

Hafiz Mohammad Vs. Masoodbi

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Court : Madhya Pradesh

Decided On : Feb-28-1990

Reported in : AIR1991MP23; 1991(0)MPLJ161

Judge : B.C. Varma, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 5 and 109; Madhya Pradesh Accommodation of Control Act, 1961 - Sections 12(1)

Appeal No. : Second Appeal No. 139 of 1987

Appellant : Hafiz Mohammad

Respondent : Masoodbi

Advocate for Def. : K.L. Issrani, Adv.

Advocate for Pet/Ap. : S.P. Khirwadkar, Adv.

Disposition : Appeal dismissed

Judgement :

B.C. Varma, J.

1. This further appeal under Section 100, Code of Civil Procedure by the defendant-tenant is against the decree for his eviction from a house. Admittedly, the house was let out to the appellant by the respondent. While this tenancy

subsisted, the respondent sold away the house to one Fatimabi, vide sale deed dated 28-3-1981 containing the following stipulation:

mDr nqdku ds fdjk;snkj ls mDr nqdku dks [kkyhdjkus ds fy, eSaus vnkyrh dk;Zokgh 'kq: dj nh gS vkSj eSa mDr nqdku dks [kkyhdjkdj ml ij srk dks dCtk ekydkuk nsus dh ftEesnkj gwa blesa esjh tks Hkht;jr iM+sxh eSa mls iwjk d:axhA

Even after this alienation, the respondent filed the suit for eviction against the appellant on certain grounds under Section 12(1) of the M.P. Accommodation Control Act, 1961. One of the defences taken by the appellant had been that after divesting herself of all the interests, right and title in the suit accommodation, the respondent could not maintain the suit for eviction against her tenant. This defence did not find favour with the Courts below. Finding in favour of the respondent on other issues, the suit has been decreed. This second appeal has been admitted on the following substantial questions of law :

(i) Whether the Courts below were right in holding that the respondent had a right to file suit for eviction against the appellant even though she had executed a registered sale deed dated 28-3-1981, i.e., much before the filing of the suit?

(ii) Whether the Courts below have erred in holding that the right of suit was saved in favour of the respondent vide Section 109 of the Transfer of Property Act?

2. Section 5 of the Transfer of Property Act defines, the 'transfer of property' as an act by which the transferer conveys property to the transferee or transferees. It necessarily contemplates that the transferer has interest in the property which is sought to be conveyed but the transferee has no such interest in such property as long as it is not conveyed by the transferer to him. 'Sale' as defined under Section 54 of the Transfer of Property Act, denotes a transfer of ownership in exchange for a price paid or part paid. A completed sale creates rights and liabilities as mentioned in Section 55 of the Act. There is no particular charm in the word 'sale' or in the word 'transfer'. The word 'transfer' is used in a larger sense while 'sale' is a specific word denoting transfer of ownership. 'Transfer' would, therefore, include transfer by sale. The statutory consequences mentioned in Section 55 shall follow in absence of a contract to the contrary, i.e., in absence of a contract the terms of

which are inconsistent with specified provision of that section.

3. Section 109 of the Transfer of Property Act speaks of transfer of property which is the subject of lease. It provides:

'109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him'.

This section speaks of a transfer of property by a lessor while the lease subsists. He may transfer the entire property or he may transfer a part of it or he may even transfer any part of his interest in that property. In each of these transfers, the transferee shall possess all the rights of the lessor as to the property or part transferred so long as he is the owner of it. At the same time, the transferee shall be subject to all liabilities of the lessor as to the property or part transferred if the lessee so elects. When the lessor sells the entire property leased, the transferee gets all the rights of the lessor including the right to terminate the tenancy by issuing a quit notice because the right to terminate the lease by a quit notice is the right of the lessor and Section 109 enables the transferee to exercise all the rights of the lessor including the right to terminate the lease. (See *Sardarilal v. Narayanlal*, 1981 MPLJ 76 : (AIR 1980 Madh Pra 8) (FB).

4. The above statutory consequences shall follow 'in absence of a contract to the contrary'. This means that it is open to the transferer lessor and his transferee to agree to terms which may be inconsistent with the provisions of Section 109 of the Transfer of Property Act. Since ordinarily, on transfer of the entire ownership of the property leased, the right to terminate the lease stands transferred to the transferee by force of Section 109 of the Transfer of Property Act, in my opinion, it is open to the transferer and the transferee to agree that notwithstanding the transfer, the rights to terminate the lease and to enforce the right of reversion shall continue to vest in the lessor. Such a term shall be inconsistent with the provisions

of Section 109 of the Transfer of Property Act and, therefore, the expression 'in the absence of a contract to the contrary' appearing in that section enables a transferer and the transferee of a property leased to agree to such a term. In such an event, it shall be permissible for the lessor despite such transfer of the property leased, to enforce the right of reversion by filing a suit against the tenant. In the instant case, the finding recorded is and it is also obvious from the sale deed Ex. P-1 that there was an agreement between transferer (respondent) and her transferee that it is the respondent who shall secure possession of the property from the lessee, i.e., from the appellant. That being so, I am of the opinion that the respondent had a right to terminate the tenancy and file a suit for eviction of the appellant. I would, therefore, answer both the questions against the appellant and in favour of the respondent and hold that despite transfer of the property by sale, the respondent retained the right to recover the possession from the appellant-tenant in view of the express agreement between her and her transferee in that behalf. Consequently, the appeal must fail.

5. The appeal is dismissed with costs throughout. Counsel's fee as per schedule.

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