

Rajasthan High Court - Jodhpur

Jai Narain vs Jagdish Kumar on 3 December, 2008

SBCSECOND APPEAL NO.314/2008- JAI NARAYAN V/S JAGDISH KUMAR . : JUDGMENT DATED 3.12.2008

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR.

S.B. CIVIL SECOND APPEAL NO.314/2008

Jai Narayan

versus

Jagdish Kumar

PRESENT

HON'BLE Dr.JUSTICE VINEET KOTHARI

Mr.Sanjeet Purohit, for the appellants.

DATE OF ORDER

: 3rd December, 2008.  
ORDER

1. This appeal of the defendant - tenant is directed against the concurrent findings of two courts below decreeing the eviction suit filed by the plaintiff - respondent on the ground of personal bonafide necessity of the plaintiff. The first appellate Court while dismissing the defendant's appeal on 21.8.2008 upheld the decree of the learned trial Court dtd. 30.1.2006 in respect of suit shop situated in Sardul Colony, Bikaner.

2. The learned counsel for the appellant submitted that during the course of first appeal, the plaintiff - respondent had constructed two SBCSECOND APPEAL NO.314/2008- JAI NARAYAN V/S JAGDISH KUMAR . : JUDGMENT DATED 3.12.2008 rooms over the suit shop in question and therefore, his bonafide need stood satisfied. He submitted that these subsequent developments were allowed to be taken on record vide order dtd.21.7.2005 of the learned trial Court, still the learned trial Court failed to consider the said aspect of the matter. He further submitted that the plaintiff - respondent has alternative accommodation available with him and therefore, the eviction decree could not be passed. He also submitted that the learned trial Court has erred in directing eviction of the shop with police help and therefore, the approach of the learned trial Court was against the provisions of law.

3. Having heard the learned counsels, this Court is satisfied that no substantial question of law arises in the present appeal against the concurrent findings of two courts below passing eviction decree on the ground of personal bonafide necessity of the plaintiff - respondent. The said findings

are essentially findings of facts, which cannot be interfered with under Section 100 C.P.C. which is maintainable only on substantial question of law arising in the matter. Unless the findings can be shown to be perverse or resulting from misreading of evidence, this Court cannot interfere in the second appellate jurisdiction as it is not intended to be third trial on facts of SBCSECOND APPEAL NO.314/2008- JAI NARAYAN V/S JAGDISH KUMAR . : JUDGMENT DATED 3.12.2008 the case. Recently, the Hon'ble Supreme Court has deprecated such interference in the case of Smt. Gurudev Kaur V/s Kaki reported in 2007(1) RLW 636. Consequently, this Court finds no force in this appeal and same is accordingly dismissed. No order as to costs.

(Dr.VINEET KOTHARI)J.

Item No.3 Ss/-