

Govardhan Das Vs. Ashok Kumar

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Court : Madhya Pradesh

Decided On : Nov-20-2012

Appellant : Govardhan Das

Respondent : Ashok Kumar

Advocate for Def. : Shri. Avinash Zargar, Shri. Zargar

Advocate for Pet/Ap. : Shri. A.K. Jain, Shri. Jain, Shri. Zargar

Judgement :

F.A. No.286/2002 -1- HIGH COURT OF MADHYA PRADESH JABALPUR
SINGLE BENCH: Honble Shri Justice A.K. Shrivastava F.A. No.286/2002
APPELLANT Govardhan Das s/o Banamal DEFENDANT Badhwani, Proprietor
Gopal Garrage, Occupation: Transport Business, Resident of Mission Chowk,
KATNI (M.P.) Versus RESPONDENT Ashok Kumar s/o Radhika Prasad
PLAINTIFF Katare, R/o Mission Chowk, Subhash Ward, Katni (M.P.)
----- Shri A.K. Jain,
learned counsel for the appellants. Shri Avinash Zargar, learned counsel for the
respondent. -----

JUDGMENT

{ 20 - 11 - 2012 } This first appeal under Section 96 of the Code of Civil Procedure
has been filed at the instance of defendant against the judgment and decree dated
28.6.2002 passed by learned First Additional District Judge, Katni in Civil Suit

No.9-A/1994 decreeing the suit of plaintiff/respondent for eviction.

2. In brief, the case of plaintiff/respondent is that the appellant/defendant is a tenant @ Rs.1500/- of a shop (non- residential accommodation) the description whereof has been F.A. No.286/2002 -2- mentioned in the plaint and which is the subject matter of the suit. According to the plaintiff, the defendant/appellant is denying his ownership although he is his tenant and hence, it made a cause for him to file the suit for eviction on the ground of disclaimer of title under Section 12(1)(c) of the M.P. Accommodation Control Act, 1961 (for brevity the Act.).

3. The defendant/appellant filed written-statement and denied the plaint averments. According to him, a notice under Section 248 of the M.P. Land Revenue Code, 1959 (in short the Code.) has been received by him from Tehsildar that he is an encroacher upon the suit land and therefore, the plaintiff is required to be called to make the position clear.

4. The learned Trial Court on the basis of averments made in the plaint and denial in written statement, framed the necessary issues and after recording the evidence of the parties decreed the suit of the plaintiff.

5. In this manner, this first appeal has been filed by the defendant.

6. The contention of Shri Jain, learned counsel for the appellants is that because the tenant/appellant received notice under Section 248 of the Code from the Tehsildar mentioning therein that he is a trespasser upon the government land, therefore, he was in dilemma and in these facts and circumstances it cannot be said that the denial of title of the F.A. No.286/2002 -3- plaintiff is not bona fide. Learned counsel submits that defendant never set up the title of the disputed property in him or in any third person and if that would be the position, in view of the decision of the Supreme Court Sheela and others vs. Firm Prahlad Rai Prem Prakash, (2002) 3 SCC 37. which has been relied by a single Bench of this Court in Dayal Das (dead) through L.Rs Smt. Kamla Chenani and others vs. Rajendra Prasad Gautam, 2012 (2) M.P.L.J.460 the eviction suit cannot be decreed.

7. On the other hand, Shri Zargar, learned counsel for the respondent argued in support of the impugned judgment and submitted that not only at several places in the written- statement but in the oral evidence as well as in several documents, the defendant/appellant has not only denied the title of the plaintiff but set up the title of the State Government and as well as prayed to allot the disputed premises to him and thus, the defendant is denying his title and is setting up the title of the suit property in the State Government. Learned counsel further submits that a suit for declaration of ownership right was submitted by the plaintiff against the State Government in the Court of First Additional District Judge, Mudwara which was registered as Civil Suit No.21-A/1993 and was decreed on 9.8.1997 in which it has been categorically held that plaintiff is the owner of the suit property. The judgment passed by learned Trial Court was affirmed by this Court in F.A. No.577/1997 F.A. No.286/2002 -4- decided on 28.6.2012. Learned counsel further submits that the defendant/appellant submitted an application (Ex.P-1) before the Naib Tehsildar, Nazul Department praying to allot the disputed premises to him on Patta. In these proceedings the plaintiff submitted objection and also submitted an application under Order I Rule 10 CPC (Ex.P-2) stating therein in para-1 that he is the owner of the suit property and the defendant is his tenant. In reply (Ex.P-3) to this application categorically the defendant denied the ownership of the plaintiff and thus, it has been submitted by learned counsel that since the defendant is mala fidely denying plaintiff's title, therefore, eviction decree has been rightly passed against him.

8. Having heard learned counsel for the parties I am of the view that this appeal deserves to be dismissed.

9. It has been stated at the Bar by Shri Avinash Zargar, learned counsel for the respondent/plaintiff and which has rightly not been disputed by Shri A.K. Jain, learned counsel for the appellants that the judgment and decree dated 9.8.1997 passed by learned First Additional District Judge, Mudwara in Civil Suit No.21-A/1993 has been affirmed by this Court in F.A. No.577/1997 dated 28.6.2012 holding that the plaintiff is the owner of the suit property and the disputed land is not of the State Government. F.A. No.286/2002 -5- 10. The factum of obtaining the disputed premises on tenancy basis @ Rs.1500/- has not been denied by the

defendant in the written-statement and this has also been found to be proved by the Trial Court on the basis of oral and documentary evidence. I have gone through those reasonings as well as the evidence and I find that no illegality or any perversity is there in holding so. Even otherwise, the learned counsel for the appellants is also not very much serious in challenging those findings and his contention is that the decree on the ground of disclaimer of title as envisaged under Section 12(1)(c) of the act can be passed against the tenant only when he set up a title of his own or if he is mala fidely denying the title of the land. Heavy reliance has been placed on this point on the decision of Supreme Court Sheela (supra) which has been relied by this Court in Dayal Das (supra). Thus, the only pivotal question which is to be decided is whether the defendant set up title in State Government or in himself as well as he is denying the title of the plaintiff mala fidely.

11. On bare perusal of the plaint averments it is gathered that the plaintiff has categorically pleaded that the defendant/appellant obtained the disputed premises on the monthly rent @ Rs.1500/-. The rent receipts are also proved in evidence and they are exhibited and thus, it is proved that defendant/appellant took the disputed premises on tenancy basis from the plaintiff and he is his tenant. F.A. No.286/2002 -6- 12. So far as the pleading part of the defendant is concerned, I am of the view that nowhere in the written-statement he has set up either his own title upon the suit property or of any third person. Very intelligently and cleverly it has been pleaded in order to save the appellant from the clutches of the decree of eviction under Section 12(1)(c) of the Act that the plaintiff should clear the position since notice has been received by him under Section 248 of the Code that he is the encroacher upon the disputed property. However, much earlier to the filing of the written-statement which was submitted on 6.3.1995, on 11.8.1992 the defendant/appellant submitted application before the Naib Tehsildar to allot the suit premises to him, although he was fully aware that he took the suit premises on tenancy basis from the plaintiff. Nowhere in this application (Ex.P-1) it has been so stated by him that because notice has been received by him under Section 248 of the Code, he is submitting such application not he has so pleaded that he is the tenant of the plaintiff. If he has submitted an application for allotment, according to me, impliedly it shall be deemed that he is denying the title of his landlord and is

setting up the title in the State Government and hence praying to allot the disputed premises in his favour. Things would become more clear when the plaintiff in those proceedings before the Tehsildar submitted an application under Order I Rule 10 CPC (Ex.P-2) stating in para-1 that he is the owner of the suit property and the defendant/appellant is his F.A. No.286/2002 -7- tenant. In reply to this application (Ex.P-3-C) categorically in para-1 the defendant/appellant stated that the averments of the plaintiff are incorrect, baseless and illegal, which means that he is not the owner of the suit property. Further in Ex. P/3 he has stated in para-2 that the suit premises is of the Government and it may be settled in the name of the defendant. Thus, I am of the view that since the defendant was quite aware that he took the suit premises from the plaintiff and when he is denying his ownership it would amount to mala fide denial and denying the title of his landlord by setting up the title in third person (State Government). In these facts and circumstances, the decision of Supreme Court Sheela (supra) is not applicable in the present case and similarly the single Bench decision of this Court Dayal Das (supra) is also not applicable on the same ground.

13. Resultantly this appeal fails and is hereby dismissed with costs. Counsel fee of Rs.5,000/-, if pre-certified.

14. At this juncture, Shri Jain, learned counsel for the appellants seeks time to vacate the suit premises since is in occupation of the same for more than 20 years.

15. This prayer has been vigorously opposed by Shri Zargar, learned counsel for the plaintiff. However, time to vacate the suit premises is granted to the appellants on the following conditions: (i) The appellants/tenant/defendant shall vacate the suit premises on or before 31.12.2013; F.A. No.286/2002 -8- (ii) he shall not create any third party interest in the suit premises; (iii) the cost of the suit as well as of this appeal shall be deposited by the appellant before learned Trial Court/Executing Court on or before 31.01.2013; (iv) the amount of rent, if any due, be also deposited on or before 31.01.2013 and the appellant shall continue to deposit the monthly rent in terms of Section 13(1) of the M.P. Accommodation Control Act, 1961; (v) the plaintiff/respondent shall be entitled to withdraw the cost

as well as the rent which shall be deposited by the appellant; and (vi) a usual undertaking mentioning the aforesaid conditions be submitted by the appellant in the Trial Court on or before 31.01.2013. It is, however, made clear that in case appellant fails to comply any of the conditions laid down herein-above, the respondent/plaintiff shall be free to get the decree of eviction executed prior to 31.12.2013.

16. With the aforesaid observations and time allowed to the appellant to vacate the suit premises, this appeal is accordingly dismissed. (A.K. SHRIVASTAVA) JUDGE
S/ F.A. No.286/2002 -9-

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