

Sheikh Akbar and Another Vs. Sameer Kumar Pal and Others

Sheikh Akbar and Another Vs. Sameer Kumar Pal and Others

SooperKanoon Citation : sooperkanoon.com/507406

Court : Madhya Pradesh

Decided On : Aug-17-2001

Reported in : 2001(4)MPHT37

Judge : Mr. S.P. Khare, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 12(1); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100; Tamil Nadu Building (Lease and Rent Control) Act, 1960 - Sections 13(3)

Appeal No. : Second Appeal No. 596/99

Appellant : Sheikh Akbar and Another

Respondent : Sameer Kumar Pal and Others

Advocate for Def. : Shri V.P. Shrivastava and ;Shri Girish Shrivastava, Advs.

Advocate for Pet/Ap. : Shri Ravish Agrawal, Sr. Adv. and ;Shri Faiyaz Khan, Adv.

Disposition : Second appeal allowed

Judgement :

S.P. Khare, J.

1. This is defendants' second appeal under Section 100, CPC. The following substantial questions of law were formulated by this Court by order dated 19-8-

1999 at the time of admission of this appeal:--

'(1) Whether the Courts below, in view of the admissions of the plaintiffs and their witnesses, have erred in passing decree of eviction on the ground under Section 12(1)(f) of the M.P. Accommodation Control Act, 1961 ?

(2) Whether the Courts below have erred in holding that the burden of establishing availability of alternative accommodation lay upon the defendants?'

2. The facts relevant for the decision of the questions referred to above are that plaintiffs Sameer Kumar Pal and Suresh Chand Pal have purchased the suit house bearing No. 1214, Corporation Chowk, Wright Town, Jabalpur by registered sale-deed dated 31-12-1991 from its original owners. The defendants were their tenants in the suit accommodation and were carrying on their business therein.

3. The plaintiffs' case was that they require the suit accommodation for carrying on the business of sweets and for running a restaurant. It was stated by them that they have no other non-residential accommodation of their own for this purpose. The defendants' case was that there is an accommodation commonly known as 'Madras Hotel' which was purchased by the plaintiffs' father Laxminarayan Pal and his brothers. That accommodation is joint family property of the plaintiffs and their father. The defendants pointed out some other houses and shops, but those are either residential or rented and, therefore, a full description of those properties need not be given.

4. There is a concurrent finding of fact of the Trial Court and the First Appellate Court by which it has been held that the ground for eviction under Section 12 (1) (f) of the M.P. Accommodation Control Act, 1961 has been established.

5. In this second appeal the decree of eviction is assailed on the ground that the plaintiffs have alternative accommodation of their own in their occupation and, therefore, their need is not bona fide. It has been argued that the property held by the plaintiffs' father Laxminarayan Pal, commonly known as 'Madras Hotel', is suitable in all respects for carrying on the business of sweets and restaurant. That accommodation is admitted to be of bigger size and just adjacent to the suit

accommodation. The only ground on which there has been a debate between the two parties is that the suit accommodation is owned by the plaintiffs' father and not by the plaintiffs.

6. After considering the evidence on record, this Court is of the opinion that the finding of both the Courts below that the accommodation known as 'Madras Hotel' does not belong to the plaintiffs, is perverse. The Trial Court has written a very cryptic judgment and has not given any clear finding on this point. The First Appellate Court in Para 27 of its judgment has held that 'Madras Hotel' belongs to the plaintiffs' father Laxminarayan Pal which he has received in partition between himself and his brothers. The First Appellate Court has not closely examined the question, whether the accommodation, known as 'Madras Hotel', can be said to be an alternative accommodation to meet business need of the plaintiffs. Therefore, it becomes the duty of this Court to enter upon the evidence of plaintiff Subhash Chandra Pal (P.W. 1) and his father Laxminarayan Pal (P.W. 3). Subhash Chandra Pal (P. W. 1) has deposed in para 16 that 'Madras Hotel' belongs to his father and, therefore, it does not concern him. In cross-examination in para 30 he admits that he is living with his father and he is also carrying on business with him. Laxminarayan Pal (P.W. 3) has deposed that 'Madras Hotel' is owned by him. It was acquired by him and his two brothers and thereafter in partition it came to his share. There is release deed dated 14-10-1987 (Ex. P-7) in respect of that property. A perusal of the release deed reveals that the said property was purchased by Laxminarayan and his two brothers on 30-1-1975 for a consideration of Rs. 40,000/-. The other two brothers have relinquished their shares in favour of Laxminarayan by this release deed. Laxminarayan (P.W. 3) has further admitted in his cross-examination that the building known as 'Madras Hotel' is in his possession. He has stated in para 6 that he was carrying on the business in the name of 'Anand Bhandar' with his two brothers and after their death he is doing the same business with his two sons, who are plaintiffs in this suit. He claims that he is carrying on business with his sons in partnership, but no partnership deed has been produced. He has further stated in para 11 that there is nearly 1700 sq. ft. of area in the building known as 'Madras Hotel' and it was being used for hotel business earlier. He admits that the said building of 'Madras Hotel' is more spacious. He admits that his two sons are living with him and they are also

carrying on business with him, but he does not want to give the building of 'Madras Hotel' to his sons for their business as they are not on good terms with him. In para 12 he was asked about the source from which the money was paid for purchasing the suit accommodation. He is unable to disclose the source from which the money came. He does not say that he himself or his sons have any other source of income.

7. From the evidence discussed above, it is firmly established that the building known as 'Madras Hotel' belongs to Laxminarayan Pal and his twosons, who-are the plaintiffs. That is their joint family property. This building was purchased by Laxminarayan, when he was carrying on business with his two brothers and the partition took place long after the acquisition of that building. In that partition that building was allotted to Laxminarayan alone. It was held in *Sital prasad v. Ramprasad*, ILR (1944) Nag. 17 that there is a presumption under Hindu Law that joint acquisition by brothers without the aid of nucleus of joint family property is joint family property. For this proposition reliance was placed on the decision of the Privy Council in *Rampershad Tewarry v. Sheochum Doss* : (1866) 10 MIA 490 and the principles of Hindu Law by Mulla.

8. Mayne, in his *Commentary on Hindu Law* has dealt with the position of law in this respect as under:--

'It is well settled that when the members of a joint family, by their joint labour or in their joint business, acquired property, that property in the absence of a clear indication of a contrary intention would be owned by them as joint family property and their male issues would necessarily acquire a right by birth in such property. If a single individual acquires a fortune by his own exertion, without any assistance from ancestral property, his male issue would certainly take no interest in it. If several brothers did the same, the property would in absence of any indication of an intention to the contrary be owned by them as joint family property and in that case their male issues would necessarily acquire a right in it by birth; for under the Mitakshara System there can be no joint family property in respect of which the male issues of the joint owners do not take a share by birth. If there is satisfactory evidence of an intention to treat the property not as joint family property but as a

joint property only, i.e., as the joint self-acquisition of the acquirers, it will be given effect to. But the presumption is in favour of its being regarded as joint family property....'

9. Relying upon the above passage the Orissa High Court has held in *Sidha Sahoo v. Jhuma Dei* (AIR 1977 Orissa 45) that the property acquired by members of joint family by joint labour or in their joint business, in absence of a clear indication of a contrary intention would be regarded as their joint family property.

10. Applying the above law to the facts of the present case, it must be held that the building, known as 'Madras Hotel' received by Laxminarayan Pal (P.W. 3) in the partition between himself and his brothers, is joint family property of Laxminarayan Pal (P.W. 3) and his two sons, who are plaintiffs in the suit.

11. Section 12 (1) (f) of the Act uses expression 'of his own'. It was interpreted by this Court in *Ramswarup v. Prem Narain* (1973 M.P.L.J. 505) and it was held that these words do not connote exclusive ownership. A house belonging to the joint family, of which the plaintiff is a member, would be a house of his own within Section 12 (1) (e) of the Act. These words have been used in clause (f) also. The Supreme Court has interpreted Section 13 (3) (a) (iii) of T.N. Building (Lease and Rent Control) Act, 1960, which is a provision in pari materia with Section 12 (1) (f) of the M.P. Accommodation Control Act, 1961. It has been held that a non-residential building in occupation of a landlord which is his own envisaged in Section 13 (3) is not only that of which he is an absolute owner but also that of which he is a co-owner, therefore, the respondents who were carrying on business in a non-residential building of which they were co-owners, could be regarded as landlords of that building and as such they would be disentitled to claim eviction of the tenant under that Section from their non-residential building in the same city.

12. In the present case the building in the name of the plaintiffs' father Laxminarayan Pal (P.W. 3) is vacant and that is suitable in all respects for carrying on the business of sweets and running a restaurant. That is just adjacent to the suit accommodation. That is bigger in size. It is no doubt an old construction, but for the suit accommodation also the plaintiffs' plea is that they would re-build it and then carry on business in that building. They can do same in the building of which

they are co-owners and in which they have acquired rights being the members of the joint Hindu family. It is an admitted fact that the plaintiffs are living with their father and they are at present carrying on business with him in the name of 'Anand Bhandar'. Therefore, it would be too technical a ground to say that building of 'Madras Hotel' belongs to Laxminarayan Pal (P.W. 3) and, it is not available to the plaintiffs for running their business. Such an artificial distinction cannot be permitted to be carried out between the father and two sons who are living jointly. If they do so that strikes at their bona fides. The Supreme Court has observed in Shiv Sarup Gupta v. Mahesh Chand Gupta (AIR 1999 SC 2507) that the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. Similarly in Ram Narain Arora v. Asha Rani (AIR 1998 SC 3012) it has been observed that the requirement of the landlord is intermixed with the question of finding out whether he has any other reasonably suitable accommodation. If he has other reasonably suitable accommodation, then necessarily it would mean that he does not require the suit premises and his requirement may not be bona fide.

13. In the present case the only ground on which the plaintiffs are refusing to use the building of 'Madras Hotel' to meet their business need is that it belongs to their father Laxminarayan Pal and not to them. Such a narrow and dogmatic approach cannot be countenanced by the Court. It has been held above that this building is a joint family property of the plaintiffs and their father Laxminarayan Pal (P.W. 3) and, therefore, the plaintiffs must meet their need by occupying the building of 'Madras Hotel' which is in their possession. The M.P. Accommodation Control Act maintains a fine balance between conflicting interest of the landlord and the tenant. It has incorporated the principle of 'Social Engineering' advocated by Roscoe Pound. The basic philosophy underlying the Act is 'Live and let live'. If the landlord bona fide and genuinely requires an accommodation and he has no other reasonably suitable accommodation of his own for this purpose in the city, he can seek eviction of the tenant, but if he has a spacious building in his occupation held by joint Hindu family of which he is a member, he should first make use of that building instead of keeping in unoccupied for years. If that meets his requirement, it cannot be said that his alleged need for the suit accommodation is bona fide. It

has been emphasised recently by the Supreme Court in Deena Nath v. Pooran Lal, JT 2001 (5) 380, that plaintiffs must demonstrate that 'the need is pressing and there is no other reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation'.

14. The answer to the question No. 1 is that the Courts below have committed an error of law in passing the decree of eviction under Section 12 (1) (f) of the Act. They have also erred in holding that the burden of establishing availability of alternative accommodation lay upon the defendants.

15. In the result, this appeal is allowed. The judgment and decree of the Trial Court and the First Appellate Court are set aside and the plaintiffs' suit for eviction from the suit accommodation is dismissed.

16. Second Appeal allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com