

Shehzade Vs. Mohammad Kasim Judgement Given By: Hon'ble Shri Justice Ravi Shankar Jha

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Court : Madhya Pradesh

Decided On : Jan-09-2014

Appellant : Shehzade

Respondent : Mohammad Kasim Judgement Given By: Hon'ble Shri Justice Ravi Shankar Jha

Judgement :

Second Appeal No.654 / 2011 (Shehzade .

Vs..Mohammad Kasim) 09-01-2014 Heard Shri M.A.Khan, learned counsel appearing for the appellant on the question of admission.

The appellant/defendant has filed this appeal being aggrieved by the judgment and decree dated 12-5-2011 passed by the District Judge, Shahdol, in C.A.No.11A/2011 whereby the judgment and decree dated 21-12-2010 passed by the 3rd Civil Judge Class-II, Shahdol, decreeing the suit filed by the respondent/plaintiff has been affirmed.

It is submitted by the learned counsel appearing for the appellant/defendant that the suit was filed by the respondent/plaintiff claiming eviction of the appellant, for arrears of rent and for bona fide requirement of the accommodation for residential as well as business purposes under Section 12(1)(a).12(1)(e) and 12(1)(f) of the

M.P.Accommodation Control Act, 1961 (hereinafter referred to as the 'Act').It is submitted that while doing so, the respondent/plaintiff did not specifically plead in the plaint that the defendants did not have any alternative suitable accommodation in their possession and on the contrary, it was only stated that the respondent/plaintiff did not have any suitable accommodation in his possession.

It is submitted that the appellant/defendant in the written statement had pointed out that the respondent/plaintiff had two rooms in his possession and confronted the respondent/plaintiff with the aforesaid fact during evidence but the respondent/plaintiff, instead of amending the pleadings or making any specific averment in that regard, only clarified the issue in the evidence that the accommodation available with him was not suitable for the purposes of business requirements and other requirements of the respondent/plaintiff which has been accepted by the Courts below.

It is stated that in the absence of any specific pleading the Courts below have committed gross illegality in decreeing the suit filed by the respondent/plaintiff under the provisions of Section 12(1)(f) of the Act.

It is further submitted that the appellant had stated in the written statement that a part of the accommodation was re-posessed by the landlord/respondent just before filing the suit and, therefore, the rent should have been suitably adjusted but the Courts below have decreed the suit for the entire rent and not given suitable adjustment thereby committing perversity giving rise to a substantial question of law for adjudication in the present appeal.

Having heard the learned counsel for the appellant/defendant and after perusing the record, it is observed that the respondent/plaintiff was confronted by the appellants regarding the availability of the alternative suitable accommodation and the respondent/plaintiff in his evidence has clearly explained the fact that he had certain rooms in his possession which were not suitable for his purpose.

It is further clear that the Courts below have taken the aforesaid evidence into consideration by recording a finding to the effect that the respondent/plaintiff did not have any alternative suitable accommodation and was entitled to a decree

under Section 12(1)(f) of the Act.

I do not find any gross illegality in the findings recorded by the Courts below in view of the decision of this Court in the case of Smt.

Sujata Sarkar versus Anil Kumar Duttani, reported in 2009 (2) MPLJ156 that even in the absence of any pleadings in the plaint if the landlord by adducing oral and documentary evidence is able to establish that he does not possess an alternative suitable accommodation, the requirement of the provisions of law are fulfilled.

Apart from the above, it is also clear that the appellant/defendant did not, at any point of time, make any claim in respect of dispossession from the part of the accommodation or in respect of the adjustment of rent before any authority and, therefore, the claim as raised by the appellant in that regard has rightly not been adjudicated by the Courts below.

In the circumstances, I do not find any substantial question of law arising out in the present appeal, therefore, the appeal filed by the appellant/defendant being meritless is accordingly dismissed.

(R.S.Jha) Judge mct

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