

Omprakash Vs. Ramcharan

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Court : Madhya Pradesh

Decided On : May-07-1977

Reported in : AIR1978MP52

Judge : Shiv Dayal, C.J. and ;U.N. Bhachawat, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 12, 12(1) and 12(6)

Appeal No. : Second Appeal No. 370 of 1976

Appellant : Omprakash

Respondent : Ramcharan

Advocate for Def. : A.R. Naokar, Adv.

Advocate for Pet/Ap. : H.B. Mangal, Adv.

Judgement :

Shiv Dayal, C.J.

1. This case has come up before us on reference by the learned single Judge on the question whether compensation is payable to the tenant under Sub-section (6) of Section 12 of the M. P. Accommodation Control Act, 1961, even when the decree for eviction is made not only on the ground contained in Section 12 (1) (f) but also on other grounds. He thought that conflicting views were expressed in

Dindayal v. Vimalchand (1973 MPLJ 465) : (AIR 1973 Madh Pra 299), and Nathuram v. Gyanchand (Civil Second Appeal No. 292 of 1975 decided on 20-12-1975) (Madh Pra).

2. In the plaintiff's suit for eviction on several grounds contained in Section 12 (1) of the M. P. Accommodation Control Act, 1961, (hereinafter called 'the Act'), the trial Court passed a decree for eviction under Cls. (a) and (f) of Section 12 (1) of the Act. The defendant appealed. The learned Addl. District Judge dismissed the appeal but made the following direction:--

'The executing Court, while executing the decree for eviction, shall enquire into what compensation is payable to the appellant as required under Section 12 (6) of the Act.'

By this last mentioned direction the plaintiff is aggrieved.

3. In this Second Appeal the plaintiff's contention is that since the decree for eviction has not been passed only on ground contained in Clause (f) of Section 12 (1), but also on other grounds, he is not liable to pay compensation under Section 12 (6) of the Act. When this Second Appeal was placed before the learned Single Judge, the abovesaid decisions were referred to him by the contesting parties.

4. Section 12 of the Act imposes restrictions on the right of the landlord in the matter of eviction of the tenant. Two further restrictions are imposed in case a decree for eviction is passed on the ground specified in Clause (f):--

(i) the landlord cannot obtain possession before the expiration of period of two months from the date of the decree;

(ii) if the accommodation is situate in the cities specified and under that sub-section the landlord is not entitled to obtain possession unless he pays to the tenant compensation as prescribed in that sub-section.

These further restrictions as enacted in Sub-section (6) are superimposed only on the decree for eviction under Clause (f), but not on a decree on any other grounds specified in other clauses of Sub-section (1). Therefore, where a decree is passed

on any ground specified in any other clause of Sub-section (1) of Section 12, the landlord cannot be prevented from obtaining possession by imposing restrictions contained in Sub-section (6). That being the clear and undoubted position it cannot be said that if the landlord has obtained a decree also on any ground other than that specified in Clause (f), the decree obtained on any other ground has also become the subject of the restrictions contained in Sub-section (6). The landlord who has obtained a decree on the grounds specified in any other Clauses cannot be placed in a disadvantageous position because of the fact that the decree is also on the ground specified in Clause (f). This will obviously be anomalous.

5. The decree for eviction is good and operative even on one of the grounds contained in Sub-section (1). Therefore, the restrictions imposed in Sub-section (6) cannot come in the way of the landlord who has obtained possession on any ground other than that specified in Clause (f). In the ultimate analysis it must be held that Sub-section (6) comes into play only when the decree for eviction is passed on a sole ground specified in Clause (f). However, if the decree for eviction is made also on any ground other than that specified in Clause (f), the restrictions imposed in Sub-section (6) do not apply although the decree is also under Clause (f).

6. This question arose in Second Appeal No. 127 of 1966 (Ramcharan v. Nehneram) which was decided on 7-11-1968 (Madh Pra), by one. of us (Shiv Dayal J.) there it was said as follows:--

'6. Adverting now to the plaintiff's cross-objections the question is whether compensation is payable to the tenant under Sub-section (6) of Section 12 even when the decree for eviction is made not only on a ground specified under Section 12 (1) (f), but also on a ground specified in another clause of Section 12 (1). The respondent's contention is that since the decree for eviction passed in her favour is also under Section 12 (1) (b) she should not be called upon to pay compensation just because her ground under Section 12 (1) (f) has also been accepted. In my opinion, the contention is right. It is quite clear from the meaning and intention of the provisions contained in Section 12 (1) (f) read with Section 12 (6) that the latter comes into play only when a decree for eviction is passed exclusively on the

grounds contained in Section 12 (1) (f). Where a decree for eviction is passed on another ground as well, it will be anomalous to say that the landlord will have to pay compensation just because the judgment in his favour is also on the ground contained in Section 12 (1) (f). A decree for ejection is good and operative even on one of the grounds specified in Section 12 (1). The landlord cannot be penalised when he succeeds on another ground besides that specified in Section 12 (1) (f). The compensation is allowed under Section 12 (6) just because the tenant has to vacate for no fault of his, but simply because the landlord requires the premises for his own business.

7. It is clear beyond doubt that where a decree for ejection of the tenant is passed on any ground other than the one specified in Clause (f), the tenant is not entitled to compensation notwithstanding that a decree for ejection is also based under Section 12 (1) (f).'

7. In *Dindyal v. Vimalchand* (1973 MP LJ 465) : (AIR 1973 Madh Pra 299) referred to by the referring Judge, the same view was taken.

8. We have perused the other decision which has been mentioned in the order of reference. In that case no contrary decision was rendered. That was an appeal which was heard by a learned Single Judge. It was a tenant's appeal from a decree which was on two grounds, viz.:-

(i) sub-letting under Clause (b), and (ii) bona fide requirement under Clause (f). The learned Judge dismissed the appeal summarily without notice to the other party. However, the operative part of that order reads as follows :-

'This appeal is dismissed summarily without notice to the other party. It is, however, ordered that the execution court while executing the decree for eviction shall enquire into what compensation is payable to the appellants under Section 12 (6) of the Act and shall pass a suitable order for payment of the same after hearing both the parties.'

When the appeal was dismissed summarily without notice to the landlord, no order could be made against him. Therefore, the latter direction made in the operative

part of the judgment reproduced above must be read as obiter dictum. Moreover, it cannot be read as a precedent inasmuch as the point was neither considered nor decided.

9. Our answer to the question referred to us is:

'When a decree for eviction is passed on a ground specified in Clause (f) of Sub-section (1) of Section 12 and also on a ground specified in another clause of Sub-section (1) of Section 12, the restrictions contained in Sub-section (6) of Section 12 do not apply and the landlord is entitled to obtain possession under the other ground as if the decree on the ground specified in Clause (f) was not passed.'

10. The learned single Judge has referred the case to us for hearing of the appeal on merits. However, in our opinion, the reference falls within the purview of Rule 9 (2) (b) of Chapter I of Part I of the High Court Rules. That being so Clause (5) of Rule 9 comes into play so that a stated question or questions on which the decision requires reconsideration had to be stated. We have answered that question. The case shall now go back to the learned single Judge for deciding the appeal in accordance with the above said Clause (5) of Rule 9.

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