

Sardar Ram Singh Vs. Devendra Nath

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Court : Madhya Pradesh

Decided On : Aug-27-2013

Appellant : Sardar Ram Singh

Respondent : Devendra Nath

Advocate for Def. : Shri. J.Prasad

Advocate for Pet/Ap. : Shri. Imtiaz Husain

Judgement :

HIGH COURT OF MADHYA PRADESH JABALPUR Second Appeal No.150/2012

Sardar Ram Singh Vs. Devendra Nath and others

Present : Hon'ble Shri Justice N.K. Gupta.

Name of counsel for the parties: Shri Imtiaz Husain, counsel for the appellants.

Shri J.Prasad, counsel for the respondents No.1 to 5.

ORDER

(Passed on 27th day of August, 2013) The Civil Judge Class-I vide judgment and decree dated 21.10.2005 passed in Civil Suit No.8-A/1989 decreed the suit for eviction against the appellant and directed him to provide the vacant possession of the suit accommodation to the respondents. In Civil Appeal No.13-A/2009

preferred by the appellant was also dismissed vide judgment and decree dated 8.11.2011 by the learned 1 st Additional District Judge, Multai District Betul. Being aggrieved with the aforesaid judgments and decrees, the appellant has preferred the present appeal.

2. The plaintiff Prathvinath has moved a suit against the appellant before the trial Court with the pleadings that the suit accommodation was given to the appellant on rent. The appellant was 2 Second Appeal No.150/2012 not regular in payment of the rent and therefore, a demand notice was given to him but in spite of that notice, neither the rent was deposited nor tendered to the plaintiff therefore, it was prayed that the decree of eviction be passed. Thereafter, the plaintiff Prathvinath expired and the respondents were brought as legal representatives of the deceased Prathvinath. Since the appellant in written statement denied the title of the deceased Prathvinath and the respondents therefore, the pleading of disclaimer of title was also taken by the plaintiffs to get the eviction.

3. The appellant/defendant in his written statement has accepted the tenancy but, he has pleaded that when he got the knowledge that the super structure was constructed by the plaintiff on the government land, he stopped the payment of rent and construction was situated on the land bearing survey nos. 584 & 585 which was a Beed. in the revenue records and therefore, it was a government property. Hence, it was prayed that the suit may be dismissed.

4. The learned Civil Judge Class-I after framing the issues, recorded the evidence given by the plaintiff and an opportunity of cross-examination was given to the witnesses of the plaintiff. However, the defence of the appellant was struck off due to non- depositing of the rent and therefore, no defence evidence was accepted. After considering the submissions made by the learned counsel for the parties, the learned Civil Judge Class-I decreed the suit on the ground of Section 12(1)(a) and (c) of the M.P. 3 Second Appeal No.150/2012 Accommodation Control Act (hereinafter it would be referred as 'the Act'). In appeal, the decree passed by the trial Court was confirmed.

5. I have heard the learned counsel for the parties at length at the stage of admission.

6. The learned counsel for the appellant raised only two objections; firstly that the land on which the suit accommodation situated was of the State Government and the house was dilapidated and thereafter, the appellant himself constructed a Tapra. on the Government land therefore, he was not liable to deposit the rent. The decree of eviction passed by the trial Court was not based upon the sound ground and secondly, it was submitted that if the defence of the appellant was struck off, still he was entitled to adduce the defence evidence. The trial Court refused to take his defence evidence. His valuable right was violated and therefore, the decree of eviction passed by the trial Court is not applicable.

7. If these two points are considered one by one then, it would be apparent that the appellant has pleaded that he made a Tapra. on the land bearing survey nos. 584 & 585, which was a government land. It was also pleaded that the deceased/plaintiff Prathvinath permitted him to make a super structure on the land and a sum of `100/- per month be provided as a rent to the deceased/plaintiff therefore, the appellant accepted to pay the rent. Such pleadings were made in para 1-A of the written statement, which indicates that the appellant has accepted his tenancy through the plaintiff. Thereafter, the appellant had amended his pleadings 4 Second Appeal No.150/2012 vide order dated 26.11.1992 that the then Tahsildar removed the encroachment and thereafter, the appellant again constructed a super structure and started his workshop. If the possession was obtained by the appellant then, there was no problem for the appellant to plead such a fact from the very beginning. Initially, he was in possession of the property as a tenant and thereafter, his possession was removed and he became an encroacher. He was expected to give such a reply to the plaintiff when a notice related to the demand of rent was given to the appellant. Under such circumstances, by the pleadings of the appellant himself, it was established that he obtained the possession of the property as a tenant and therefore, he was liable to deposit the rent agreed between him and the plaintiff. He neither tendered arrears of the rent to the plaintiff, nor deposited any rent in the court. Consequently, the trial Court has rightly passed a decree of eviction under Section 12(1)(a) of the Act.

8. If the appellant would have taken the advantage from the very beginning that he was removed from the spot by the Tahsildar and his tenancy was terminated then he would have given a notice to the plaintiff that his tenancy was duly terminated because the entire super structure was dis-mentaled by the Tahsildar but no such notice was given and therefore, the story cooked by the appellant was nothing but an afterthought. He continued as a tenant of the deceased/plaintiff Prathvinath and therefore, he was not entitled to challenge the title of the landlord therefore, the trial Court has 5 Second Appeal No.150/2012 rightly decreed the suit of eviction under the Provisions of Section 12(1)(c) of the Act. Hence, the objection raised by the learned counsel for the appellant is not acceptable that the appellant was not the tenant of the deceased/plaintiff.

9. The learned counsel for the appellant took a second objection that when a defence get struck off then, still the defendant was entitled to adduce his evidence through his witnesses and since no opportunity was given, his valuable right is violated. In support of his contention, the learned counsel for the appellant has placed his reliance upon the order passed by the Single Bench of this Court in the case of Sarder Sohinder Singh Vs. Star Chappals and others. [1992(2) M.P.L.J.Note 2].. Similarly, a reliance is placed upon the order passed by the Single Bench of this Court in the cases of Shyamlal Agrawal and others Vs. Sardar Gurubachan Singh. [1992(2) M.P.L.J.288], Kewal Kumar Sharma Vs. Satish Chandra Gothi and another. [1991 M.P.L.J.458]. and Sabiha Masood Vs. Tahabbur Ali Khan. [1998(2) M.P.L.J.610]. to show such situations, where the defence is struck off. In this context, the para 5 of the order passed in case of Kewal Kumar Sharma (supra) may be referred in which, the learned Single Judge referred the judgment passed by the Hon'ble Apex Court in the case of Modula India Vs. Kamkshya Singh Deo.[AIR 198.SC 162]. in which, it was laid; We, therefore, think that the defendant should be allowed his right of cross-examination and arguments. But we are 6 Second Appeal No.150/2012 equally clear that this right should be subject to certain important safeguards. The first of these is that the defendant cannot be allowed to lead his evidence. None of the observations or decisions cited have gone to the extent of suggesting that in spite of the fact that the defence has been struck off, the defendant can adduce evidence of his own or try to substantiate his own case.

. By perusal of the entire orders, it is apparent that the appellant could contest the case on any other ground except the grounds taken in the Section 12(1)(a) and (c) of the Act and he could cross-examine the witness of the plaintiff on such other grounds and a final submission may be made on behalf of the defendant in the present case. It is apparent that the appellant was given an opportunity of cross-examination to the plaintiff witnesses at length. He was expected to cross-examine about his general defence (if any) but he concentrated on his tenancy and the entire cross-examination was taken on the ground of Section 12(1)(c) of the Act therefore, he violated his limit of the cross-examination. If the order dated 5.4.2005 passed by the trial Court is perused then, an opportunity of defence evidence was given for the date 18.4.2005. However, thereafter the case was listed for final hearing. Again the opportunity of defence was considered in the order sheet dated 11.8.2005 thereby directly, it was the situation about defence evidence may be made clear before the trial Court. Again the appellant moved an application under Section 151 of C.P.C. on 12.8.2005, which was decided vide order dated 3.10.2005. If the text of the application is 7 Second Appeal No.150/2012 perused then, it would be apparent that the appellant wanted to lead the evidence to show that the property was not of the plaintiff. Hence, he wanted to give an evidence on the ground of Section 12(1) (c) of the Act, whereas he was not entitled to lead any evidence in relation to the ground raised under Section 12(1) of the Act. It is nowhere mentioned in the application that the appellant was willing to adduce the evidence about any general defence except the grounds of Section 12(1) of the Act and therefore, the trial Court has rightly rejected his application. In the light of the judgment passed by the Hon'ble Apex Court in the case of Modula India (supra), the appellant was entitled to cross-examine the plaintiff witnesses on the other grounds except under Section 12(1) of the Act and thereafter, the learned counsel for the defendant was entitled to make further submissions therefore, the defendant whose defence was struck off was not entitled to adduce any evidence on the ground raised under Section 12(1) of the M.P. Accommodation Control Act. Hence, no right of the appellant was denied by the trial Court or the appellate Court.

10. On the basis of aforesaid discussion, it would be apparent that the decree of eviction passed by the trial Court on the ground of Section 12(1)(a) and (c) of the

Act was proper. No illegality or perversity is shown by the learned counsel for the appellant in the decree passed by the trial Court. There is no ground by which any substantial question of law may be framed for the consideration of the second appeal and therefore, the second appeal filed by the 8 Second Appeal No.150/2012 appellant appears to be not acceptable. Consequently, the second appeal filed by the appellant is hereby dismissed with the costs at the motion stage.

11. Copy of the order alongwith the appellate decree (if any), be sent to both the Courts below alongwith their records for information and compliance. (N.K. GUPTA) JUDGE 27 08.2013 pnkj

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