

Kashi Devi Vs. Dharamshala Ramchandra Phoolchand and ors.

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Court : Madhya Pradesh

Decided On : Nov-30-2001

Reported in : 2002(1)MPHT226; 2002(1)MPLJ339

Judge : S.P. Srivastava, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 2; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115

Appeal No. : Civil Revision No. 977/2001

Appellant : Kashi Devi

Respondent : Dharamshala Ramchandra Phoolchand and ors.

Advocate for Pet/Ap. : Vivek Khedkar, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

S.P. Srivastava, J.

1. Heard.

The plaintiff/applicant has approached this Court invoking its revisional jurisdiction envisaged under Section 115 of the Civil Procedure Code feeling aggrieved by the

order passed by the Trial Court whereby their application seeking an interim injunction staying the execution of the decree for ejectment of the premises in dispute passed against Dr. Maithlisharan in Suit No. 18-A/98 claiming that it was void and in-effectual in law as against them has been dismissed.

2. Plaintiff had filed the suit giving rise to this revision praying for a decree of prohibitory injunction restraining the decree-holders in the aforesaid suit from dispossessing the present plaintiffs from the shop in suit. During the pendency of the suit they filed an application seeking an ad interim injunction in the same terms which application was dismissed. This order has been confirmed by the First Appellate Court vide its impugned judgment and order.

3. The present respondent Nos. 1, 2 and 3 had filed a suit for the eviction of the present respondent No. 4 from the shop in question and recovery of arrears of rent and damages for the use and occupation.

4. This suit had been filed in the year 1991 which had been decreed on 21-12-98. This decree was affirmed in appeal. The suit giving rise to the present revision had been filed in the year 2000.

5. From the materials brought on record it is apparent that the shop in question had been utilised by Dr. Maithlisharan who was a qualified Vaidya. He was running his vaidiki business in the shop in dispute for about 35 years in the name and style of Amrit Aushdhalaya.

6. From the perusal of the statement of Sitaramsharam, the present applicant No. 2 who is the brother of Maithlisharan and had been examined in the earlier suit which had been filed for the eviction of Dr. Maithlisharan, it is apparent that he had never raised any objection in the earlier suit claiming any tenancy rights in the premises in question where the business was being run by Dr. Maithlisharan. He had also stated that Kishorisharan, the other brother of Dr. Maithlisharan was employed in the Co-operative Bank. Sitaramsharan himself had been employed in the Co-operative Bank on the post of Inspector. It was admitted by him that all the three brothers were residing in different houses separately.

7. The provision contained in Section 2 (i) of the M.P Accommodation Control Act, 1961 defines a tenant as follows :--

'tenant' means a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract expressed or implied, would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made.'

8. In the present case the Court below has come to the conclusion that taking into consideration the nature of the business being done in the shop in question and other relevant facts, Dr. Maithlisharan alone was the tenant thereof in his personal capacity. The plaintiffs had not been able to prove even prima facie that they had ever received any monetary benefit from the earnings of the shop in dispute or they had ever contributed any amount towards the payment of rent or they had ever been in actual possession of the shop in dispute. It appears to be a case where the other tenants-in-common had relinquished and surrendered their co-tenancy rights and ceased to have any concern with the premises in question and the business being run by Dr. Maithlisharan there.

9. It may be observed that implied surrender does not depend on the intention of parties like express surrender. It has to be implied from conduct of the parties. Where none of the heirs who were not made parties to eviction suit filed after the death of original tenant had come up before the Court to assert their tenancy rights, their names were also not categorically stated by the heirs made party to suit and further none of them had paid any rent and it was the case of the heir who was party to the suit that he alone was the tenant of the property, it was a clear case of implied surrender of tenancy by the heirs who were not made parties to the suit.

10. It may also be noticed that if the landlord took only one of the heirs of the deceased tenant as his tenant and it was accepted by all the parties then the transaction could be termed as implied surrender by the other tenants even if there was no physical taking over or giving of possession by the landlord.

11. From the findings returned against the plaintiffs by the Court below, it is apparent that neither prima facie case could be established by the applicants nor the balance of convenience had been found to lie in their favour.

12. Taking into consideration the facts and circumstances as brought on record, no justifiable ground has been made out for any interference while exercising the revisional jurisdiction envisaged under Section 115 of the Civil Procedure Code, 1908.

13. This revision in the circumstances is dismissed.

14. It may however be observed that the views expressed and the observations made hereinabove or by the Court below will be taken as only with reference to the stage of the proceedings and will not in any manner imply or mean reflections or comments on the merits of the case which shall be decided by the Trial Court after considering the evidence and material brought on record by the parties in support of their respective claims.

15. Civil Revision dismissed.