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Subhash Kumar Vs. Kanhaiyalal

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Court : Madhya Pradesh

Decided On : Sep-03-1990

Reported in : AIR1991MP44; 1991(0)MPLJ414

Judge : R.D. Shukla, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 12(1) and 12(7)

Appeal No. : S.A. No. 295 of 1984

Appellant : Subhash Kumar

Respondent : Kanhaiyalal

Advocate for Def. : V.S. Shroti, Adv.

Advocate for Pet/Ap. : Abhay Sapre, Adv.

Disposition : Appeal allowed

Judgement :

R.D. Shukla, J.

1. This appeal is directed against the judgment and decree dated 2-3-1984, passed by the First Addl. Judge to the Court of District Judge, Hoshangabad, in Civil Appeal No. 40A of 1981 (arising out of the judgment and decree dated 19-8-

1981, passed in Civil Suit No. 124A of 1977 by the Second Civil Judge (Class II), Hoshangabad, whereby the decree of dismissal of plaintiffs suit has been confirmed.

2. Briefly stated, the plaintiff's case is that he filed a suit in the trial Court on 5-1-1977 with an assertion that he purchased the house in suit with an open plot from one Ramratan Dubey. This house is situated in Ward No, 22 of Talab Mohalla at Itarsi. Defendant was occupying one of the blocks of this house as a tenant on rent of Rs. 6/- per month during the ownership of Ramratan Dubey. The plaintiff is his predecessor-in-title. The defendant had failed to pay arrears of rent from 28-11-1975 to 27-12-1976. The house is old and dilapidated one. The plaintiff wants to construct it after demolition and he required the house for his own residence. It has also been pleaded that the house is in dangerous condition and is unsafe for residence. The plaintiff, therefore, wanted a decree for eviction from the suit house on grouds enumerated in Sections 12(l)(a), (e), (g) and (h) of the M,P. Accommodation Control Act, 1961 (hereinafter referred to as 'the Act').

3. The defendant, on the other hand, pleaded that the plaintiff refused to accept the money order of rent sent by him. The plaintiff is not in need of the house. The house is in good condition. He further pleaded that the plaintiff can be granted a decree for evictionon the condition that after reconstruction of the house., its possession shall be delivered by the plaintiff to the defendant.

4. The trial Court gave a finding that the plaintiff refused to accept the money order and that the defendant had complied the requirements of Section 13(1) of the Act. The suit accommodation is in dangerous condition, but the plaintiff does not require it bona fide for his own residence. He has not submitted the plans and estimates and has no sufficient funds for reconstruction. Thus, the suit of the plaintiff was dismissed.

5. On appeal to the first appellate Court, it confirmed the finding of the learned lower Court that the suit accommodation is in dangerous condition along with the other finding that the decree for eviction cannot be granted unless the plaintiff complies with the requirements of Section 12(7) of the Act, which has not been proved, and, accordingly, dismissed the appeal. Hence, this second appeal.

6. This appeal has been admitted on thefollowing substantial question of law:--

'Whether, having reached the finding tothe effect that the house is in a dilapidatedcondition, the plaintiff is not entitled to adecree under Section 12(l)(g) of the M.P. Accommodation Contract Act, 1961?'

7. The learned counsel for the appellant has submitted that the findings about the house being in dangerous and dilapidated condition and very unsafe for human habitation, arrived at by the trial Court, have been confirmed by the first appellate Court and, therefore, the plaintiff is entitled for a decree -under Section 12(l)(g) of the Act.

8. Learned counsel for the respondent, on the other hand, relied on Mattulal v. Radhelal, AIR 1974 SC 1596, and submitted that the findings of fact arrived at by the two Courts below, cannot be disturbed at the second appellate stage.

9. The learned counsel for the appellant gave up all other grounds during his arguments, i.e., arrears of rent, plaintiffs bona fide requirements, rebuilding of house under Sections 12(l)(a), (e) and (h) of the Act and laidstress only on ground under Section 12(l)(g) of the said Act.

10. Sections 12(l)(g) and 12(7) read as follows:

'12. .....

(1).....

(g) that the accommdation has become unsafe, or unfit for human habitation and is required bona fide by the landlord for carrying out repairs which cannot be carried out without the accommodation being vacated;'

XXX

'(7) No order for the eviction of a tenant shall be made on the ground specified in Clause (h) of Sub-section (1), unless the Court is satisfied that the proposed reconstruction will not radically alter the purpose for which the accommodation was let or that radical alternation is in the public interest, and that the plans and

estimates of such reconstruction have been properly prepared and that necessary funds for the purposes are available with the landlord.'

11. The trial Court has framed Issue No. 5(a) on this point and the plaintiff has examined P.W. 1 B. B. Mohe, who has proved the certificate (Ex. P1), whereby, on inspection, it has been certified that the outer walls of the building have cracked and have gone out of plumb. They may collapse at any time. The bailies and rafters of roof have become rotten and are not fit for taking roof load. P.W. 2 Shiv Prasad Tiwari, while proving Ex. P2 plans arid estimate, has also stated that the rcfters of the house are weak and unfit for taking load. P.W. 3 Dinesh Kumar has also stated on this point. No effective cross-examination has been made by the defendant on this point and the trial Court has come to a conclusion in answering this issue 'Whether the disputed house is in dangerous condition' in the affirmative.

12. The trial Court has held that since the condition of the house is not relevant for purposes of granting relief under Section 12(l)(h) of the Act, and, therefore despite an affirmative finding about the condition of the house, the plaintiff cannot be given the benefit of the same.

13. The learned lower appellate Court, in para 10 of its judgment, has held that a decree for eviction cannot be granted on the ground that the house is in a dangerous condition, unless the plaintiff has pleaded and proved the requirements of Section 12(7) of the Act. Thus, the contention of the learned counsel for the appellant appears to be correct that there is a concurrent finding of fact on the point that the house is in a dangerous and dilapidated condition and is unsafe for human habitation.

14. Learned counsel for the respondent has submitted that in spite of pleadings, since two Courts have not found it sufficient for granting a decree for eviction, the same cannot be disturbed by the second appellate Court. I agree with the law laid down in the case of Mattulal v. Radhelal, AIR 1974 SC 1596; referred to above. In that case, the finding of fact was disturbed by the High Court on appreciation of evidence and came to a different conclusion after appreciation of evidence. The observations of the High Court were accepted to be correct and it was held by their Lordships of the Supreme Court that a finding of fact arrived at by the first

appellate Court was supported by other grounds and, therefore, it was not proper for the High Court to disturb the same. It is not acase here. The two Courts below have come to a definite finding that the house is in a dangerous and dilapidated condition.

15. Now, therefore, it has to be seen as to whether the requirements of Section 12(7) of the Act, have been complied with or whether a decree cannot be granted unless the said requirements are complied with.

From the plain reading of Section 12(7) of the Act, which has been reproduced in para 10 of this judgment, it is clear that those conditions have been laid down for eviction under Section 12(l)(h) of the Act and not for eviction. under Section 12(l)(g) thereof. Thus, the learned first appellant Court has committed an error of law, and, therefore, it calls for interference by this Court. Plaintiff has pleaded in paras 5 and 6 of the plaint, that the house is unsafe and unfit for residence. P.W. 1 B. B. Mohe has also proved the fact that the walls havecracks, rafters are weak and the walls are also unfit to take the load of the roof. Under these circumstances, the house cannot be repaired unless it is vacated by the tenant.

16. While granting a decree under Section 12(l)(g) of the Act, it is incumbent for the Court to consider as to whether the defendant is willing to take back the house and reside in it after completion of repairs thereof and the plaintiff-landlord should be given a direction for starting the work of his repairs within a month from the date of vacation and put the tenant in possession within a month after the completion of repairs.

17. As a result, the appeal is allowed and the judgment and decree of the two Courts below are set aside. Instead, a decree for eviction is granted in favour of the plaintiff with condition that the learned trial Court shall ask the defendant as to whether he agrees to re-occupy the house after its repairs and that the trial Court shall give a date for the vacation of the house and direct the plaintiff-landlord to complete the repairs within a reasonable period as may be fixed by the trial Court and put the house in possession of the defendant within one month after repairs of the house. Under the facts and circumstances of the case, the parties are directed to bear their own costs. Counsel's fee Rs. 150/-, if certified.

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