

Sundersingh Vs. Rajaram and anr.

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Court : Madhya Pradesh

Decided On : Jun-19-1990

Reported in : AIR1991MP59

Judge : S.K. Dubey, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 12(1); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100 - Order 6, Rule 13 - Order 14, Rule 1 - Order 41, Rule 23

Appeal No. : S.A. No. 178/1985

Appellant : Sundersingh

Respondent : Rajaram and anr.

Advocate for Def. : K.K. Lahoti and ;N.K. Jain, Advs.

Advocate for Pet/Ap. : R.A. Raman, Adv.

Disposition : Appeal dismissed

Judgement :

S.K. Dubey, J.

1. The appellant/defendant/tenant has preferred this appeal against the judgment and decree of eviction passed under Section 12(1)(e) of the M. P. Accommodation

Control Act, 1961 (for short, the 'Act') in relation to residential suit accommodation.

2. The appeal was admitted by this Court on 27-2-1986 on the following substantial question of law:--

'Whether lower appellate Court erred in confirming the decree for eviction on the ground mentioned in Section 12(1)(e) of the M. P. Accommodation Control Act, in the absence of pleadings and proof on the point that the plaintiff has no other reasonably suitable residential accommodation for his occupation within the Municipal limits of Vidisha?'

Though the appellant lost in two Courts, Shri R.A. Raman, learned counsel for the appellant, stressed that for seeking a decree of eviction and invoking the jurisdiction of the Court to grant a decree under Section 12(1)(e) of the Act, one out of the two requirements of law, that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned, was not pleaded by the plaintiff, nor any issue was framed on that, this requirement of law is condition precedent which has not only to be pleaded or averred in the plaint, but it has to be proved which having not been done, the decree passed by the Courts below, of eviction deserves to be set aside. Learned counsel placed reliance on Onkar Nath v. Ved Vyas, AIR 1980 SC 1213; Abdul Rahman v. Muhammad Ismail and others, (1979) 2 MPRCJ Note 2; Abdul Hamid v. Nur Mohammad, AIR 1976 Delhi 328 and a Full Bench decision of the Punjab and Haryana High Court reported in AIR 1977 Punj 158 : (1977) 1 Rent Control Journal 332; Bank Ram v. Smt. Saraswati Devi. An unreported decision of this Court in S. A. No. 171/1982, Brijballabh and 3 others v. Bitsharan decided on 20-2-1987, was also pressed into service. It was also submitted by Shri Raman that the plaintiff/ respondent has filed on 12-4-1988 an application under G.S.R. 17 read with Section 107, C.P.C., for amendment in the plaint to incorporate the said requirement of law and, as such, the matter deserves to be remitted for allowing an opportunity to the parties to amend their pleadings and to record evidence thereon. No written reply to this application was filed by the appellant.

3. After hearing Sarvshri N.K. Jain and K.K. Lahoti, learned counsel for the respondents and going through the record, I am of the opinion that in the facts and

circumstances of the case, the appeal has no merit and deserves to be dismissed.

4. It is true that for seeking eviction from residential accommodation under Section 12(1)(e) of the Act, a landlord is required to plead and prove that the suit accommodation is needed bona fide by him for his occupation as residence or for the residence of any member of his family, if he is owner thereof, or for any person for whose benefit the accommodation is held. Besides this, the other requirement which the landlord has to plead and prove is that he has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. In para 7 of the plaint, which contains pleadings the landlord averred that in his family there are 18 members. Out of them, three sons of the plaintiff No. 1 and one daughter-in-law are residing in one room of the suit house after raising a partition in the said room, as two rooms which form the suit accommodation are in occupation of the appellant/tenant. The plaintiffs genuinely desire to stay at Vidisha, but because of inadequacy of the accommodation, neither the plaintiffs nor the family members are in a position to stay there; they are, thus, suffering a great inconvenience for want of accommodation. The plaintiffs' children also want to get education in Vidisha, hence, the suit accommodation is bona fide required. The defendant in his written statement denied the allegations. The plaintiff No. 2 examined himself and proved all the averments by making his statement on oath; in para 8 he stated that in Vidisha town the plaintiffs are not in occupation of any accommodation of their own except the suit accommodation. The plaintiff was not cross-examined nor his statement, as aforesaid, was challenged in any manner. The defendant examined himself as D.W. 1, and in cross-examination he admitted in para 13 that the plaintiffs have no other house or accommodation in Vidisha except the suit house.

5. The trial Court after appreciating the material on record, decreed the suit of the plaintiffs and held in para 19 of its judgment that the plaintiff's requirement for the suit accommodation is bona fide and they have no other reasonably suitable residential accommodation of their own in their occupation in Vidisha. Against this judgment and decree, an appeal was preferred by the defendant. Surprisingly enough, the ground raised before this Court was not taken in the appeal nor it was pressed during the course of arguments before the lower appellate Court. On the

other hand, an application for amendment in the written statement was filed in the lower appellate Court by the defendant that after partition between the plaintiffs, the suit accommodation is not required bona fide by the plaintiffs. On that, the lower appellate Court remitted the case and called for a finding on the amended pleading vide order dated 11-10-1984. The trial Court, on remand, recorded evidence of the parties and gave finding against the defendant. Again on hearing, the ground raised before this Court was not pressed before the lower appellate Court. The lower appellate Court confirmed the finding of the trial Court and decreed the suit for eviction. The respondents on 12-4-1988 filed an application (I.A. No. III/1988) under Order 6, Rule 17 read with Section 107, C.P.C., to add at the end of para 7 of the plaint the following:

'VADI KI IS AWASHYAKATA KI PURTI KE LIVE ANYA KOI VAIKALPIK STHAN VIDISHA NAGAR KI SEEMA MAIN UPLABDHA NAHIH HAI.'

This application was supported by an affidavit of plaintiff Rajaram. In this application no written reply was filed by the appellant.

6. It is true that under Order 6, Rule 2, C.P.C., it is essential for a party to plead the ingredients and facts in his pleadings on which he wants to rely in proof of which he may produce evidence. It cannot also be denied that in the absence of any evidence or averment in compliance with the two conditions under Clause (e) of Sub-section (1) of Section 12 of the Act, a landlord would not be entitled for a decree. But failure to aver that the landlord had no other reasonably suitable accommodation in the city or town concerned is not fatal in the present facts and circumstances of the case and on the evidence on record. On the evidence, as discussed above, in my opinion, it will not be an impediment for passing a decree of eviction. It is true that the evidence led on no issue on which the parties actually went to trial, should not be made the foundation for decision of another and different issue, which was not present in the minds of the parties and on which they had no opportunity of adducing evidence. But this rule has no application to a case where the parties go to trial with the knowledge that a particular question is in issue. Though there is no specific pleading or issue, the parties adduced evidence on the question in issue. The apex Court in a recent decision in Kali Prasad (dead

by L.Rs.) v. Bharat Coking Coal Ltd. (AIR 1982 SC 1580), relying on its earlier decision in Kundu Kesavan v. M.H. Philip (AIR 1964 SC 164), negated the plea that in the absence of a proper pleading, evidence should not be looked into, to hold that where the parties went to trial knowing fully well what they were required to prove and they had adduced evidence of their choice in support of their respective claims, and that evidence was considered by both Courts below, they could not be allowed to turn round and say that the evidence should not be looked into. Besides the learned counsel for the appellant could not show as to how the appellant was prejudiced in this case for want of pleading. On the other hand, there is a clear-cut admission of the plaintiff, which has proved the requirement of law.

7. In Mangilal v. Bashiram (1989 MPRCJ NOC 3, decided on 31-10-1983 in S.A. No.211/88) at Indore Bench and in S.R. Bros. v. Smt. Tarabai (1989 MPRCJ 9), decided on 18-8-1988 also at Indore Bench, this Court has taken the view that absence of specific pleading about non-existence of alternative accommodation in the city or town is not fatal, as the plaint allegations contained general averments relating to non-availability of alternative accommodation, the plaintiff cannot be non-suited due to inartistic drafting, and the Court is required to see substance of the matter and not jugglery of the pleadings. In case of S. Mitra v. P.V. Shrinivasaiyya, 1989 MPRCJ 114 this Court held that a landlord having not pleaded about non-availability of an alternative accommodation, but at the trial denied the availability of the alternative accommodation, besides the denial of availability of alternative accommodation, in the evidence same intended to be incorporated by way of amendment in the High Court and no reply being filed by the appellant, since it has already come in evidence that he has no other suitable alternative accommodation, the application for amendment was allowed and instead of remanding the case, the decree of eviction was confirmed.

8. The cases relied on by Shri Raman, thus, in the facts and circumstances of the case have no application. In the case of Onkar Nath v. Ved Vyas (AIR 1980 SC 1218), there were not merely discrepancies of pleadings, sufficient to make out a case of eviction, but total absence of proof of two vital requirements was apparent. The case of Smt. Suraj Bai v. Dr. S.L. Agrawal (1980 MPRCJ Note 71) is also not

applicable; in this case this Court held that in the absence of the pleadings, a landlord will not have a ground for eviction. The case of Abdul Hamid v. Nur Mohammad (AIR 1976 Delhi 328) has also no application to the present case. The un-reported decision in S.A. No. 171/1982 has also no application, as in that case certain subsequent events were brought on record, and the Court in view of the law laid down in Hasmatrai v. Raghunath (AIR 1981 SC 1711) remanded the case for allowing the parties to amend the pleadings on the basis of the subsequent events and to record evidence, and then to give a decision in accordance with law.

9. As to the application filed by the respondent for amendment of the pleadings, which was opposed orally and a prayer for remanding the case was made, it is allowed and the respondents are directed to incorporate the proposed amendment today in the plaint. Since the relevant evidence in relation to the said pleadings and the admission of the appellant are already on record, it is not necessary to remand the case of proving the second requirement of Section 12(1)(e) of the Act. As far as the bona fide requirement is concerned, the facts pleaded and proved clearly established the requirement of the landlord being bona fide, the finding about bona fide need for residence of the plaintiffs and their family members is not liable to be interfered in second appeal, the finding being concurrent finding of facts.

10. In the result, the appeal is dismissed without any order as to costs.

11. As the appeal is dismissed and the decree of eviction is confirmed, the appellant is granted six months' time to hand over the vacant possession of the suit house of the plaintiffs/landlords.

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