

Jumma Vs. Birja

Jumma Vs. Birja

SooperKanoon Citation : sooperkanoon.com/500479

Court : Madhya Pradesh

Decided On : Jul-10-1987

Reported in : AIR1988MP276; 1987MPLJ710

Judge : T.N. Singh, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 23A and 23D(3)

Appeal No. : Civil Revn. No. 70 of 1987

Appellant : Jumma

Respondent : Birja

Disposition : Appeal partly allowed

Judgement :

ORDER

T.N. Singh, J.

1. This application under Section 23A of the Madhya Pradesh Accommodation Control Act, 1961, for short, the 'Act', has raised two important questions of law. Indeed being conscious of this position and conscious also of the fact that decision to be rendered in this matter was likely to affect both pending and future applications of the same nature, I heard counsel at length on different dates. I

commend the resourceful assistance which I received from them in this matter which I propose to dispose of finally today, here and now.

2. The questions formulated are as follows : --

1. Whether Section 23A, in terms, contemplates that relief thereunder can be available only in respect of an accommodation which, on the date of the application, is in occupation of a 'tenant' and the Rent Controlling Authority (for short, the 'Authority') shall have no jurisdiction to try and dispose of the application when the applicant fails to establish subsisting tenancy of the non-applicant in respect of the said premises?

2. When a person sued under Section 23A is granted 'leave' by the Authority to defend landlord's application for his eviction thereunder and he has filed written statement challenging title in the concerned premises of the applicant/landlord, what procedure the Authority is required to adopt in dealing with the pending litigation?

3. Before proceeding to decide the questions set out above, it is necessary to state first few admitted facts of the case. The instant petitioner on being granted leave by the Authority to defend the application of the non-petitioner made under Section 23A filed written statement denying the fact that he was ever in occupation of the suit premises as a tenant under anybody and he set up his independent title in the suit property. Indeed, in the application itself, the non-petitioner stated the fact that the petitioner was a tenant not under him, but under his predecessor-in-interest, namely, Lalaram from whom he had purchased the suit premises. He also adduced evidence to prove his case set out in the application, examining himself and the said Lalaram and other witnesses. The admitted position on facts is also that Lalaram deposed that although he had executed sale deed in respect of the suit premises in favour of the non-petitioner, the property was not of his sole ownership but ancestral property and that his other co-sharers did not join him as vendors. What also appears on evidence is that the tenancy of the petitioner under Lalaram, set up in his application by the non-petitioner, could not be satisfactorily proved. No rent receipt executed by Lalaram in favour of the petitioner could be proved though Lalaram claimed that the petitioner had occupied the suit premises

as his tenant before the alienation made in favour of the non-petitioner. However, the further fact is also that other witnesses examined by the non-petitioner deposed that Lalaram had never been in possession of the suit premises and they had all along been seeing the petitioner occupying the premises. The clear picture which emerges at this stage on evidence is that the petitioner raised a serious dispute not only to non-petitioner's title to the suit premises, but also to his claim that the petitioner was 'tenant' before his purchase, under Lalaram, of the suit premises.

4. Now, I proceed to examine the law to decide the questions aforesaid. For that purpose, I propose to extract the relevant portion of Section 23-A :

'23-A. Special provision for eviction of tenant on ground of bona fide requirement-- Notwithstanding anything contained in any other law for the time being in force or contract to the contrary, a landlord may submit an application..... to the RentControlling Authority on one or more of the following grounds for an order directing the tenant to put the landlord in possession of the accommodation, namely : --

(a) that the accommodation let for residential purposes is required 'bona fide' by the landlord for occupation as residence for himself.....

(b) that the accommodation let for non-residential purpose of continuing or starting his business.....

Provided that where a person who is a landlord has acquired any accommodation of any interest therein by transfer, no application for eviction of tenant of such accommodation shall be maintainable at the instance of such person unless a period of one year has elapsed from the date of such acquisition.'

The expressions which have signal relevance for deciding the questions are indeed 'landlord', 'tenant' and 'accommodation let', though the importance of the clause 'to put the landlord in possession of the accommodation' and the import and purport of the Proviso has to be equally emphasized. The terms 'landlord' and 'tenant' are defined respectively in Clauses (b) and (i) of Section 2 of the Act and I

propose to quote the said provisions.

'(b) 'landlord' means a person who for the time being is receiving or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the accommodation were let to a tenant and includes every person not being a tenant who from time to time derives title under a landlord;'

'(i) 'tenant' means a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract express 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.'

5. In the above definition clauses, it is necessary merely to indicate in the context of the instant lis that emphasis is on payment of 'rent' by the 'tenant' for the premises, namely, 'accommodation' occupied by him. Indeed, this aspect has been examined extensively in *Pacchobai Rathor*, 1987 MPRCJ 23 by this Court to take the view that the Act (like other Rent Acts enacted in other States) protects existing possession of a tenant and the Legislature requires the tenant to pay rent to stay in the house in his occupation till he continues to pay rent. When any person claims to be a 'landlord' under derivative title because he becomes, in virtue thereof, 'entitled to receive rent', it is still necessary that the person, from whom he is entitled to receive rent, has been occupying the premises as a 'tenant' and if he is not a 'tenant', even then, he must be such a person who derives his title under a 'landlord'. There is no doubt that when the Act was amended and the privileged class of landlords envisaged under Section 23-J came into existence for the first time in virtue of the provisions of the Madhya Pradesh Accommodation Control (Amendment) Ordinance, 1985, there was no dilution of the crucial requirement that the new class of landlords can claim recovery of possession of such premises which had already been let out by his predecessor-in-interest or by

him. This aspect of the law was examined in Madanlal's case 1987 MPRCJ 147 and in that case, holding of the D.B. decision of this Court in B. Johnson, 1985 MPRCJ 296 : (AIR 1986 Madh Pra 72) was extracted to stress this point. It was noted in Madanlal (supra) that B. Johnson (supra) claimed its pedigree to Winifred's case (AIR 1984 SC 458 : 1985 MPRCJ 107, on which account supreme primacy must attach to its holding derived therefrom that the Act conferred 'benefit only on those retired persons who were landlords while in service and availed the benefit after retirement in respect of a tenancy subsisting during his service.' I would only add that the expression of Section 23-A 'to put the landlord in possession of the accommodation' clearly envisages that an application under Section 23-A can be made in respect of such accommodation only possession of which, at any time, had been parted by any 'landlord' so that landlord or any subsequent landlord, deriving title from him, can stake a claim thereunder to recover possession of the said accommodation.

6. I have, therefore, no hesitation to hold that an application under Section 23-A would lie in respect only of a premises which had been tenanted and in respect of which there exists a subsisting tenancy. In other words, it would be required of the landlord/applicant to establish first that the accommodation in respect of which the application was filed was of such a nature as was contemplated under Section 23-A and an order from the Authority to put him in possession thereof after evicting therefrom any person occupying the same could be validly prayed. In Rambharose (1986) 1 MPWN 15 : 1986 MPRCJ (Note) 25 as also in Sunil Cloth Stores, 1986 MPRCJ 147 and Gyanibai 1987 MPLJ 113, the view taken consistently by this Court is that there is no presumption of law created even in favour of a landlord of the class envisaged under Section 23J as to his compliance of the requirement of Section 23-A and indeed in Madanlal, (1987 MPRCJ 147) (supra), it was clearly stated that the Authority was required to be satisfied by the applicant/landlord that he has a good case to go to trial under Section 23-A so as to shift the burden under Section 23-A(3) on the tenant to disprove the case under Section 23-A.

7. For all the foregoing reasons, I would answer the first question in the affirmative holding that the requirement of law for the landlord/applicant to establish that the suit premises was a tenanted premises at the time when the application was filed

is an important pre-requisite and for the Authority's jurisdiction to be invoked in rendering final decision on the application, it would be necessary for the landlord/applicant to satisfy first the said condition-precedent before the non-applicant is asked upon to adduce rebuttal evidence under Section 23-D(3) of the Act. When in the written statement 'subsisting tenancy' in respect of the accommodation sued for is denied the Authority must first decide that question, at the very outset.

8. To the second question, in view of the above holding, a short answer is warranted. Indeed, the question of entitlement to sue for eviction under Section 23-A, when based on the ground that the landlord making the application had become entitled to receive rent in respect thereof is not much different from the question of proof of 'title' of the applicant/landlord and he has to establish the same requirement of law. However, my attention is also drawn by Shri Ramji Sharma, petitioner's counsel to the decision in Devendra Singh, 1986 MPLJ 522 wherein the view taken was that when a question of title was raised in a case litigated under Section 23A, the jurisdiction of the Authority was barred indeed because only the Civil Court, in terms of Section 12(1)(o) of the Act itself was invested expressly by the Legislature to deal with such a case. Shri Katare, learned counsel appearing for non-petitioner has drawn my attention to the decision in Krishna Prakash Kannojiya, 1986 MPRCJ (Note) 34, but I do not read anything therein to take a contrary view or to hold that the view taken in the decisions referred hereinabove is in any way indented thereby in any manner. It was held in Krishna Prakash Kannojiya (supra) that 'mere denial' would not debar the jurisdiction of the Rent Controlling Authority but it was further held that the relationship of the landlord/applicant has to be proved by the landlord. In the D.B. decision in the case of Mirkhan, 1979 Jab LJ 126, cited by Shri Ramji Sharma, the view taken was that the landlord, who claimed derivative title and sued under Section 12(1)(a) of the Act, had to prove his title and denial of the derivative title by the tenant provided no ground for his eviction. Shri Katare has also relied on the decision of a learned single Judge in Shankar Sahai, 1971 Jab LJ 102 which was not under the Act, but under the Transfer of Property Act and I have no hesitation, therefore, to take the view that for construction of the several provisions of the special law (the 'Act') no assistance can at all be called from the said decision. Whatever that may be, it is

still necessary to say that the decision was on Section 109 of the T.P. Act and as such, even the issue litigated therein has no relevance to the instant lis. Indeed if I have to say anything more, I would add that the concept of attornment, to which is relevant the provision of Section 109, is not appropriately germane to a lis under the Rent Act generally. This view I had expressed in Ramjidas, AIR 1987 Madh Pra 78 reiterating what was held by me in the case of Mazid Mir, (1983) GLR NOC 29, and I stand by it even today.

9. For the reasons foregoing, I hold that after 'leave' is granted to a person sued under Section 23-A, and in his written statement he takes the plea -- (a) there was no subsisting tenancy as respects his occupation of suit accommodation; and/or (b) the applicant/landlord had no title to the suit premises, then it becomes the duty of the Authority to strike a preliminary issue to decide the question of the maintainability of the application and to render a decision thereon on the basis of pleadings as also on the basis of the evidence adduced by the landlord in support of his case. If the Authority does not do so and calls upon the defendant (assuming him to be a 'tenant' under the Act) to adduce rebuttal evidence in terms of Section 23-D(3), then, the procedure adopted would not stand the cavil of the judicial mandate inscribed in several decisions herein referred. The short reason to say so is to reiterate that the landlord/applicant must make out prima facie case under Section 23-A in all manners in relation to its different requirements before rebuttal evidence can be called under Section 23D(3).

9-A. The application under Section 23-A may fail as not maintainable for the reason that the title of the applicant/landlord was seriously disputed, by which the jurisdiction of the Authority to continue proceeding and decide the lis was ousted on the holding in Devendra Singh, (1986 MPLJ 522) (supra). Indeed, that should be the position even according to the provisions of S, 23 of the Provincial Small Cause Courts Act (for short, the S.C.C Act), read with Section 23D(2) of the Act. It is to be noted that the Legislature, in its wisdom, has made a special provision for expeditious trial of an application under Section 23A in a summary manner and it is for this reason that by Sub-section (2) of Section 23D, a special provision is made for procedure before the Authority to be followed as provided by S.C.C Act. Under Section 23(1) of the S.C.C. Act, it is provided that when a decision in the

case depends upon proof or disproof of a title to an immovable property, the Court (Small Causes Court) would return the plaint to be presented to the Court having jurisdiction to determine the title. The Authority must also, in similar cases, refuse to try and decide finally application made under Section 23-A, instead directing parties to Civil Court for taking decision thereat on the question of title.

10. In the instant case, the non-petitioner/landlord having closed his evidence and the stage having reached for the Authority to decide if the petitioner is to be called upon to produce rebuttal evidence in terms of Section 23D(3), it is incumbent upon the Authority to decide at this stage, whether the applicant/landlord (herein the non-petitioner) has made out the prima facie case under Section 23-A or whether a serious challenge to his title is involved in the lis, which question the Authority cannot decide. True it is that two issues in this connection are framed by the Authority and they are :

Issue No. 2 :-- Whether the applicant/landlord was owner of the suit premises;

Issue No. 3 :-- Whether there exists the relationship of landlord and tenant between the non-petitioner (applicant/landlord) and the instant petitioner.

11. What is necessary to be stated, therefore, is that the issues have not been correctly framed and as such, they are recast as follows, to be decided even now as preliminary issues in the pending proceeding :--

(a) Whether the landlord/applicant has established his prima facie case under Section 23A of the Act and by proving that there was an 'existing tenancy' in respect of the suit premises, from which eviction of the non-applicant could be ordered?

(b) Whether the title to the suit premises of the applicant/landlord was seriously disputed and as such, the application made under Section 23A being beyond the jurisdictional competence of the Authority, the plaint ought to be returned for filing in the appropriate Civil Court for proof of title and for eviction on the basis thereof?

12. I am now required to consider only if in these proceedings, final decision can be rendered by this Court on the issues aforesaid. I would reiterate what was held

in Madanlal, (1987 MPR CJ 147) (supra) that the jurisdiction of this Court to pass any order in revision under Section 23-A is not so wide as to interfere with facts except such facts as are jurisdictional facts. That being the position, no finding or decision at all having been recorded by the Authority on its jurisdictional competence as respects the two issues aforesaid, it is not possible for me to examine any facts which cannot, at this stage, be considered jurisdictional facts. Indeed, it is also to be stressed once again that it is the primary duty of the Authority to render a decision on its jurisdictional competence and indeed, it is required by the Statute to arrive at the finding as to whether it was necessary to call upon the tenant to adduce rebuttal evidence under Section 23-D(3) after determining the question of its jurisdictional competence in terms of Section 23-A or even under Section 23-D(2) read with Section 23 of the Small Cause Courts Act.

13. This petition is accordingly allowed in part. The Authority is directed first to render its decision on merits on the preliminary issues herein framed before proceeding further with the trial of the application which shall be disposed of in accordance with the decisions rendered on the preliminary issues. Indeed, if the issues are decided against the land lord/applicant, there would be the end of the matter, otherwise, it shall be competent for the Authority to continue with the trial of the case and to call upon the tenant to produce rebuttal evidence.

14. Because evidence with respect of the preliminary issues herein framed is already on record, a decision in respect thereof shall be rendered within a week, if possible, from the date of appearance of counsel before the Authority, Counsel agree to appear before the Authority on 15th July, 1987. There shall be no order as to costs in this proceeding.