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Court : Madhya Pradesh

Decided On : May-11-1994

Reported in : AIR1995MP119

Judge : Shacheendra Dwivedi, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 12

Appeal No. : Miscellaneous Petition No. 938 of 1986

Appellant : Bafati

Respondent : Ram Gopal and ors.

Advocate for Def. : A.M. Naik, Adv.

Advocate for Pet/Ap. : K.K. Lahoti, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Shacheendra Dwivedi, J.

1. The present petition has been preferred under Article 227 of the Constitution of India. A brief narration of facts is necessary before dealing with the points of controversy.

2. The respondent No. 1 had filed a suit for the eviction of the petitioner from the suit premises on the grounds of Section 12(1)(c)(f)(k)(o) of the M.P. Accommodation Control Act, 1961. The evidence was recorded in the suit, but the suit was, later on, compromised on 22-12-1972. A decree was drawn, in accordance with the terms of compromise.

3. Under the Compromise decree, the petitioner was required to deliver possession of a specified portion out of the suit premises by 31-12-1972 and the remaining portion was to be vacated within a period of five years from 1st of January, 1973.

4. Acting upon the terms of the compromise decree, the petitioner had vacated the specified portion of the suit accommodation before 31-12-1972. However, the possession of the remaining accommodation remained with the petitioner, which was to be vacated after a period, of five years. But after the expiry of the period of five years, since the petitioner did not vacate the remaining portion of the suit premises, the execution was filed against him by respondent No. 1.

5. The petitioner contested the execution on the ground that the compromise decree had not shown the existence of any ground under Section 12(1) of the M.P. Accommodation Control Act (hereinafter called the 'Act') for the eviction of the petitioner and as such the execution proceedings could not proceed and the decree was not executable. The contention advanced by the petitioner did not find favour of the executing Court. The petitioner preferred a revision against the order of the executing Court, but that too was dismissed.

6. The petitioner's counsel Shri K. K. Lahoti, has very forcefully contended that the decree passed on compromise is unexecutable as it is in contravention of Section 12 of the Act. The Court below did not find that any ground under Section 12(1) of the Act had existed, and therefore, no jurisdiction was vested in the trial Court for passing a valid decree of eviction on compromise. It was also contended by the petitioner's counsel, though feebly, that the compromise created a fresh tenancy, and the petitioner in execution of the compromise decree could not be evicted.

7. Refusing the allegations, the respondent's counsel Shri A.M. Naik, very confidently contended that the two Courts below have rightly rejected the objection raised by the petitioner. Much stress was laid by the respondents's counsel on the point that the decree was executable as the Courts below had examined all the relevant facts and circumstances and had taken into account also the pleadings of the parties. The decree was neither in violation nor in contradiction to the provision of the Act. The compromise decree also could not be alleged to have the effect of creating a fresh tenancy as that was not the intention of the parties, and therefore, the dismissal of the petition was prayed by the respondents.

8. This petition presents a highly tunous nature of litigation between the landlord and the tenant. The suit for eviction was filed by respondent No. 1 against the petitioner in the year 1971 and a decree of compromise was passed on 22-12-1972. The petitioner under the decree was required to deliver the possession of the remaining portion of suit accommodation within five years from 1-1-1973. The execution was filed in the year 1978 by the respondent No. 1 against the petitioner and even after the lapse about 16 years, the respondent is waiting for the fortunate day when he gets the possession of the remaining part from the petitioner even after the petitioner had compromised the suit about 21 years back.

9. In, an eviction suit, when the parties arrive at compromise, the trial Court is required to see that the compromise is not in violation of the provisions of eviction law, and the trial court under the decree cannot grant a relief which may not be permissible, under the law, merely on the ground that tenant had agreed to such eviction. A decree of eviction shall not be passed solely on the basis of compromise unless the Court had examined the terms of compromise and was satisfied that the terms were in accordance with the provisions of law. If the eviction of a tenant was prohibited and no ground was raised by the plaintiff for his eviction on the grounds permissible under the law, the consent of the defendant would not provide jurisdiction to the Court to pass a decree of eviction in those circumstances.

10. The petitioner's counsel has relied upon the authority of K.K. Chari v. R.M. Seshadri AIR 1973 SC 1311. But the authority is of no avail to the petitioner in the

facts and circumstances of the present case. In the relied authority as well, it was observed by their Lordships of Supreme Court that:-

'26. The true position appears to be that an order of eviction based on consent of the parties is not necessarily void if the jurisdictional fact viz the existence of one or more of the conditions mentioned in S. 10 were shown to have existed when the Court made the order. Satisfaction of the Court, which is no doubt a pre-requisite for the order of eviction, need not be by the manifestation borne out by a judicial finding. If at some stage the Court was called upon to apply its mind to the question and there was sufficient material before it, before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on which the order of eviction as based.'

and it was further found that:-

'If the Court was satisfied that on the permissible grounds under the Eviction Law, the tenant could be evicted; there was no impediment in passing an executable decree'.

It was also observed by their Lordships of Supreme Court that:-

'27. It is no doubt true that before making an order for possession the Court is under a duty to satisfy itself as to the truth of the landlord's claim if there is a dispute between the landlord and tenant. But if the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the Court to act on that admission and make an order for possession in favour of the landlord without further enquiry.'

11. The petitioner's counsel has also relied on Tekchand v. Uddhav Kumar, 1984 Jab LJ 16, to contend that since the respondent had failed to prove a ground as mentioned in Section 12 of the Act the decree passed by the trial Court on consent was a nullity and could, therefore, not be executed. But the contention appears to be misconceived. If the landlord succeeds in proving the ground, on which the eviction of the tenant is sought, the compromise becomes irrelevant. For a compromise decree, it is essentially required that there must be an entitlement to

the landlord for seeking the eviction of the tenant. If the provisions of the eviction law do not provide any such ground which is agreed in the case or if there is prohibition for the eviction of the tenant under the law, the compromise will not confer jurisdiction on the Court to pass a decree, and if any decree is passed, in such circumstances, the decree would be a nullity. But the facts of the instant case are entirely different.

12. The respondent No. 1 had prima facie shown the grounds on which the eviction of the petitioner could be sought, and under the compromise, the petitioner had agreed to vacate the suit accommodation in two instalments. For the satisfaction of the Court, before passing a decree on compromise the requirements of the provisions of law are essentially to be considered. It is well settled that if the Court does not find the permissible ground for eviction disclosed in the pleadings and from other material on record, no consent or compromise will give jurisdiction to the Court to pass a valid decree for eviction.

13. The respondent's counsel in support of his contention that the decree of eviction was valid and executable, has relied upon the authority of *Nai Babu v. Ram Narain*, 1978 Jab LJ 252, Their Lordships of Apex Court in the authority has observed that:-

'It is true that a decree for eviction of a tenant cannot be passed solely on the basis of a compromise. The Court is to be satisfied whether a statutory ground for eviction has been pleaded which the tenant has admitted by the compromise. Thus dispensing with further proof on account of the compromise, the Court is to be satisfied about compliance with the statutory requirement on the totality of facts of a particular case bearing in mind the entire circumstances from the stage of pleadings up to the stage when the compromise is effected.'

Their Lordships had also considered the authority of *K. K. Chari (supra)* and had found that:-

'When a compromise decree is challenged as a nullity in the course of its execution the executing Court can examine relevant materials to find out whether statutory grounds for eviction existed in law. If the pleadings and other materials

on the record make out a prima facie case about the existence of statutory grounds for eviction a compromise decree cannot be held to be invalid and the executing Court will have to give effect to it.'

14. The intention of the parties plays an important role in such matters. After the delivery of a part of suit accommodation, the landlord had reduced the amount of mense profits, and that by itself does not create a fresh tenancy. The petitioner had himself acted upon the decree and had delivered the possession of the specified portion of the suit accommodation. It is only for the remaining part that the controversy was raised. The intention of the parties can well be gathered from the conduct of the petitioner himself, and in the circumstances, the decree has rightly been found by the two Courts below to be valid and executable and the objections raised by the petitioner have rightly been rejected.

15. For the foregoing discussion, I have found no substance in the petition. The petition is, therefore, dismissed with costs.