Siddalingamma And Anr vs Mamtha Shenoy on 18 October, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2896, 2001 AIR SCW 4345, (2002) 1 ANDHLD 6, (2001) 7 SUPREME 870, 2002 HRR 117, (2001) 2 RENCR 539, 2001 (8) SCC 561, 2002 SCFBRC 17, (2002) 46 ALL LR 18, (2002) 1 MAD LW 600, (2001) 2 RENCJ 539, (2001) 2 RENTLR 569, 2002 ALL CJ 1 337, (2001) 7 SCALE 345, (2001) 9 JT 268 (SC)

Author: R.C. Lahoti

Bench: Chief Justice, R.C. Lahoti, P. Venkatarama Reddi

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           CASE NO.:
Appeal (civil)  7292 of 2001

PETITIONER:
SIDDALINGAMMA AND ANR.

RESPONDENT:
MAMTHA SHENOY

DATE OF JUDGMENT: 18/10/2001

BENCH:
DR. A.S. ANAND, C.J. & R.C. LAHOTI & P. VENKATARAMA REDDI

JUDGMENT:
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JUDGMENT 2001 Supp(4) SCR 366 The Judgment of the Court was delivered by R.C. LAHOTI, J. A decree for recovery of possession passed by the Trial Court against the respondent has been reversed by High Court in a revision preferred by her. The aggrieved landlady has filed this petition seeking special leave to appeal under Article 136 of the Constitution.

Leave granted.

The suit premises are situated in Rajaji Nagar, Bangalore. The appellant ho. 1 is admittedly the owner and landlady of the premises and respondent is holding the same as a tenant on a monthly rent of Rs. 1100. Appellant no. 2 was joined as plaintiff because she used to collect rent for and on behalf of appellant no. 1. The respondent's eviction was sought for on the ground available under Section 21(1) (h) of the Karnataka Rent Control Act, 1961. It is not disputed that there are eleven members in the family of appellant no. 1 and residing with her presently in a house situated in village Bettalasoor. In the petition filed on 25.2.1993 the requirement as set out in the petition was that appellant no. 1's husband was suffering from asthma and respiratory problems and taking oxygen regularly from the cylinder and for medical treatment he was frequently required to be taken to Bangalore from Bettalasoor, a village situated at some distance from Bangalore. The appellant

No. 1 was having two sons and grand-children living at the village with her and the grand-children were required to be shifted to Bangalore for better education. The accommo-dation in occupation of appellant no. 1 and her family members was too small and inconvenient for all the family members to reside in. It was also submitted that the respondent was running a beauty parlour and also an ice-cream shop. She was financially sound and able to secure alternate accommodation. The respondent would not suffer any hardship if she was required to vacate the suit premises and in the event of eviction being denied the landlord would suffer great hardship. Thus comparative hardship of the landlord was greater than that of the tenant.

It appears that when the case was being tried appellant no. 1's husband expired. It also appears that appellant no. 1 does not have any issue of her own. Those who are residing with her are not her own sons and grand children but her real sister's sons whom she treats as her adopted sons and their children. The petition for eviction was amended by moving an application on 22.1.1997 whereby it was submitted that the appellant no. 1 herself was not keeping well and she required better treatment which was available at Bangalore and there-fore she intended to shift from the village house to her own house situated in the city of Bangalore along with her adopted sons. The prayer for amendment though contested by the respondent, was allowed by the Trial Court.

In a detailed judgment dated 4.3.1997, the learned Trial Judge held that the suit premises were required for the use of the appellant no. 1 and her family members. The appellant no. 1 was aged about 55 years, who was not maintain-ing good health and was referred by the doctor in village Bettalasoor for treatment to be taken at Bangalore and in the interest of better treatment of hers she needed to shift her residence to Bangalore. The younger children in the family of appellant no.l were also required by the appellant no. 1 to be shifted to Bangalore so that they could have the benefit of better schooling and better educational facilities at Bangalore. The Trial Court also found that the accom-modation in Bangalore was better and sufficient for occupation by the appellant no. 1 and her family members who are presently residing in an accommodation not sufficient for their occupation in the house at Bettalasoor. The requirement of the appellant no. 1 of the suit premises having been found to be reasonable and bona fide the Trial Court held that the appellant no. 1 was entitled to decree for eviction of the tenant/respondent. The Trial Court further held that in case the eviction was ordered the respondent-tenant would not be put to any hard-ship and therefore comparative hardship lay more on the side of the appellant. Having evaluated the unit of accommodation in the light of the strength of the family members of the appellant no. 1 the Trial Court also held that it was not possible to pass an order of partial eviction.

Let it be noted here itself that there was some embellishment in the case of the appellant no. 1 inasmuch as what was stated to be 'two sons of appellant no. 1' were in fact not her own sons but the sons of her sister. The appellant no. 1 not having any children of her own was treating her sister's two sons as her adopted sons. Nevertheless, it was almost admitted that they along with their families which includes their wives and children have always been residing with the appellant no. 1. It was not disputed that the number of persons residing with appellant no. 1 was eleven.

Deciding the revision preferred by respondent-tenant, the High Court held that appellant no. 1's husband, whose sickness and need for treatment at Bangalore was the principal cause pleaded in the

eviction petition for shifting to Bangalore, having expired, the cause had ceased to exist during the pendency of the petition. The appellant did not have any children of her own and because the appellant tried to project her sister's sons as her own sons there appeared to be mala fides on her part. Insofar as her own deteriorating health and need for taking treatment at Bangalore is concerned, the High Court observed - "no doubt the petitioner has placed some material with regard to her ill-health but her health is not such a serious one warranting her shifting to Bangalore." Stating these circumstances the learned Single Judge of the High Court con-cluded that keeping in view the social purpose sought to be achieved by the welfare legislation of Rent Control Law, the Trial Court had committed a patent error in directing eviction of the tenant. The High Court did not go into the question of comparative hardship. The High Court allowed the revision and directed the eviction petition to be dismissed but observed at the fag end -"before concluding, taking into consideration the material facts I deem it proper to observe that the petitioner be permitted to file a second petition if she so chooses notwithstanding this petition by stating correct facts if she is desper-ately in need of the same."

Having heard the learned counsel for the parties we are of the option that the appeal deserves to be allowed and while setting aside the order of the High Court, the order of the Trial Court deserves to be restored.

Rent Control Legislation generally leans in favour of tenant; it is only the provision for seeking eviction of the tenant on the ground of bona fide requirement of landlord for his own occupation or use of the tenanted accom-modation which treats the landlord with some sympathy. In Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, [1999] 6 SCC 222 this Court has held that a bona fide requirement must be an outcome of a sincere, honest desire in contra-distinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejectment of the tenant. The question to be asked by a judge of facts, by placing himself in the place of the landlord, is, whether in the given facts proved by material on record the need to occupy the premises can be said to be natural, real, sincere, honest? If the answer be in the positive the need is bona fide. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell into lesser premises so as to protect the tenant's continued occupation in tenancy premises. In Deena Nath v. Pooran Lal, [2001] 5 SCC 705 this Court has held that bona fide requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in praesenti and must be manifested in actual need so as to convince the court that it is not a mere fanciful or whimsical desire.

The learned counsel for the appellant submitted that the need of the appellant no. 1 who is now a widowed landlady was also in issue from the very beginning though in the then circumstances it was the need of her husband which was the centre of emphasis. Unfortunately, the husband expired during the pendency of the petition. This changed circumstance shifted the emphasis contained in the reason for shifting from village habitat to the landlady's premises in the city of Bangalore; earlier it was on the consideration for health of the landlady's husband which now is on the consideration

for health of the landlady herself. Medical prescription given by the doctor at Bettalasoor was produced in evidence referring the landlady for treatment at Bangalore as the facilities for orthopaedic treatment which the landlady needed to undergo were available in the city of Bangalore and not in the village of present residence of the landlady. It is common knowledge that orthopaedic ailments render frequent travelling of the patient uncomfortable and difficult and therefore the desire of the landlady to shift to Bangalore for her own treatment is a felt-need in praesenti and there is nothing unnatural, un-real or insincere about it. In addition, the school going children residing with the landlady as members of her family need to be shifted to the city of Bangalore and stay thereat in the interest of schooling in educational institutions with better ambience, facilities and standards. It is true that in the petition for eviction, as originally filed, the health condition of the landlady herself and the factum of children residing with her not being her own grand- children were not pleaded, nevertheless evidence was allowed to be let in without objection and was recorded by the Trial Court. An application for amendment under Order 6, Rule 17 of the CPC was moved and the deficiency in the pleadings stood removed by the amendment permitted by the Trial Court in exercise of its discretionary jurisdiction to do so. The order permitting the amendment was not put in issue promptly. Even the High Court in its impugned order has not found fault with the order of the Trial Court permitting the amendment nor has it expressed an opinion that leave granted by the Trial Court for amendment in the eviction petition suffered from any error of jurisdiction or discretion. On the doctrine of relation back, which generally governs amendment of pleadings unless for reasons the Court excluded the applicability of the doctrine in a given case, the petition for eviction as amended would be deemed to have been filed originally as such and the evidence shall have to be appreciated in the light of the averments made in the amended petition. The High Court though set aside the order of the Trial Court but it is writ large from the framing of the order of the High Court, especially the portions which we have extracted from the order of the High Court and reproduced in earlier part of this judgment, that the learned single Judge of the High Court also was not seriously doubting the genuineness of the landlady's requirement on the material available on record but was not feeling happy with the contents of the eviction petition as originally filed and an over-zealous attempt on the part of the landlady in projecting her sister's sons and grand-children as her own. The High Court did not doubt that the landlady was not in a sound state of health and that a large-size family was with her nor was it disputed by the tenant that the number of members in the family of the landlady residing with her was eleven. In such facts and circumstances, "

> in our opinion, the High Court ought to have adopted a realistic and objective approach rather than feeling sceptical about the landlady's mannerism. Had the High Court not been convinced of the landlady 's requirement it would not have given her the liberty of filing a fresh petition solely by "stating correct facts". In our opinion, driving the widowed landlady to the need of filing a fresh eviction petition and to the rigmarole of litigation would be subversive of the ends of justice. The need of the landlady is, as borne out from the amended pleadings and material brought on record, bona fide and not arbitrary, whim-sical or fanciful. In a civil case, once an amendment has been unreservedly permitted to be incorporated in the pleadings, the correctness of the facts introduced by amendment cannot be doubted solely on the ground that they were not stated in the original petition. So also genuineness of the

landlady's statement, supported by medical prescription, that she needed to have treatment at Bangalore cannot be doubted by the Court forming an opinion that the ill-health of landlady was not so serious as to warrant her shifting to a city from a village and then substituting its opinion for the seriousness felt by the landlady. The requirement pleaded and proved was neither a pretext nor a ruse adopted by the landlady for evicting the tenant. In such circumstances, in our opinion, the order of the Trial Court deserves to be restored. On the question of comparative hardship as also on the issue of partial eviction, having our-selves evaluated the well- reasoned findings recorded by the Trial Court we are inclined to uphold the same more so when they have not been reversed by the High Court.

For the foregoing reasons, the appeal is allowed. The judgment of the High Court is set aside and that of the Trial Court restored. However, the respondent-tenant is allowed four months' time to vacate the suit premises subject to her filing before the Trial Court the usual undertaking on her affidavit that she would deliver vacant and peacful possession to the landlady on or before the expiry of four months and in between she would clear the arrears of rent, if any, and continue to pay rent falling due month by month and shall not induct any one else in the premises. Costs as incurred.