

IN THE HIGH COURT OF SIKKIM

RFA No.18/2000

Date of Decision : 2nd August, 2000.

Govind Prasad Sharma,
Resident of Tadong, Dara Gaon,
P.O.Tadong, PS : Gangtok,
East Sikkim. Appellant.

Versus

Ganga Prasad Sharma,
Son of Late J. D. Sharma,
Resident of Tadong, Dara Gaon,
P.O. Tadong, PS : Gangtok,
East Sikkim. Respondent.

Present : Ms. L. Chakraborty, Advocate for the
appellant.

Mr. B. Sharma, Advocate for the
respondent.

Coram :
The Hon'ble Mr. Justice Ripusudan Dayal, Chief Justice.
The Hon'ble Mr. Justice Anup Deb,

JUDGMENT

Dayal CJ.

The appellant is a tenant under the respondent in respect of half portion of the ground floor of a R.C.C. building measuring about 15' x 30' comprising of three rooms, one kitchen and one bath-room out of two and half storeyed building situated at Tadong Dara Gaon, below S.N.T. Colony in plot No.133. The landlord respondent brought suit against the appellant for eviction on two grounds. One ground is that the appellant is liable to pay rent at the rate of Rs.1000/- per month payable according to English Calender month and he defaulted in the payment of

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rent since April, 1998. The other ground is, that, the respondent required the suit premises for his personal bona fide use and occupation and for the use and occupation of his family members. It is further alleged that the sons of the respondent-plaintiff are grown up and one of his sons has already been married and his second son was going to be married, and, as such, he will require the premises urgently to accommodate his family members. The appellant-tenant in his written statement denied the rent to be at the rate of Rs1000/- per month and alleged that the agreed rent is Rs.600/- per month. It is admitted that rent could not be paid from April, 1998, but it is averred that the payment could not be made since the respondent-landlord refused to accept rent and thereafter rent was sent by money order. Further, the appellant-defendant has denied that the respondent-plaintiff has bona fide requirement of the suit premises for personal use and occupation of himself and his family members.

2. The learned trial court did not accept the plea of default but accepted the ground of bona fide requirement and, as such, granted the decree of eviction.

3. Aggrieved by the judgment and decree of the learned trial court, the tenant has come up in appeal.


4. The learned Counsel for the appellant submits that the ground of bona fide requirement was upheld by the learned trial court only on the ground that he after having retired from service wants to start a school to augment his family income but such an allegation was not made in the plaint. On the other hand, the learned Counsel for the respondent submits that the respondent has bona fide requirement for the residence of his family and also for running the school.


5. It is a fact admitted before us and proved by evidence that the building of which the premises forms part is a two and a half storeyed building. The half portion of the ground floor is under the tenancy of the appellant and the other half portion is occupied by some college students. The first floor consists of six rooms

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and one toilet. The second floor has one kitchen measuring 15' x 30'. He has three sons. The elder two sons are employed. The eldest son Bhanu Sharma is serving in the Department of Agriculture at Jorethang and the other son serving in the Labour Department and is posted at Mangan. The youngest son is unmarried and unemployed. The appellant has deposed that he intends to start a school in the tenant premises for enhancing the income of his family. The very fact that he has expressed his intention to start a school in the tenanted premises to enhance his income implies that he does not need the tenanted premises for the purpose of his residence and the residence of his family members. Thus, his evidence is contrary to his own plea. Otherwise also, we are not inclined to believe that the accommodation in occupation of the appellant is not sufficient to meet his requirement and the requirement of his family for residential purpose, as his two sons are residing outside Gangtok. Therefore, we hold that the respondent landlord does not have bona fide need for the tenanted premises for his use and occupation and for the use and occupation of his family members. Finding of learned trial court on Issue No.2 is accordingly reversed. The respondent does not want to press the cross-objection at the time of argument. The cross-objection is, therefore, dismissed as not pressed.

In the result, the appeal is allowed, judgment and decree of the learned trial Court is set aside and the suit is dismissed. The respondent shall pay costs in both the Courts.


(Anup Deb)
Judge
2.8.2000


 2.8.2000
(Ripusudan Dayal)
Chief Justice
2.8.2000

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