

Goru Vs. Devendra Nath

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Court : Madhya Pradesh

Decided On : Jul-31-2013

Appellant : Goru

Respondent : Devendra Nath

Judgement :

HIGH COURT OF JUDICATURE MADHYA PRADESH, JABAPLUR Single Bench:
Hon'ble Shri Justice N.K.Gupta,J SECOND APPEAL NO.246 OF 201.Goru. Vs.
Devendra Nath & others.

----- Shri Imtiaz
Husain, Advocate for the appellant. Shri Jagtendra Prasad, Advocate for the
respondents. -----

ORDER

(Passed on the 31st day of July, 2013) The Civil Judge Class-I, Multai District Betul vide judgment and decree dated 30.8.2005 in Civil Suit No.188- A/1994 decreed the suit of the respondents/plaintiffs against the appellant for possession and arrears of rent of the suit accommodation on the ground of Section 12(1)(c) of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as Act, 1961.). In Appeal No.5-A/2011 the learned First Additional District Judge Multai District Betul vide judgment and decree dated 15.12.2011 dismissed the appeal filed by the appellant. Being aggrieved with the aforesaid decree and judgments, the appellant/defendant has preferred the present second appeal.

2. The brief facts of the case are that the appellant received the possession of the suit accommodation on the basis of a contract of tenancy from the deceased plaintiff 2 SA No.246/2012 Prathvinath Bhargav. The plaintiff instituted a suit before the trial court claiming eviction of the appellant on the basis of the ground of Section 12(1)(a) of the Act, 1961. During the pendency of the suit the appellant modified his written statement that the suit property belongs to the State Government, and therefore the provisions of the Act, 1961 were not applicable in the present case and the plaintiff was not the person who could claim the possession in the property.

3. The learned Civil Judge after recording the evidence adduced by the parties, decided the case that if the State Government is not party in the case, then it makes no difference in the case, though the appellant deposited the arrears of rent before the Court during the pendency of the suit and he was not liable to be evicted under the provisions of Section 12(1)(a) of the Act, 1961, he was liable for eviction under the provisions of Section 12(1)(c) of the Act, 1961, and therefore the decree of eviction along with mesne profits was passed. In appeal, the Appellate Court dismissed the appeal in toto.

4. I have heard the learned counsel for the parties at length.

5. The learned counsel for the appellant has submitted that it was found that the suit accommodation 3 SA No.246/2012 was constructed on a government land and it was an encroachment, therefore the appellant could not be evicted from the suit premises, and therefore there was no malafide intention of the appellant in making such pleadings. No eviction could be directed under Section 12(1)(c) of the Act, 1961.

6. After considering the submission made by the learned counsel for the parties, only two short questions arose in the present appeal, firstly as to whether the State Government was necessary party in the case and the provisions of the Act, 1961 were not applicable in the present case. Secondly, as to whether the appellant could be evicted under the provisions of Section 12(1)(c) of the Act, 1961 though there was no malafide intention of the appellant?. It is admitted in the case that the appellant obtained the possession of the property from late

Prathvinath Bhargav as a tenant, and therefore unless he got a lease executed from the side of the State Government, neither the State Government was a necessary or proper party in the case, which was filed between the landlord and the tenant not the appellant could challenge that the property belongs to the State Government. Under such circumstances, the State Government was not necessary or proper party in the case. Both the Courts below have rightly 4 SA No.246/2012 decided that the State Government was neither a proper not necessary party. In the Act some limitations are given that for the particular series of landlords, the Act was not applicable. In the present case, Prathvinath Bhargav or his successors do not fall in such a category, and therefore the appellant could not establish that there was a contract of tenancy between him and the State, and therefore it was not a suit filed by the State Government for eviction. Hence, the provisions of the Act were not excluded in the present case.

7. It is true that the appellant did not take such a pleading from the very beginning that the land on which the suit property was erected was of the State, but thereafter such pleadings were added by way of a modification. If a tenant raised such a pleading in the written statement and his conduct is considered, then it would be apparent that he did not tender the rent due towards him to the landlord. After receiving a demand notice he deposited the rent in the Court so that his defence may not be struck off. Under such circumstances, it would be apparent that the appellant was not ready to tender the rent to the landlord. It is nowhere established that the appellant has received any lease from the State Government thereafter, and therefore looking to the conduct of the appellant, he was claiming that the suit 5 SA No.246/2012 property is of the State Government, but neither he was paying the rent to the landlord nor he had any contract with the State Government and he wanted to enjoy the property on the basis of encroachment, and therefore conduct of the appellant cannot be said to be bonafide. His conduct clearly indicates that he disclaimed the ownership of the landlord, whereas he obtained the possession of the property through the landlord by a tenancy agreement. Under such circumstances, the appellant was liable to be evicted under the provisions of Section 12(1)(c) of the Act, 1961. Both the Courts below have rightly decreed the suit filed by the appellant. Under such circumstances, there is no basis by which the concurrent findings of both the courts below towards

the facts may be disturbed. Hence no substantial question of law is involved in the present second appeal which is to be decided. Therefore, the second appeal filed by the appellant cannot be accepted. Consequently, it is hereby dismissed with cost at motion stage.

8. Copy of this order and appellate decree (if any) be sent to both the Courts below along with their records for information. (N.K.Gupta) Judge 31/07/2013
Ansari

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