

MHNG010054282011



Presented on : 21/07/2011  
Registered on : 22/07/2011  
Decided on : 27/03/2023  
Duration : 11-Y., 08-M. 06-D.

**Exh. No. : 80**

**BEFORE THE PRINCIPAL DISTRICT JUDGE, NAGPUR.**  
**[Presided over by Shri S.B. Agrawal]**

**Reg. Civil Appeal No. 326 of 2011**

Lala Amarnath Khanuja, .. Appellant  
Aged about 67 years, Occu. Business, (Ori. Deft.)

**Since dead, through his L.R.**

Mohan S/o Amarnath Khanuja,  
aged about 45 years, Occu. Business  
of Kirana Shop, on Pachpaoli road,  
Nagpur.  
R/o. Teka Naka, Sangam Nagar,  
Above T.V.S Showroom Building,  
Nagpur.

// Vs. //

- 1] Surindarsingh S/o Bentsingh Hoda, .. Respondents  
Aged about 60 years, Occu. Business, (Ori. Plntiffs.)
- 2] Satnamsingh S/o Bentsingh Hoda,  
Aged about 55 years, Occu. Business,
- Both R/o. Dr. Ambedkar Road,  
Panchpaoli, Nagpur.

**[APPEAL UNDER SECTION 96 OF THE CIVIL PROCEDURE CODE]**

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**Appearances:**

Mr. A.P. Moharil, learned Counsel for the Appellant

Mr. S.L. Jaiswal, learned counsel for Respondents

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**J U D G M E N T**

[Delivered on this 27<sup>th</sup> day of March, 2023]

Decree for eviction in respect of shop premises on the ground of *bonafide* requirement, is assailed in the present appeal by the tenant/original defendant.

2] It is the case of the plaintiffs/landlords that they are the owners of Municipal Corporation House No.62, Ward No.54, Ambedkar Marg, Panchpaoli, Nagpur, and this property was originally owned by one Gupta family, and was purchased by the plaintiffs vide registered sale deed dated 07-04-1989. The defendant was the tenant of the previous owner, and after purchase of the property by the plaintiffs, the tenancy was transferred in favour of the plaintiffs, and the defendant was occupying one shop on the Eastern side of the house property, and was running a Kirana shop in the name of "Shyam Kirana Stores" on a monthly rent of Rs.1,000/-, and the tenancy month commenced from 1<sup>st</sup> day of each English Calender month. The said shop was admeasuring 300 sq.ft. and the rent was inclusive of Corporation taxes and exclusive of electricity and water charges. There were 3 shop blocks on the ground floor and one of them was occupied by the defendant.

3] The plaintiffs were also doing the business of Kirana shop in the name of "Gurunanak Kirana Stores" just opposite to the

suit premises on rent from one Sardar Iqbal Singh. The said area was falling short in the business of the plaintiffs and they wanted to expand their business.

4] The plaintiff No.1 was having a son and a daughter, and the son Devendra Singh was doing business in the name of “Gurunanak Enterprises”, having distributorship of Inverters and other Electrical Equipments, but was not having independent office to run his business, whereas the son of the plaintiff No.2 Indrapal Singh also wanted to start his business having grown up, but because of not having proper place, he was not in a position to start his business, and in such circumstances, need of the plaintiffs was *bonafide*, and as such quit notice was issued to the defendant on 02-04-2005, but it was not complied despite termination of tenancy from 1<sup>st</sup> June, 2005, and as such, the suit was filed.

5] Defendant filed his written statement, wherein the adverse allegations were denied, but it is not disputed that one of the 3 shops was occupied by him and defendant was running a Kirana shop therein. It is contended that the rent was revised from time to time, and that in the year 1972, it was Rs.55/- per month and it was increased up to Rs.1,000/- per month. It is also contended that there were 2 more shops on the ground floor and in one shop, one cycle store was running and the other shop was not being used. Even the fact of plaintiffs running Kirana shop opposite the shop of the defendant is denied, and the contentions as regards *bonafide* requirement of the sons of the two plaintiffs, have also been denied, and it has been specifically contended that the plaintiffs were having several properties, and that the financial condition of the plaintiffs was very good, and the plaintiffs were having several premises.

6] From the aforesaid pleadings of the parties, learned judge of the trial court framed necessary issues.

7] The plaintiffs have examined Surinder Singh (plaintiff No.1) as PW-1 by filing his evidence on affidavit on record at Exh.18, and also examined one Devendra Singh (son of plaintiff No.1) as PW-2 by filing his evidence on affidavit on record at Exh.55 and relied upon following documents :

<b>Sr.No.</b>	<b>Particulars</b>	<b>Exhibit</b>
1.	Slips of money order sent by defendant	47 & 48
2.	Tax receipt	49
3.	Rent receipts	50 & 51
4.	Notice dated 2 <sup>nd</sup> April, 2005	52
5.	Acknowledgement receipt	53
6.	Reply notice	54
7.	Namuna – A	58
8.	Letter of appointment given by Powerlink Micro Systems (P) Ltd.	59
9.	Copies of certificate of registration	60 & 61

Whereas, defendant has examined his son, namely, Mohan Amarnath Khanuja as DW-1 by filing his evidence on affidavit at Exh.65, and relied upon following documents :

<b>Sr.No.</b>	<b>Particulars</b>	<b>Exhibit</b>
1.	General power of attorney	68
2.	Rent receipts	69/1 & 69/2
3.	Letters under Right to Information Act	70 & 71
4.	Certified copy of sale deed	77

8] Heard learned counsels for the parties. Following points arise for my consideration.

Sr.No	Points	Findings
1]	Whether the plaintiffs have proved their reasonable and <i>bonafide</i> requirement for the suit premises ?	<u>Yes</u>
2]	To whom greater hardship would be caused if the premises is vacated/not vacated ?	<u>Plaintiffs (If the premises is not vacated)</u>
3]	Whether the impugned judgment and decree warrants interference in appeal ?	<u>No</u>
4]	What order ?	<u>As per final order.</u>

### REASONS

#### As to Point Nos.1 to 4 :

9] The law contemplates that the landlord can seek eviction of tenant if he is able to prove that the requirement of the landlord is *bonafide*, which means that it is not tainted with *malafides*, and once this requirement is proved, what is required to be seen is, whether more hardship would be caused to the tenant by eviction, or whether it would be more for the landlord if eviction is not awarded, and even after proof of *bonafide* requirement by the landlord, if the court is satisfied that no eviction would cause greater hardship to the landlord than what would be caused to the tenant by his eviction, then and then only the eviction could be ordered.

10] The Court of Small Causes, Nagpur have given finding on both these aspects in favour of the landlord, and has directed eviction. Furthermore, it has given 5 months time from the date of

order to handover vacant and peaceful possession.

11] It is apparent from the pleadings itself that at least from the year 1972, the tenant is occupying the premises and running the Kirana shop, which is almost half a century over the period of time. It is the contention of the plaintiffs that they wanted to expand their business and one son each of both the plaintiffs were growing up, and in such circumstances, they were in *bonafide* need of the premises.

12] Plaintiff No.1 has led his evidence reiterating the contents of the plaint, and has also examined his son, who has stated that he was running Gurunanak Enterprises, a business pertaining to Inverters and Electrical Equipments, whereas the defendant has examined his son Mohan, as power of attorney holder of the tenant, and the tenant himself has not stepped into the witness box.

13] The plaintiff and his witness have in categorical terms explained their need for the premises in question, and what is sought to be canvassed is the fact about one vacant shop, but then it is not for the tenant to dictate the terms on the landlord and what is required to be seen is, whether the need made out is *bonafide* or not? Moreover, the tenant is occupying the premises for last more than 50 years, and in all this time, it was incumbent on him to look for the alternate premises. In such circumstances, the findings recorded by the learned judge of the trial court, cannot be faulted with, that the plaintiffs had proved their *bonafide* requirement, and in the above circumstances, the issue of hardship was also rightly answered in favour of the plaintiffs. Merely stating that the livelihood of the tenant and his family depends on the said business, is not of any

avail.

14] Considering all the aforesaid circumstances, I do not find any infirmity in the impugned judgment and decree, warranting interference in appeal, and as such, I answer the points accordingly and pass following order.

**ORDER**

- i] Appeal stands dismissed.
- ii] Decree be drawn up accordingly.
- iii] Record and proceedings be sent to the Trial Court.

Nagpur.  
Date : 27/03/2023.

[S. B. Agrawal]  
Principal District Judge,  
Nagpur.

Case argued on	:	17/03/2023
Judgment dictated on	:	27/03/2023
Transcription ready on	:	28/03/2023
Judgment checked and signed on	:	28/03/2023

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**CERTIFICATE**

I affirm that the contents of this P. D. F. file of Judgment are word to word, as per original Judgment.

Name of Stenographer : Prashant P. Yenurkar  
(Grade - I)