

Chainmal Vs. Rani Bai

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Court : Madhya Pradesh

Decided On : Sep-29-2004

Reported in : 2004(4)MPHT319; 2004(4)MPLJ354

Judge : A.K. Shrivastava, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 23A and 23E; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115

Appeal No. : Civil Revision No. 1094/2003

Appellant : Chainmal

Respondent : Rani Bai

Advocate for Def. : Pranay Verma, Adv.

Advocate for Pet/Ap. : G.C. Bhatia, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

A.K. Shrivastava, J.

1. This revision petition has been preferred by tenant under Section 23-E of M.P. Accommodation Control Act, 1961 (in short 'the Act') against the order of his

eviction from the tenanted premises.

2. The respondent who is a widow, under special category of landlord as defined under Section 23-A of the Act, submitted an application of eviction of petitioner from the suit premises in which he is carrying on the business of shoe material. In the application, it has been contended that the suit accommodation is required bona fide by the landlord for the purpose of starting eye-clinic of her major son, namely, Dr. K.L. Kakkad who is a medical practitioner and there is no other vacant suitable alternative non-residential accommodation of her own is available in the township of Jabalpur.

3. The application was resisted by the petitioner and after obtaining leave to defend, he filed written statement. In the written statement, he denied that respondent is a widow and therefore she does not come under the special category of landlord as envisaged under Section 23-J of the Act. It has also been denied that Dr. K.L. Kakkad is her son and resides with her. The petitioner further denied that said Dr. Kakkad is an eye surgeon and is holding M.D. Degree. It has been further denied that he is practicing for last more than 2 decades. The tenant-petitioner specifically pleaded that the building in which the suit accommodation is situated is a double-storied building and first floor of the building is lying vacant and Dr. Kakkad can conveniently open Eye Clinic on the first floor. The averment made in the eviction application regarding the bona fide need has been emphatically denied. According to the petitioner under the garb of so called bona fide need, the suit accommodation is being tried to be vacated so that it can fetch more money by selling the same.

4. Specific objection was raised in the written statement that land- lady already sold two shops adjacent to the suit shop. It has been further pleaded in the written statement that indeed the landlady entered into an agreement to sell the entire building to one Golchha. According to the petitioner Shri Kakkad met with an accident long back on account of which he has lost his balance of mind. His wife has also left him due to his being unbalanced mind. He is also not residing in Jabalpur and he is also not practicing for last 15 years and, therefore, the alleged need is malafide and the application of eviction has been filed with an uttermost

object to get the suit accommodation vacated so that the landlady may be able to alienate it on a higher price.

5. The Rent Controlling Authority after framing the issues recorded the evidence and by the impugned order found the need of plaintiffs to be bona fide and eventually allowed the application filed by landlady for eviction of petitioner from the suit premises. Hence this revision. : ,

6. In this revision Shri G.G, Bhatia, learned Counsel for the petitioner argued that learned Rent Controlling Authority without appreciating and marshalling the evidence and ignoring the important piece of evidence passed the order of eviction. According to learned Counsel, the need of the son is to be judged objectively. It has been put forth by him that if the evidence of plaintiff and her son Dr; Kakkad is considered objectively in its stricto sensu, it would reveal that the suit accommodation is being vacated only to get it sold on a higher price. Thus, according to learned Counsel the need can not be said to be bona fide. '

7. On the other hand Shri Pranay Verma, learned Counsel for the landlord/respondent argued in support of impugned order.

8. Before dealing with the rival contentions of learned Counsel for the parties,, it would be appropriate to discuss the scope of revision filed against the order of eviction under Section 23-E of the Act. On going through the provisions of Section 23-E of the Act, it is gathered that this provision is not as narrow as the ambit of Section 115, CPC. The provisions are meant to prevent the miscarriage of justice. In this regard, I may profitably rely two decisions, they are T.D. Agrawal v. Smt. Nirmal Mitra, 2002(5) M.P.H.T. 378 and Suryanarayan v. Shyamlal Vyas, 2003(4) M.P.H.T. 109 = 2003(4) MPLJ 336. If the view taken by the Rent Controlling Authority is perverse, unreaT sonable and contrary to law then also while exercising the reysional jurisdic- tion under Section 23,-E of. the Act, this Court can interfere. In this regard I may profitably rely Girish Kumar, Shrivastava v. Punjab National Bank, Satna, 2003(5) M.P.H.T. 284 = 2003(2) JLJ 260.

9. The contention of Shri Bhatia, learned Counsel for the petitioner is that under .the garb of alleged bona fide need to start an Eye. Clinic, this eviction proceeding

was initiated, by. the landlord before Rent Controlling Authority, On the other hand; the contention of Shri Verma, learned Counsel for the respondent is that the need of plaintiff's son has been duly proved and the same was found to be bona fide. On these, factual backdrop of the submissions, made by learned Counsel, I shall now examine that part of important evidence, which according to learned, Counsel has been ignored resulting into the miscarriage of justice and the view taken by Rent Controlling Authority, is unreasonable, perverse and contrary to the law.

10. In cross-examination the landlady Rani Kakkad ;(A:W. 1) has said that on the ground floor she is owing 5 shops. According to her all the 5 shops are similar to each other. It has been admitted by the landlady that she had entered into an agreement with one Golchha to alienate the shops and the agreement took place 2-3 years earlier from the date of the filing of the eviction proceedings. She has further admitted that the agreement was of the entire house including the suit shop and other shops and the consideration was agreed by the parties to be 12 lacs rupees, A document was also executed and she received Rs. 51,000/- in advance. The landlady further admitted that she had already sold one shop to Golchha. Thereafter she says that she had no knowledge about the cancellation of the agreement and this fact is known to her son. She further says that a copy of agreement is with her son. She admitted her signature on the said agreement. The landlady on being cross-examined, further admitted that the earnest money Rs. 51,000/- is still with her. According to her Golchha did not give any notice to her for the cancellation of the deal and did not ask to return the earnest money Rs. 51,000/-.

11. Dr. Kakkad (A.W. 2) in cross-examination has admitted that the need accrued to him 5-6 years ago from the date of the filing of the proceedings and he is in need of 4-5 rooms for the clinic. On being put to a specific question that for Rs. 12 lacs, the deal has been settled to sell the entire building, this witness has said that for Rs. 14-15 lacs, deal has been settled and a written agreement has been executed in that regard. According to this witness, a sum of Rs. 2 lacs was received in advance. He further says that the agreement was executed 2-3 times and though the agreements were changed from time to time but the deal was never cancelled. According to this witness the original document of agreement is

with Golchha on which the signature of both the parties are there. According to him the first agreement was got executed 3-4 years earlier and the last agreement was executed three years ago. According to him, no document to cancel the agreement was executed, however on account of expiry of the period of agreement the 'sanguinity of the document also came to an end. He has further admitted that no notice was given by him or by his mother to Golchha for the cancellation of agreement. According to this witness, two shops were sold to Golchha and the advance :of Rs. 2 lacs which was taken was adjusted towards the consideration.

12. A very important fact crept out from the testimony of this witness in Para 24 of his deposition is that Golchha entered into an agreement with present petitioner to sell the suit accommodation to him since he was carrying on business in it and the shop in which Dr. (Mrs.) Ahluwalia is the tenant was agreed by Golchha to sell her. This type of agreement was made 4 years ago. Thereafter this witness says that if vacant shop is being sold it may fetch handsome amount while if it is sold having a tenant therein, it Would 'fetch lesser money. This witness has also admitted that two shops are already sold to Golchha. According to this witness landlady executed a power of attorney to execute the sale deed in favour of Golchha. That power of attorney is a registered document. Thereafter to cancel the power of attorney, his mother did not send any notice to Golchha, however, the notice was published in the newspaper but he did not think it proper to file the said newspaper.

13. On behalf of petitioner, his son Govardhanlal was examined. According to him, the entire building was agreed to be sold by the landlady three years prior to the filing of the eviction application and the agreement took place with one Sandeep Golchha. Thereafter Sandeep Golchha contacted him and offered to purchase the suit accommodation. There is no effective cross-examination to this witness. This witness has further said that Dr. Kakkad does not require suit accommodation to start a clinic in the suit accommodation.

14. I have discussed the important piece of evidence hereinabove because the Rent Controlling Authority had ignored them. In Para 14 it has been held by the

Rent Controlling Authority that two shops were sold to Golchha, earlier to filing of the present proceedings. But it has come in the evidence of Dr. K.L. Kakkad that the need accrued to him 5-6 years ago prior to the filing of the application of eviction and if the evidence of landlady and Dr. Kakkad is read conjointly and in proper perspective, it is revealed that after the need accrued, two shops were sold to Golchha. On going through the evidence, it is perceivable that 3-4 times different type of agreement was settled with Golchha for the sale of the entire building including the suit shop and, therefore, it can not be said that the need is bona fide. The landlady has to prove the bona fide need objectively. The bona fide requirement must be honest and not tainted with any oblique motive and should not be a mere desire or wish. In the present case, it has been established that the landlady is engaged in selling activity of suit premises and therefore the need can not be said to be a bona fide need. The important feature of the case is that the application of eviction was filed on 9-1-2001 and according to the landlady as well as her son Dn Kakkad, the entire building (including the suit shop) was agreed to be sold to Golchha earlier to the filing of the application of the eviction. Thus, the need can not be said to be a bona fide need. It has also come in the evidence of Dr. Kakkad that the need accrued to him 4-5 years ago then why proceeding of eviction was not initiated and why the entire building, including the suit shop was agreed to be sold. There is nothing on record to show nor there is any evidence of plaintiff or her son that they asked petitioner to vacate the suit accommodation and when he denied the eviction proceedings were initiated. If the need is really bona fide and accrued in plaintiff 4-5 years earlier, there is no reason why the eviction proceedings were not filed earlier. This important fact can not be marginalized and blinked away that, in between, plaintiff entered with an agreement with one Golchha to transfer the entire building including the suit shop and therefore she sold two shops to him. The landlady also executed registered power of attorney in favour of Golchha which was never cancelled. There is nothing on record, in order to show that the agree- ment was cancelled. Even if it is assumed that the agreement was cancelled, this fact would not be diluted that the plaintiff and her son are keen to get the entire building sold and therefore the need can not be said in any manner to be a bona fide need.

15. Looking to the facts and surrounding circumstances, the role of Sandeep Golchha is quite prominent in the present factual scenario of the case and he was an important witness who has not been examined by the plaintiff. On going through the record, it is found that on 22-4-2003 an application under Order 16 Rule 1, CPC was filed by plaintiff to examine Sandeep Golchha, however, the said application was withdrawn on 12-6-2003 as not pressed. Since the plaintiff and her son admitted that they entered into an agreement with Sandeep Golchha to sell the entire building including the suit shop and a part of consideration is still with the plaintiff, the view of this Court is that Sandeep Golchha was an important witness and by not examining him an adverse inference is to be drawn against the plaintiff. It has also come in the evidence of Dr. Kakkad that a copy of the agreement bearing the signature of the parties is with him but no such document has been filed and for this reason also an adverse inference is to be drawn against the plaintiff.

16. In the case of Ranjit Narayan Haksar v. Surendra Verma, 2000(1) M.P.H.T. 106, while considering the scope of Section 23-E it was held that if the finding of Rent Controlling Authority was contrary to law and evidence, this Court was justified in revision under Section 23-E to interfere with the said findings. This Court further held that the bona fide requirement of landlord must be decided by applying objective tests to find out whether the need of landlord is bona fide and reasonable or not. In the present case, the need can not be said to be bona fide. Another meaning of objective test is to take out the grain from the chaff. Looking to the conduct of the plaintiff as she had entered for several time with Golchha to alienate the entire building including the suit shop how and in what manner her need can be said to be bona fide. The expression 'bona fide' used in Section 23A (b) has not been defined under the Act. But, it can be said that the thing which is not malafide can be said to be a bona fide.

17. In view of above, it can not be said that the need of the plaintiff is bona fide. The revision petition is allowed, the impugned order is set aside. The eviction application filed by respondent before the Rent Controlling Authority is hereby dismissed. The parties are directed to bear their own costs.

