 after the appeal was decided on remand by order dated 13.10.2009. The order in probate was issued when the matter was pending before the High Court. It is pertinent, as seen from the order of the trial court that the deceased Ramji Das had left behind other legal heirs also, his wife, three daughters and the wife and children of a deceased son. None of them had challenged the Will when the matter was pending before the trial court. One of the grounds taken by the trial court to suspect the Will was that though it is mentioned in the Will that the daughters of the testator were married of with their shares and even the wife and children of the deceased son had no interest in the property, nothing was kept aside for the wife. The finding of the trial court that it is not natural that a person would not keep in mind the interest of his own wife, according to us, is not a valid ground to suspect the intentions of the testator or the probity of the bequest made. In any event, when an order of probate was produced, which is not mandatory, the claim of the plaintiff through a Will attains a legal sanctity which could not have been brushed aside by the High Court. It is trite

that in a suit for eviction, the proof of ownership of the tenanted premises is not to be strictly looked at as in a suit for declaration of title.

10. In any event, the grounds on which the Will was suspected by the trial court cannot be upheld. It was admitted by the defendants that prior to and after the death of Ramji Das, rent was paid to the husband of the plaintiff. It is the contention of the defendants that prior to the landlord's death, his son collected the rent from them on his behalf and after his death, they paid the rent accepting his status as a landlord, being the son of the original landlord. The dispute raised insofar as the ownership of Ramji Das cannot at all be accepted since Exhibit P-18, the relinquishment deed issued by Sua Lal as far back as in 1953, on the strength of which Ramji Das had given the disputed shop room on rent to the father of the defendants is clearly established. The tenant having come into possession of the tenanted premises by a rent deed executed by the earlier landlord, cannot turn around and challenge his ownership. It is also an admitted fact that from 1953, the predecessor of the defendants and the defendants, after their father's death had

been paying rent to the said Ramji Das. The dispute regarding the title of Ramji Das could not have been raised by the tenant who had come into the premises by virtue of a deed executed by Ramji Das to whom, for more than half a century, the tenants were also paying rent.

11. Insofar as the attornment of the tenancy, the plaintiff's husband mounted the witness box and asserted that he had been collecting rent after the death of his father, for and on behalf of his wife, the plaintiff. The defendants also do not have a case that any rent was paid from January 2000 onwards. In this context, though set aside by the High Court, we notice the findings in the judgment dated 11.08.2008 in the initial first appeal filed, decreeing the suit. It was found that the Will executed by Ramji Das was not challenged by any other heir and the relinquishment deed Exhibit P-18 was emphasized. Further, on the question of attornment, it was found that Exhibit P-9 registered notice was sent by the plaintiff to the defendants in their address and Exhibit P-10 and P-11 receipts of the notice sent were produced. The trial court disbelieved the same only on the ground that there was no acknowledgement produced.

The first appellate court, had at the first instance held that since the registered notice sent in the address of the tenant was proved, the presumption is that the registered notice sent was received by the addressee. The registered notice sent clearly indicated the bequest by Will and the assertion of ownership of the tenanted shop.

12. It was vehemently argued by the learned senior counsel appearing for the respondent-tenant that since ownership was not established and there were concurrent findings of three courts it cannot be interfered with by this Court. We are conscious that there are three concurrent findings against the plaintiff, but though set aside, the findings as coming out from the judgment in the first appeal, at the first instance, brings forth a divergent opinion, which is also based on the evidence led at the trial. The setting aside of the said order in first appeal was only on consent of the parties, for a remand, to enable a fresh consideration. We hasten to observe that we are not, for a moment, restoring the order of the first appellate court at the first instance, which has been set aside by the High Court.

However, having looked at the same, we find it to have dealt with the issue in the same manner as we have dealt with it.

13. As for the *bona fide* need, there is no dispute as to the business carried on; of sweets and savouries, in the adjacent shop room. There is also no dispute on the sons of the plaintiff also having joined the business and the plaintiff's intention to participate in the business, thus expanding it to the tenanted premises. The *bona fide* need hence stands established.

14. On the above reasoning, we find the concurring decisions of all the three courts to have not considered the material evidence and entered into findings in a perverse manner based on mere surmises and conjectures. We set aside the orders below and decree the suit, directing the recovery of rent arrears from January 2000 till the handing over of the possession and order eviction on the grounds of default in payment of rent as also for the *bona fide* need. Only considering the long period of tenancy, we enable the respondents herein to continue in possession for six months, subject to their filing an undertaking before the trial court to pay the arrears of rent within one month and give vacant possession within six months

from today; which undertaking shall be filed within two weeks from the date of this judgement. If no undertaking is filed the plaintiff would be entitled to seek summary eviction of the tenants from the premises.

15. The appeal stands allowed and the suit stands decreed as above. With the above reservation, all pending applications are disposed of.

16. Pending application(s), if any, shall stand disposed of.

..... J.
(J.K. MAHESHWARI)

..... J.
(K. VINOD CHANDRAN)

**New Delhi;
September 11, 2025.**