

Ashok Kumar Vs. Kishan Singh

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Court : Madhya Pradesh

Decided On : Jan-30-2001

Reported in : 2001(3)MPHT371

Judge : Mr. R.B. Dixit, J.

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

Appeal No. : Second Appeal No. 431/97

Appellant : Ashok Kumar

Respondent : Kishan Singh

Advocate for Def. : Shri D.D. Bansal, Adv.

Advocate for Pet/Ap. : Shri R.K.S. Kushwah, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

R.B. Dixit, J.

1. The plaintiff/appellant had filed a civil suit No. 91-A/92 in the Court of IInd Civil Judge, Class 1st, Guna for eviction and arrears of rent against tenant respondent

on the ground that he requires the suit accommodation/shop for his business i.e., for manufacturing furniture. The defendant denied the need on the ground that the plaintiff has sufficient alternative accommodation in his possession.

2. The learned Trial Court after recording evidence of the parties by judgment dated 29-9-95, decreed the suit of the plaintiff against which, defendant/respondent filed a civil appeal No. 49-A/95, before the District Judge, Guna, which was allowed by the impugned judgment. This appeal has been admitted on the following substantial question of law :--

(i) Whether, the Appellate Court has committed an error of law in exceeding the jurisdiction in reversing the well reasoned judgment of the Trial Court ?

(ii) Whether, the plaintiff has proved his bona fide requirement of suit premises

3. Both the substantial questions of law formulated in this appeal, relating to a common question as to whether, the bona fide need of the plaintiff is not made out on account of availability of suitable alternative accommodation. The learned Trial Court has framed issue Nos. 1 and 2 on this point and also came to the conclusion that it is proved from the evidence of plaintiff himself that there is yet another shop in possession of the plaintiff in the same premises, which is used for keeping the furnished goods, Another accommodation in the same house comprising six rooms which were previously let out for lodging purpose of a hotel, are also in possession of the plaintiff, However, according to learned Trial Court, this alternative accommodation is not suitable for the purpose of business of the plaintiff. Therefore, it seems that the learned Trial Court has not assigned any reasons for drawing such a conclusion as to how the availability of such alternative accommodation is not suitable for the business of carrying out a furniture shop or for making furniture.

4. The learned 1st Appellate Court has considered the evidence in detail and came to the conclusion that the business of furniture can well be carried out in aforesaid alternative suitable accommodation which was not detailed in the pleadings of the plaintiff but came up in evidence during the course of examination of the plaintiff. It is argued that where the plaintiff has not pleaded anything about

alternative accommodation, available at his command in the plaint itself, it means that he was hiding truth from the Court. The learned counsel for the respondent on the other hand has contended that the landlord is the best Judge about suitability of accommodation and in the circumstances, cannot be forced to choose another accommodation in place of suit accommodation.

5. Since it is not disputed that there is not one but about six or seven rooms, lying vacant in possession of the plaintiff, out of which, atleast two rooms are lying vacant on the ground floor just near to the suit accommodation. The plaintiff can therefore, shift such material of his shop of the ground floor to first floor which is not required for day today business purposes and if it is done, then about two shops on the ground floor are available for him for the purpose of making furniture. Thus, it cannot be said that the vacant shops as alternative accommodation are not suitable for business purposes of the plaintiff.

6. The Hon'ble Supreme Court in the case of *Hasmat Rai v. Raghunath Prasad*, reported in 1981 JLJ 716, has pointed out that Section 12(1)(e) specifically provides for a landlord obtaining - possession of a building let for residential purposes, if he bona fide require the same for own use and occupation. But there is an additional condition he must fulfil, namely, he must further show that he has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. Utter silence of the landlord on this point would be compelling circumstance for the Court to go in search for some imaginary requirement of the landlord of accommodation for his residence. One impermissible approach to the facts of the case on hand is avoided although facts found by the Courts are acceptable as sacrosanct, yet in view of the incontrovertible position that emerges from evidence itself that the landlord has acquired major portion of the building in which he can start his business, he is not entitled to a such extra space under Section 12 (1) (f) of the Act.

7. In the case of *Goma Bai v. Dhanraj*, reported in 1990 MPRCJ NOC 62, it was observed that to establish bona fide need, nature of business and unsuitability of available shop, required to be proved. Mere idea for seeking eviction does not prove bona fide requirement. In *Tikam Chand v. Prakash Chandra*, reported in

1991 JLJ 642, it was further made clear that the plaintiff is required to plead the alternative accommodation and not the suitability thereof. If such available accommodation is not pleaded, then, no decree can be passed under the provisions envisaged under Section 12(1 (f) of the Accommodation Control Act.

8. Now so far as present case is concerned, it is to be seen that although the plaintiff pleaded that he has no other alternative accommodation in his possession than the suit premises, however, this plea was found totally false when he was confronted with the fact in his cross-examination that there are two shops in ground floor apart from six other rooms which were previously used for lodging in a hotel which are also vacant and in his possession. Thus, the plea of suitable alternative accommodation is found false from the admissions and the evidence of the plaintiff himself. It is to be presumed that the plea of genuine necessity was merely raised for getting the suit premises evicted from the defendant. Mere hiding suitable accommodation in the plaint is sufficient to raise a presumption that the alternative accommodation is suitable for the purpose of business of the plaintiff. The learned Trial Court therefore, was not fair in arriving at a conclusion that such accommodation is not suitable for the business of the plaintiff. It is to be noticed that even if all the rooms are not vacant at the ground floor, all furniture and material required for manufacturing purpose, can very well be stored on the first floor of the house. Manufacturing work can also be carried out on the ground floor as well as on the first floor.

9. The learned counsel for the appellant has submitted that the Trial Court having advantage of recording evidence and noticing demeanour of witnesses, the Appellate Court should be slow to interfere with the findings recorded by the Trial Court. There is limitation of power of Appellate Court to dislodge the finding of facts recorded by the Trial Court on appreciation of oral evidence. Reliance is placed on decision of this Court in the case of Ramcharan v. Brij Bhushan reported in 1997 (1) MPLJ 565 and Radheshyam v. Kailash, reported in 1994 (2) MPWN 108, I am of the opinion that it is to be seen that where the First Appellate Court had upset the findings of the Trial Court illegal illogically. It has been observed by the Apex Court in the case of Arumugham v. Sundermabal, reported in 1999 (4) SCC 350, that the High Court in second appeal cannot interfere with

the judgment of the First Appellate Court merely on the ground that the First Appellate Court failed to advert to the reasons ascribed by the Trial Court. The First Appellate Court can consider the evidence adduced by the parties and give its own reasons for accepting or rejecting the evidence of one party or the other party.

10. On considering of the evidence and pleadings of the parties, discussed hereinabove, I am of the opinion that since no convincing reasons were assigned by the Trial Court for holding unsuitability of the alternative accommodation, the 1st Appellate Court was justified in interfering with the findings of the Trial Court after discussing the evidence in detail and assigning cogent reasons. The finding of the 1st Appellate Court does not suffer from any infirmity or illegality and therefore, cannot be interfered with, for any reason in this second appeal. Since the plaintiff has failed to prove his bona fide requirement of the suit premises and since the Appellate Court has not committed any error of law in reversing the finding of the Trial Court, no substantial question of law arises in the present appeal.

Consequently, the appeal fails and is dismissed.

11. Second Appeal dismissed.

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