

State of Madhya Pradesh Vs. Pradip Kumar and ors.

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Court : Madhya Pradesh

Decided On : Jan-09-1991

Reported in : 1992(0)MPLJ254

Judge : T.N. Singh, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 2 and 12(1);
Transfer of Property Act - Sections 105, 106 and 111

Appeal No. : F.A. No. 44 of 1982

Appellant : State of Madhya Pradesh

Respondent : Pradip Kumar and ors.

Advocate for Def. : P.L. Dubey and ;K.K. Lahoti, Advs.

Advocate for Pet/Ap. : M.G. Khedkar, Addl. Government Adv.

Disposition : Appeal allowed

Judgement :

T.N. Singh, J.

1. This is an appeal by the defendant against whom decree has been passed for eviction from the suit-house and also for mesne profits. There is cross-objection also of the plaintiffs in regard to costs not awarded by the trial Court.

2. Plaintiffs, twosome, brothers, claimed that they had purchased the suit property from defendant No. 3, Gyanchand Palta, by registered sale-deed dated 22-4-1975. Defendant No. 2, Shivpratap Singh, was impleaded because in the sale-deed it was stated that tenants were in possession of the house and they had been inducted by the mortgagee who was none else than late Raja Brijendra Singh predecessor-in-interest of Shivpratap Singh. It is not disputed that the suit-house is situating in Guna town and it is also not disputed that Madhya Pradesh Accommodation Control Act, 1961, for short, the Act, is in force there. However, plaintiffs based their suit not on any of the statutory grounds contemplated under the Act, but on the ground that the lessor having ceased to have interest in the suit property on redemption of that, the lease of defendant No. 1 came to an end. Indeed, prior to institution of the suit, the plaintiffs served notice dated 27-5-1975 under Section 80, Civil Procedure Code on defendant No. 1, Ex.P/3, claiming that on 23-4-1975 the said Shivpratap Singh had executed a registered deed of redemption in favour of Gyanchand Palta and the owner had thereafter executed in their favour the registered sale-deed in virtue of which they became entitled to recovery of possession of the suit house from the lessees, namely, Collector, Guna and District Education Officer, Guna.

3. The suit was contested only by State, impleaded as defendant No. 1, while Shivpratap Singh, defendant No. 2, gave his evidence only to support plaintiffs' case without filing any written statement. Defendant No. 3, Gyanchand, did not contest the suit and was also not examined.

4. Although several pleas were raised in the written statement and accordingly a large number of issues, as many as 12, were struck by the trial Court, it is rightly contended by the Additional Government Advocate, Shri Khedkar, that the trial Court erred in law in deciding issue No. 6 in plaintiffs' favour by holding that the suit was maintainable overlooking the provisions of the Act. In that contention, I have found much merit for reasons to follow and I am of the view that the Court below acted illegally and without jurisdiction in decreeing the plaintiffs' suit.

5. Some of the crucial provisions having a material bearing on the issue aforesaid, bear extraction :

'Section 2.(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 also receive the rent or be entitled to receive the rent, if the accommodation were let to a tenant and included 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.

Section 12. Restriction on eviction of tenants. - (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;....'

6. There is need also to highlight some of the other provisions. According to Section 3, the provisions of the Act are not meant to be applied to certain 'accommodations', namely, those which are properties either of the Central Government or State Government or of a local authority used exclusively for non-residential purpose. Indeed, as per sub-section(2), Government may, by notification, exempt other accommodations also owned by any educational, religious or charitable institution from all or any of the provisions of the Act. According to Section 4, the provisions of Chapter II which deals with fixation of fair rent and prohibits increase of rent are not meant to apply to an accommodation or part thereof construction of which was completed before or after the commencement of the Act, but the exemption is limited to a period of five years from the date of completion.

7. What cannot be disputed therefore is that a 'tenant' occupying any unexempted accommodation in an area in which the Act is in force can claim protection from eviction under Section 12(1), aforequoted. The mandate is clear, explicit and

inexorable as landlord's right to evict a tenant is circumscribed thereunder to entitle him to claim recovery of possession of the tenanted premises' on one or more of the following grounds only' namely, the grounds enumerated in clauses (a) to (p) thereof. The question is, if the two plaintiffs came within the definition of the term 'landlord' and the defendant within the mischief of the term 'tenant' as defined. Admittedly, on plaintiffs' becoming sole owners of the tenanted premises on and from 22-4-1975, they became 'entitled to receive' rent from defendant No. 1 of the accommodation in occupation of that defendant. The term 'tenant' is explicitly meant to include 'any person continuing in possession after the termination of his tenancy' and as such, by no stretch of imagination, it can be said that defendant No. 1 would not be a tenant within the meaning of the term defined in the Act despite the fact that tenancy of the defendant had been terminated, according to the plaintiffs, by operation of law. It is necessary to bear in mind, in this connection, that the only class of persons who are excluded from the definition of the term 'tenant' are specified too by providing that the term 'shall not include any person against whom any order or decree for eviction has been made'. Admittedly, defendant No. 1 does not belong to this class.

8. Reference will be apposite in this context to the decision in *Mani Subrat Jain*, AIR 1980 SC 299 where a similar plea was unsuccessfully raised. It is true that in Section 13(1), East Punjab Urban Rent Restriction Act, 1949, protection was given also to a tenant against whom a decree was passed, whether before or after commencement of the Act, but Section 2(i) of the Act defined similarly the term 'tenant' to include a person 'continuing in possession after the termination of their tenancy'. Their Lordships held that the tenant's continuance in possession of the property was his nexus with that property and, therefore, his status as a tenant of the property was not extinguished by the decree passed against him. To hold so, their Lordships observed that the essence of Rent Control jurisprudence postulated that construction, to fulfil the underlying statutory purpose.

9. In the leading case of *V. Dhampal Chettiar*, 1979 MPLJ 719 (SC) = AIR 1979 SC 1745, it was held that on the basis of a notice served under Section 106, Transfer of Property Act, terminating tenancy of the tenant, the landlord cannot get eviction of the tenant as the tenant continues to be so even thereafter. It was held

that the landlord is required to make out a case under the Rent Act for eviction of the tenant. Their Lordships noted that 'Rent Acts' enacted in different States after the Second World War had brought about considerable changes in the rights and liabilities of a lessor and lessee, largely in favour of the latter and by necessary implication, many of the provisions of the Transfer of Property Act had been either modified or even expressly abrogated.

10. Shri Dubey, relied mainly on Sections 76 and 111(c) of the Transfer of Property Act, besides citing the decision in the case of Sachalmal Pamsram, AIR 1972 SC 637. Learned counsel submitted that Shivpratap Singh or, for that matter, his predecessor-in-interest, Raja Brijendra Singh, admittedly being mortgagees in possession of suit property, they were required to act as persons of ordinary prudence and desist from encumbering the property in any manner so as to prejudice the rights of the mortgagor or his successor-in-interest. He also submitted that the lease which the mortgagee had created in favour of defendant No. 1, terminated by operation of law in virtue of the provisions of Section 111(c) which provides that 'a lease of immovable property determines where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event by the happening of such event.' He also relied on the recitals of the mortgage-deed dated 8-6-1950, Ex. P/6, deed of reconveyance, dated 23-4-1975 (Ex. P/2) and the sale-deed dated 22-4-1977 (Ex. P/1) in support of the contention that defendant No. 1 was inducted on the suit premises not by the mortgagor, Gyanchand, but by the mortgagees, Raja Brijendra Singh. He contested accordingly, the finding of the trial court to the contrary.

11. Appellant/defendants' counsel Shri Khedkar supported the finding reached by the trial Court that it was Gyanchand who had inducted the contesting defendant and he relied on documentary evidence, such as Rent Notes (Exs.D/1 and D/2) executed in favour of Gyanchand Palta and rent receipts (Exs.D/3 to D/6) besides oral evidence of D.Ws. 1 and 2. In so far as the factual controversy in that regard is concerned, I have no hesitation to hold that trial Court's finding is unassailable. It is unfortunate that the Court below rendered its decision in plaintiffs favour without properly appreciating the legal position in the context of the provisions of the Act

aforequoted. On the sole ground that with the determination of the mortgage, the lease stood determined by operation of law, the suit for recovery of possession of the premises was decreed. The Court below found as a fact that although Gyanchand had inducted the defendant, the latter had been paying rent to the mortgagee, albeit at Gyanchand's instance. Shri Dubey also relied on paragraphs 3, 4 and 5, Vol. 27, Halsbury's Laws of England (Fourth Edition), to establish attornment of the contesting defendant to the mortgagee in order to overcome the difficulty created by the finding of the trial Court.

12. In regard to the contentions of Shri Dubey, it has to be observed that, as held in *S. B. Abdul Azeez*, AIR 1989 SC 553, a mortgagee's acts, if prudently done, bind the mortgagor even after redemption of the mortgage. In the instant case, the mortgagor had expressly vested in the mortgagee, under the terms of the mortgage, the right to let out any part of the premises mortgaged and to appropriate the proceeds towards liquidation *pari passu* of the mortgage-debt. Therefore, assuming *arguendo*, the defendant attorned to the mortgagee (predecessor-in-interest of respondent No. 3) on payment by him of rent to the mortgagee which was his legal entitlement under the mortgage-deed, the tenancy created by the mortgagee would not be an act of imprudence so as not to bind the mortgagor (defendant/respondent No. 4) or for that matter, the plaintiffs, as his successors-in-interest. Their Lordships in that case held that under the Karnataka Rent Control Act, the mortgagee-in-possession could claim eviction of the tenant inducted by him to recover possession of the premises tenanted by him for his own bona fide requirement on the footing that he was 'landlord' for the purpose of the Act. As earlier observed, in the instant case also, the mortgagee is to be regarded as the 'landlord' within the meaning of the term used in Section 2(b) of the Act. Still, neither he nor any person claiming through him could evict the defendant unless any of the 'grounds' contemplated under Section 12(1) is made out.

13. It is clear, however, according to me, that the question of attornment is wholly otiose vis-a-vis statutory tenancy because any person lawfully inducted as a 'tenant' before or after the Act, on any premises in any area in which the Act is in force, continues to hold that legal status which is not affected by change of

ownership of the premises. His right to enjoy possession of the premises is not regulated by Section 105, Transfer of Property Act, but by Section 12(1) of the Act as clearly and expressly mandated by the non obstante clause thereof. Provisions of neither Section 106 nor Section 111, Transfer of Property Act apply proprio vigore to his case. It matters little as to who, at any particular point of time, is the landlord and whether the tenancy is terminated or the same is determined in accordance with any of the provisions of the Transfer of Property Act. Because, for recovery of possession of the tenanted premises, the landlord for the time being, must make out his case under Section 12(1) of the Act. As held in Mani Subrat Jain (supra), it is the continuous possession of the tenant that gives him the right to resist any suit of any landlord to evict him without complying with the provisions of the Act. In the instant case, the fact established on evidence is that since 1954 continuously, defendant No. 1 has been in possession of the suit premises and that he was lawfully inducted by respondent No. 4. Evidently, the character of possession of the suit premises of the defendant continued to be lawful during the subsistence of the mortgage or even after its determination. It has come in the evidence of D.W.2, the Accountant of the Office of District Education Officer, that rent was all along being deposited in Court. Indeed, in the decree passed, the trial Court has accordingly allowed the claim of mesne profits in the light of that evidence at the rate of Rs. 70/- per month and has directed that credit for the amount deposited shall be given to the defendant when execution is levied of the decree.

14. It is true that in Sachalmal (supra), cited by Shri Dubey, their Lordships referred to an earlier decision of the Court in the case of All India Film Corporation v. Raja Gyannath, AIR 1969 NSC 185, wherein sub-lessees' claim for protection under East Punjab Urban Rent Restriction Act, 1949 was rejected. That decision, it is true, was not cited in Mani Subrat Jain (supra), but the two views are apparently irreconcilable. In any case, what is very clear is that although Sachalmal's case was from this State, their Lordships took the view in para 8 of the Report that the definitions of the words 'tenant' and 'landlord' used in the Act were in the same terms and on that basis the decision was rendered. There was no occasion for their Lordships to examine the express mandate of Section 12(1) of the Act. In any case, on facts, the decision is evidently distinguishable because the Court applied

Section 76(a), Transfer of Property Act to hold the lease created by the mortgagee-in-possession to be an act of imprudence.

15. Although plaintiffs' claims for eviction and mesne profits, for foregoing reasons, I hold, have been decreed erroneously by the Court below, a direction is still warranted and that is made against the defendant/appellant to enforce the statutory duty of that defendant. Evidently, the plaintiffs cannot claim mesne profits because of the defendant's lawfully continuing in possession of suit premises. Even so, the plaintiffs are still entitled to be ensured of payment of all arrear rents due payable by the defendant till today. That duty is inscribed in Sections 12(l)(a) and 13(1) of the Act and as this Court has held in Lachhobai Rathore, 1987 MPRCJ 23, the Act protects lawful continuing possession of a tenant in terms of the statutory mandate of 'pay and stay'. Within three months, therefore, all arrear rents due payable by the defendant to the plaintiffs at the rate found by the trial Court, namely, Rs. 70/- per month, shall be tendered directly to the plaintiffs by defendant if that has not been deposited in Court. Indeed, for rent already deposited, no fresh payment need be made and the plaintiffs shall be entitled to withdraw the same from the Court.

16. In the result, the appeal succeeds and is accordingly allowed with costs, albeit subject to the direction hereinabove made. Plaintiff's suit stands dismissed with costs. The cross-objection also accordingly fails and is dismissed. Due to intervening winter-break and delay of counsel in furnishing translated copies of documents, the judgment could not be delivered earlier.