

R3

C.A.No. 1979 OF 2002  
ITEM No.103

Court No. 11

SECTION XI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO. 1979 OF 2002

Ram Swaroop (Dead) through L.Rs. Appellant(s)

VERSUS

Mahesh Chandra Jain and Ors.

Respondent(s)

(With application for permission to submit additional documents  
and with office report)

Date : 09/09/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARIJIT PASAYAT  
HON'BLE MR. JUSTICE C.K. THAKKER

For Appellant (s)Mr. A.K. Ganguli, Sr.Adv.  
Mr. Harish,Adv.  
Ms. Barnali Basak,Adv.  
Mr. V. Krishna Murthy,Adv.

For Respondent (s)Mr. Jitender Sharma, Sr.Adv.  
Mr. S.S. Nehra,Adv.  
Dr. I.B. Gaur,Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order.

(Neena Verma) (Vijay Aggarwal)  
Court Master Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1979 OF 2002

Ram Swaroop (Dead) through L.Rs.  
...Appellants

Versus

Mahesh Chandra Jain and Ors.  
...Respondents

O R D E R

The tenant has filed this appeal against the judgment of a learned Single Judge of the High Court of Allahabad by which the writ petition filed by the tenant was dismissed. The factual position needs to be noted in brief.

Mahesh Chandra Jain (hereinafter referred to as 'the landlord') filed an application for release of Shop No.559 under Section 21(1)(a) of the U.P. Urban Building (Regulation of letting, Rent & Eviction) Act, 1972 (in short the 'Act'). The reason for seeking eviction was that there was need to expand the clinic of his son, Dr. Jinesh Chandra Jain. The application was rejected by the Prescribed Authority by order dated 19.11.1992. An appeal was carried by the landlord and the same was allowed by order dated 28.05.1996. It was held that there was a bonafide need for the premises in question. A writ petition was filed. In the writ petition, it was submitted that the landlord on an earlier occasion had filed an application under Section 21 of the Act which was rejected and, therefore, the subsequent application which formed the subject matter of controversy before the High Court was not maintainable. The need of landlord was not bonafide and his son Dr. Jinesh Chandra Jain had already a clinic in the adjacent shop No.560 and he could practice from his residence. The findings recorded regarding comparative hardship was also without any foundation.

The High Court found that the first contention was not of any relevance because earlier rejection of the application for need of one son does not stand on the way of the subsequent application being moved for another son. So far as points 2 and 3 are concerned, it was found with reference to the materials on record that the conclusions of the first appellate court were in order. It was pointed out that merely because the son Dr. Jinesh Chandra Jain was practicing from the residence, that cannot be a ground to refuse eviction from shop No.559. So far as the availability of shop No.560 is concerned, it was noted that both the shop Nos. 559 and 560 would be utilised for better professional services being rendered and it was certainly desirable for a medical practitioner to have adequate place, for doing pathological and radiological tests. Accordingly, the writ petition was dismissed.

In support of the appeal, Mr. A.K. Ganguly, learned senior counsel submitted that the approach of the first appellate court and the High Court is clearly erroneous. The findings recorded by the Trial Court were in order, as the essence of dispute was kept in view while upholding that the bonafide need of the house was not established. It was noticed that there was a persistent attempt to get the tenant vacated. It was also submitted that the first appellate court and the High Court acted on surmises and conjunctures to hold about the bonafide and genuine need of the landlord to provide accommodation to his son for setting up medical practice.

In response, Mr. Jitender Sharma, learned senior counsel submitted that the findings of fact recorded by the first appellate court based on proper appreciation of evidence, as affirmed by the High Court, do not need any interference. The total area of shop Nos.559 and 556 would come to about 270 sq. feet. That is not such a big area even for a medical practitioner to set up practice and conveniently function from the premises. The two shop Nos.558 and 561 are in the possession of the landlord and his another son, who were doing separate business. The father has a moral obligation to see that his son, who is a qualified Ayurvedic Doctor gets a firm footing in life and for that purpose a bonafide application was made and on appreciation of facts, the first appellate court found that need was bonafide and genuine. The High Court also analysed the factual position and came to an identical finding. These findings of fact do not need any interference.

On consideration of the rival submissions, we find that the first appellate court has correctly analysed the factual position and has assessed the need of the applicant for setting up his son in business. The findings are not perverse in any way and the High Courts affirmation of view cannot also be called perverse. That being so, the appeal is without merit and deserves dismissal, which we direct.

However, considering the fact that the tenant has been occupying the premises for more than three decades, we permit retention of the premises till the end of December, 2005 subject to his filing usual undertaking before the Trial Court within three weeks to deliver the vacant possession of the premises on or before 31st December, 2005. The rent shall be paid regularly in terms of the agreement and if any arrears have to be paid, the same shall be paid within three months.

The appeal is dismissed subject to aforesaid directions.

.....J.

( ARIJIT PASAYAT )

.....J.

( C.K. THAKKER )

New Delhi,

September 09, 2004.