

Shrimanth Seth Dharmendra Kumar Vs. Smt. Uma Devi and ors.

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Court : Madhya Pradesh

Decided On : Sep-23-2004

Reported in : 2004(4)MPHT412

Judge : A.K. Shrivastava, J.

Acts : Madhya Pradesh Accomodation Control Act, 1961 - Sections 12(1) and 12(7)

Appeal No. : Second Appeal No. 89/92

Appellant : Shrimanth Seth Dharmendra Kumar

Respondent : Smt. Uma Devi and ors.

Advocate for Def. : A.S. Usmani and ;A. Usmani, Advs.

Advocate for Pet/Ap. : G.C. Bhatia and ;Y.H. Khare, Advs.

Disposition : Appeal allowed

Judgement :

A.K. Shrivastava, J.

1. Plaintiff, being aggrieved by the judgment and decree passed by First Appellate Court dismissing his suit for eviction has preferred this second appeal.

2. A suit for eviction was filed by plaintiff/appellant on the ground envisaged under Section 12(1)(h) of the M.P. Accommodation Control Act, 1961 (in short the 'Act'). According to the plaint averments the suit accommodation which is a shop is in a dilapidated condition and there are reasonable chances that the accommodation may fall down. Therefore, the plaintiff required the suit accommodation to rebuilt it. The plaintiff further pleaded that he has prepared the plans and he is also having necessary funds for reconstruction.

3. The original defendant was Shambhoo Nema who died during the pendency of this second appeal and his legal representatives are brought on record. The defendants resisted the suit by filing written statement. In the written statement, it was admitted by the defendant that the suit shop has become in dilapidated condition and roof may fall down. According to the defendant, necessary repairs can be carried out without getting the suit accommodation vacated.

4. The Trial Court framed necessary issues and recorded the evidence of the parties and thereafter found the ground of eviction to be proved, as a result of which decreed the suit.

5. An appeal was preferred by the defendant before the Appellate Court which was allowed and the suit was dismissed. Hence this appeal.

6. This second appeal was admitted on 26-6-1992 on the following substantial question of law:--

'Whether the Lower Appellate Court was right in reversing the ejection decree passed by the Trial Court on the ground under Section 12 (1) (h) of the M.P. Accommodation Control Act, 1961 on the grounds stated in Paragraph 9 of the impugned judgment of the Lower Appellate Court ?'

The contention of learned Counsel for the appellant is that there is a specific evidence of the plaintiff in order to prove ground under Clause (h) of Sub-section (1) of Section 12 of the Act. It has been further contended by him that the plans and estimates for reconstruction of suit shop was submitted by the plaintiff in the Trial Court and these documents are Exs. P-3 and P-4, and there is sufficient

evidence that the plaintiff is also having necessary funds with, him. The learned Counsel by placing emphasis on Para 9 of the impugned judgment has contended that the Appellate Court has dismissed the suit only on the ground that the estimate was never with the plaintiff on the date of the filing of the suit and the same was prepared after 3 years of the institution of the suit. On this ground alone, the suit was dismissed. By placing reliance on the decision of this Court in the case of Ramprakash v. Kapoorchand, 1966 JLJ Short Note 64, it has been contended by learned Counsel that plans and estimates may be prepared and the funds may be made available even after filing of the suit.

7. Combatting the aforesaid submission, Shri Usmani, learned Counsel for the respondents argued in support of the impugned judgment and has contended that since the estimate was not available with the plaintiff on the date of the filing of the suit and he was not having necessary funds, therefore the Appellate Court rightly dismissed the suit. His further contention is that there is no pleading of the plaintiff in regard to the estimate for the reconstruction of suit shop and for this reason also the suit has been rightly dismissed.

8. Having heard learned Counsel for the parties, this Court is of the view that this appeal deserves to be allowed.

9. On going through the written statement, it is perceivable that defendant himself has admitted that the suit shop is in dilapidated condition as the roof of it is also in a falling state. Thus, there is a clear admission of the defendant that the suit shop is in a dilapidated condition. The averment made by the plaintiff in his plaint that he has prepared the plans and he is also having necessary funds for reconstruction of the suit shop has not been specifically denied by the defendant in his written statement. The pleadings of defendant in written statement in that regard is not clear and is vague. Even otherwise the plaintiff has filed Exs. P-3 and P-4 in regard to the plans and estimates. True Ex. P-4 the document of estimate is of subsequent date and was prepared after filing of the suit, but, merely on this ground the plaintiff can not be non-suited. The plaintiff has examined Devchand (P.W. 4), in order to prove that he is having sufficient funds for the construction of the suit shop. In the case of Ramprakash (supra), this Court while considering the

scope of Section 12 (7) of the Act with reference to the ground of eviction under Section 12 (1) (h) of the Act has laid down the law that the plans and estimates may be prepared even after filing of the suit and up to the point of time when the Court is to pass a decree for eviction. I am respectfully in agreement with the said decision. In the present case, the defendant has not specifically pleaded in his written statement that necessary plans have not been prepared or the plaintiff is not having necessary funds and, therefore, in absence of specific denial in that regard, it would amount to an admission.

10. The First Appellate Court has dismissed the suit of plaintiff merely on the ground that the estimate Ex. P-4 is of later date and was not available with the plaintiff when he filed the suit. According to me, the approach of the First Appellate Court is not in accordance with the law. On going through the ambit, scope and sphere of Sub-section (7) to Section 12 of the Act, it can not be said that the plans and estimates should be made available by the plaintiff on the date of the filing of the suit and if they were obtained later on, the plaintiff will be non-suited. If we analyse the scope and ambit of Section 12 (7) of the Act, it is perceivable that the intention of Legislature is not that, on the date of the filing of the suit the plans, estimate and necessary funds should be available with the plaintiff or these conditions are pre-requisite conditions and plaintiff should possess these conditions when the suit is filed. In Sub-section (7) to Section 12 the Court is required to satisfy that the plans, estimates and necessary funds are available with the landlord. The provisions of Sub-section (7) can not be stretched to the extent that plans, estimates and the funds should be available to the plaintiff at the time of institution of the suit, nor this is the intention of Legislature. I may further add that the expression 'necessary funds for the purpose are available with the landlord' used in Sub-section (7) to Section 12 would not mean liquid money in hand. It would be sufficient if landlord demonstrates and proves that he is having potential capacity to raise funds for the purpose of carrying out the construction.

11. So far as the contention of learned Counsel for the appellant that there is no pleading in the plaint in regard to estimates for reconstruction of the suit accommodation, suffice it to say that if a suit for eviction is filed on the ground envisaged under Clause (h) of Sub-section (1) of Section 12 of the Act, the plaintiff

is required to satisfy the Court under Sub-section (7) of Section 12 that the plan and estimate of the proposed reconstruction have been prepared and the necessary funds, for that purpose, are available with the plaintiff. Merely the requirement of Sub-section (7) of Section 12 has not been pleaded, the plaintiff can not be non-suited on this ground. What the plaintiff is required to show is that he is having the plans, estimate and necessary funds to carry out the construction and this can be shown by him even at the stage of evidence to satisfy the Court about the availability of plan, estimate and funds. The decree under Section 12(1)(h) of the Act can not be denied on this ground. In this regard, I may profitably rely the decision of this Court in the case of Lal Singh Tomar v. Ramesh Chand and Anr. 1985 JLJ 304, wherein in Para 12 has held that the provisions of Section 12(7) of the Act are not required to be pleaded but there should be a satisfaction of the Court that plaintiff is having plans, estimate and necessary funds with him. In the present case since all these three things are available with the plaintiff, the view of this Court is that he has been wrongfully debarred from the decree under Section 12(1)(h) of the Act by the First Appellate Court which was allowed to him by the Trial Court.

12. In this view of the matter, since the approach of learned First Appellate Court dismissing the suit is not in accordance with law, the judgment and decree passed by it is hereby set aside and the judgment and decree passed by Trial Court is restored. The Trial Court directed to vacate the suit accommodation up to 24-2-1986 that time has already been elapsed. Respondent is hereby directed to vacate the suit accommodation on or before 31st October, 2004. The plaintiff/appellant is hereby directed to carry out the necessary construction thereafter and within one month of the completion of such work may place the respondent in occupation of the accommodation.

13. Resultantly, the appeal is allowed without any order as to costs.