

Smt. Pushpa Devi Vs. Murarilal and Another

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Court : Madhya Pradesh

Decided On : Mar-27-2001

Reported in : 2001(3)MPHT193; 2001(3)MPLJ256

Judge : Mr. S.S. Saraf, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 12(1); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 96 and 100

Appeal No. : Second Appeal No. 912/96

Appellant : Smt. Pushpa Devi

Respondent : Murarilal and Another

Advocate for Def. : Shri Jaideep Singh, Adv.

Advocate for Pet/Ap. : Smt. Sneha Mishra, Adv.

Disposition : Second appeal dismissed

Judgement :

S.S. Saraf, J.

1. This appeal under Section 100, CPC has been preferred against the judgment and decree dated 25-10-1996 passed by the learned Xth Additional District Judge, Jabalpur in Civil Appeal No. 9-A/91 arising out of the judgment and decree dated

16-4-1991 passed by the learned VIIIth Civil Judge, Class II, Jabalpur in Civil Suit No. 30-A/91.

2. The essential facts necessary to decide the appeal are :--

The plaintiffs/respondents are the landlords while the defendant/appellant is the tenant in the suit premises which was let out for residential purposes. The plaintiffs/respondents instituted the eviction suit against the defendant/appellant on the grounds under Section 12 (1) (a), (e) & (g) of the M.P. Accommodation Control Act (for short the 'Act'). It has been pleaded that the defendant/appellant is defaulter, the suit premises is required bona fide for the occupation of the plaintiffs/respondents and their family members and they have no other reasonably suitable accommodation of their own in their possession in the city of Jabalpur. It has, further, been pleaded that the suit premises has become unsafe for human habitation and is, therefore, required bona fide by the plaintiffs/respondents for carrying out repairs which cannot be carried out without its being vacated by the defendant/appellant. The defendant/appellant denied all the above grounds raised by the plaintiffs/respondents. The learned Trial Court after evaluating the evidence decreed the suit for eviction in favour of the plaintiffs/respondents and against the defendant/appellant on grounds under Section 12 (1) (a) & (e) of the Act while dismissed it on ground as enumerated under Section 12 (1) (g) of the Act. Being aggrieved by the judgment and decree passed by the learned Trial Judge, the defendant/appellant preferred an appeal under Section 96, CPC. The learned First Appellate Court affirmed the eviction on grounds as enumerated under Section 12 (1) (e) of the Act only and dismissed the claim of the plaintiffs/respondents for eviction of the suit premises on ground under Section 12 (1) (a) of the Act. Being aggrieved by the impugned judgment and decree dated 25-10-1996 passed by the learned First Appellate Court, the present appeal has been preferred by the defendant/tenant.

3. This appeal was admitted for hearing on the following substantial questions of law:--

(1) Whether in view of the fact that the respondents came up with a plea that they required the suit house bona fide for eviction of the appellant, as well as they

claimed that the suit house was required by them for repairs under Section 12 (1) (g) of M.P. Accommodation Control Act, 1961, the claim of the respondents can be said to be bona fide under Section 12(1) (e) of the aforesaid Act ?

(2) Whether the appeal filed by the applicant is liable to be allowed on the aforesaid ground ?

4. Having heard the learned counsel for both the sides and having carefully scrutinised the entire material on records of the Courts below, I am of the considered opinion that this appeal deserves to be dismissed. The plaintiffs/respondents claimed that the suit premises is required bona fide by them for their residence and that they will occupy it after getting it repaired. The plaintiffs/respondents have pleaded in Para 3 of the plaint that they require the suit premises for bona fide need of themselves and their family members. In Para 4 of the plaint, they have specifically pleaded as under:--

'The suit premises under the occupation of the defendant is very old in nature and is in a highly dilapidated condition. It needs drastic repairs which cannot be carried out without being vacated by the defendant. After the suit premises is vacated by the defendant, the plaintiff shall carry out essential and necessary repairs in it and then shall occupy it for their residence as mentioned above in Para 3.'

5. In Para 3 of his statement, the plaintiff/respondent Murarilal (P. W. 3) has specifically stated that after getting the suit premises vacated, he and his family members will occupy it after getting it repaired. It is, therefore, clear that the relief sought under Section 12(1) (e) as well as under Section 12(1) (g) of the Act is a composite in nature. This is not the case of the plaintiffs/respondents that they independently require the suit premises for carrying out repairs.

6. The learned counsel for the appellant has placed reliance on the decision of this Court in Smt. Parmeshwari Devi v. Thakur Natthu Singh, 1998 (1) MPJR 462. In Smt. Parmeshwari Devi's case (supra), it has been laid down that the plea of the landlord that he requires the suit house bona fide for the residence of himself cannot stand together with his plea that he requires the suit premises bona fide for re-construction. It has, further, been laid down that the requirement of bona fide re-

construction of the suit house cannot be pleaded simultaneously with the plea of bona fide requirement for personal residence. Both the pleas are mutually destructive of each other and the very fact they were pleaded together shows that none of them are bona fide. The learned counsel for the appellant has, therefore, contended that in view of the decision in Smt. Parmeshwari Devi's case (supra), both the pleas cannot be taken together and therefore the decree under Section 12 (1) (c) of the Act could not have been passed by the learned Courts below.

7. Having given a thoughtful consideration to the above contention of the learned counsel for the appellant, I am of the view that it cannot be accepted. In Smt. Parmeshwari Devi's case (supra), both the pleas were taken simultaneously and were independent while, as pointed out earlier, in the given case both the pleas were inter-connected. It has specifically been pleaded by the plaintiffs/respondents that they will occupy the suit premises after getting it repaired. As pointed out earlier, in Para 3 of his statement, plaintiff Murarilal (P.W. 3) has categorically stated that he and his family members will occupy the suit premises after getting it repaired. If the two pleas, i.e., pleas under Section 12 (1) (c) of the Act and 12 (1) (g) or (h) of the Act are inter connected and have not been taken independently, a decree under Section 12 (1) (e) of the Act can legally be passed. I am fortified in my view by the decision of the Apex Court in K.A. Anthappai v. C. Ahammed, AIR 1992 SC 1696, where in it has been laid down that the claim of the landlord that he needs the building bona fide for his personal occupation cannot be negated on ground that building require repairs and alterations before landlord can occupy the same. It has also been laid down by the Supreme Court in Ramniklal Pitambardas Mehta v. Indradaman Amratlal Sheth, AIR 1964 SC 1676, that in case the landlord requires the tenanted premises bona fide and genuinely for his own occupation, after getting it reconstructed, he need not claim a decree for eviction under clause (h) of sub-section (1) of Section 12 of the Act.

8. For the reasons stated above, I am of the considered opinion that in view of the fact that the plaintiffs/respondents came up with a plea that they required the suit premises bona fide for eviction of the defendant/appellant as well as they claimed that the suit premises was required by them for repairs under Section 12(1) (g) of the Act, the claim of the respondents under Section 12 (1) (e) of the Act can be

said to be bona fide and therefore this appeal is not liable to be allowed.

9. In view of above, the appeal deserves to be dismissed and is, therefore, dismissed. No costs.

10. Second Appeal dismissed.

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