

Harnarayan Vs. Tulsiram and ors.

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Court : Madhya Pradesh

Decided On : Jul-02-1971

Reported in : AIR1971MP255; 1971MPLJ762

Judge : Bishambhar Dayal, C.J. and ;S.P. Bhargava, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 2(1)

Appeal No. : Letters Patent Appeal No. 5 of 1968

Appellant : Harnarayan

Respondent : Tulsiram and ors.

Advocate for Def. : T.C. Naik, Adv.

Advocate for Pet/Ap. : A.R. Choubey, Adv.

Disposition : Appeal dismissed

Judgement :

Bishambhar Dayal, C. J.

1. This is a Letters Patent Appeal by Harnarayan. He had taken a cinema building on sub-lease on 9-4-1958 at Rs. 500/- per month. However, the building was requisitioned by the Collector on 11-6-1960 and was later released in favour of the appellant when the landlord filed a suit on 5-5-1961 for his ejectment. On 30-12-

1961 the M. P. Accommodation Control Act, 1961 came into force. The suit however, continued to be contested and ultimately on 28-9-1964 there was a compromise between the parties and it was agreed that the appellant would remain in possession of the building for a year and would thereafter vacate it; and if he does not vacate, the decree would be executed for his ejectment. The relevant words of the compromise may be quoted:

'Defendant No. 5 shall be a tenant at the monthly rate of Rs. 500/- for a year. The plaintiffs shall be entitled to execute their decree for possession of the building and machinery with articles attached in the aforesaid list at the close of one year, i.e., 27-9-1965.'

This compromise was accepted by the Court and on 6-10-1964 a decree was passed in terms of the compromise. The appellant did not vacate the building as agreed and on 10-6-1966 the landlord filed an execution application for ejectment of the tenant. The appellant objected to his ejectment on the ground that the compromise created a fresh lease in his favour and his tenancy was protected by the M.P. Accommodation Control Act, 1961 and therefore he could not be ejected unless one of the conditions mentioned in the Act had been fulfilled. The objection was rejected by the executing court, holding that it could not go behind the decree, and therefore it proceeded with the execution. A Miscellaneous First Appeal was filed in this Court and a learned Single Judge dismissed the same. Hence this Letters Patent Appeal.

2. After hearing the learned counsel we are of opinion that the decision of the Court below is correct. We need not go into all the questions that have been raised by learned counsel for the appellant. Suffice it to say that under Section 2 (i) of the Madhya Pradesh Accommodation Control Act, 1961 the word 'tenant' has been defined and at the end of the definition there is an exception added which is as follows:--

'But shall not include any person against whom any order or decree for eviction has been made.' The position therefore is that even if the appellant had become a tenant by virtue of the compromise dated 28-9-1964, yet on 6-10-1964 a decree for his ejectment had been passed. He therefore ceased to be a tenant within the

meaning of the Act and is thus not entitled to any protection thereunder.

3. Learned counsel for the appellant contended that this exception would not apply to him because he had become a tenant on 28-9-1964 and this exception applied only to a person who was not a tenant against whom a decree had been passed. We are unable to agree with this contention. The exception must necessarily be with regard to persons who were tenants previously but against whom a decree for ejectment had been passed. The words 'any decree' in the section are wide enough to cover this compromise decree.

4. We are therefore satisfied that after the passing of this decree the appellant cannot take advantage of the provisions of the M.P. Accommodation Control Act, 1961. Consequently this appeal is dismissed with costs. Counsel's fee Rs. 50/- or according to certificate whichever be less.

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