

Shivnarayan Vs. Narendra Kumar and ors.

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Court : Madhya Pradesh

Decided On : Mar-04-2004

Reported in : 2004(2)MPHT527; 2004(2)MPLJ344

Judge : S.K. Seth, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 12(1); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100

Appeal No. : Second Appeal No. 646/2003

Appellant : Shivnarayan

Respondent : Narendra Kumar and ors.

Advocate for Pet/Ap. : M.K. Jain, Adv.

Disposition : Appeal dismissed

Judgement :

S.K. Seth, J.

1. This Second Appeal by the tenant is directed against judgment and decree dated 19-11-2003 passed by the IInd Additional District Judge, Ujjain in Civil Suit No. 20/2003. By the impugned judgment and decree appeal preferred by the present appellant was dismissed.

2. Respondent plaintiff filed a suit for eviction of appellant on the allegation that appellant is the tenant of the plaintiff and is residing in House No. 234 (old No. 134) Nayapura, Badnagar. The tenancy is monthly and appellant is paying Rs. 30/- per month as rent for the tenanted premises. The case of plaintiff was that appellant had constructed his own residential accommodation and is residing with his family members but to avoid delivery of vacant possession of the tenanted premises he has inducted his own brother as sub-tenant in the suit accommodation. Plaintiff, therefore, filed the suit for eviction on the ground under Section 12 (1) (i) of the M.P. Accommodation Control Act, 1961 (for short Act). Appellant although admitted that the residential house has been constructed but denied the eviction on the ground that the said house is in the name of his wife and the appellant is not living with his wife. With this allegation the appellant resisted suit. Parties lead their respective evidence and learned Trial Court after analysing the evidence found that the plaintiff has made out case for eviction, therefore, granted a decree under Section 12 (1) (i) of the Act. Being aggrieved by the decree appellant unsuccessfully preferred First Appeal that too was dismissed by the lower Appellate Court as mentioned here in above.

3. Shri M.K. Jain, learned Counsel appearing for appellant assailed the judgment of Trial Court as well as of lower Appellate Court and submitted that lower Appellate Court failed to appreciate the decision of this Court reported in 1986 MPLJ 530 (Sanchidanand Garg v. Govindlalji Maharaj Nathdwara). Shri Jain further submitted that reliance placed by the Courts below on the decision reported in 1998 (2) MPLJ 50 (Dudhnath v. Ashok Mahadev Sangewar) is bad in law inasmuch as without referring to the earlier decision reported in Sachidanand's case (supra), subsequent decision is per in curium and has to be ignored. In support of this contention, Shri Jain has relied on decision reported in 2000 (3) MPLJ 27 (Union of India v. Raju Construction Company).

4. After hearing learned Counsel at length and after going through the evidence available on record, I find no force in the contention urged by Shri Jain, learned Counsel for appellant.

5. The short question for consideration is whether respondents made out a ground for eviction under Clause (i) of Section 12 (1) of the Act. For ready reference Section 12 (1) (i) is reproduced here in below.

'Section 12 (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:

a.

b.

c.

d.

e.

f.

g.

h.

(i) that the tenant has, whether before or after the commencement of this Act, built, acquired vacant possession of, or, been allotted an accommodation suitable for his residence.'

Both the Courts below have found as a finding of fact that three storey residential accommodation has been constructed/acquired by appellant which although is in the name of his wife, but the appellant in fact is living together with his wife and other family members in the said residential accommodation. Both the Courts below found and held that Section 12 (1) (i) has been made out.

6. In Sachidanand Case (supra) learned Single Judge of this Court taking into note of the definition of 'tenant' held that the accommodation acquired in the name of wife can not be said to be the accommodation, built or acquired in the name of

tenant and on that ground the defendant's appeal was allowed and plaintiff was non-suited. Another Single Bench of this Court after taking into account Sachidanand's Case (supra) which incidently is also reported in 1982 MPLJ 129, has held that in case the accommodation is acquired by wife and the same is not available to the tenant husband for any bonafide reason then it can not be said or considered as accommodation available to the husband tenant. Coming to the said conclusion learned Single Judge placed reliance on the decision of Supreme Court in Premchand v. Shersingh reported in 1981 DRL 287 and dismissed tenant's second appeal. Since subsequent decision of this Court is based upon decision of the Supreme Court and has rightly distinguished earlier decision reported in 1986 MPLJ 530 or 1982 MPLJ 129, therefore, principles laid in 2000 (3) MPLJ 27 supra are inapplicable to the facts of the case in hand and I am bound by the decision reported in 1998 (2) MPLJ 50.

7. However application of this principle requires a great deal of caution. Before applying this principle one has to see where accommodation is available for husband tenant for use as residence as of right, then notwithstanding the fact that house was acquired by the wife or in her name, the other spouse if he is tenant has a right stay and use the premises then only such a acquisition shall be deemed acquisition of the tenant husband for the purpose of consideration on the ground of eviction. The intention of the legislature in divesting the tenant of his right is based upon the fact that the tenant has legally acquired another residence as of right. The correct position must be that if a wife or husband acquires a property and the other spouse if he/she is a tenant, has as a legal right by virtue of such acquisition to go and stay there, then only such a acquisition of premises attracts the provisions of Clause (i) of Section 12(1), otherwise the whole purposes would be defeated. In other words if for all practical and in real sense the tenant acquired, build another house then his need for the old tenanted premises goes and tenant loses his right to retain his tenanted premises.

8. As pointed out herein above this case there are concurrent findings of fact have been recorded by the Trial Court as well as by the lower Appellate Court that appellant tenant has acquired accommodation suitable for his residence and in fact is residing in the said accommodation together his wife and other family

members, appellant/tenant is liable to be evicted on the ground of Section 12 (1) (i) of the Act.

9. The findings recorded by the Courts below are based upon proper appreciation of evidence on record. No material evidence has been overlooked nor any inadmissible evidence has been considered to come to such findings and as such there is no scope for interference in such findings of fact. See *Ishwar Das Jain v. Sohanlat* (AIR 2000 SC 426). It is not a case of misreading of evidence leading to miscarriage of justice. Neither a case of no evidence and thus, the findings are not perverse to invite the ratio of *Rohini Prasad v. Kastur Chand* (2000 (4) M.P.H.T 5 (SC) = AIR 2000 SC 1283), hence such findings being unassailable are confirmed in this second appeal.

10. In view of aforesaid no interference can be made with the findings of fact recorded by the Courts below. There is no merit and substance in the appeal; therefore the same is accordingly dismissed summarily.

11. Learned Counsel for the appellant submitted that appellant shall give an undertaking before Trial Court that he will deliver vacant possession of the suit accommodation to the landlord/plaintiff within a period of three months from the date of filing of undertaking. Such undertaking shall be filed within fifteen days. In case of failure to deliver the vacant possession and payment of upto date rent, the plaintiff respondent shall be at liberty to get the decree executed in accordance with law.

12. With the aforesaid discussion appeal stands dismissed.