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Court : Madhya Pradesh

Decided On : Oct-24-2007

Reported in : 2008(1)MPHT378; 2008(1)MPLJ488

Judge : Arun Mishra, J.

Appellant : Ram Chandra Dixit and ors.

Respondent : Arvind Kumar Jain

Disposition : Appeal dismissed

Judgement :

Arun Mishra, J.

1. The appeal has been preferred by defendants/tenants aggrieved by the judgment and decree dated 19-12-2006 passed by 1st Additional District Judge in Civil Appeal No. 31 -A/2005 thereby affirming the judgment and decree dated 5-2-05 passed by Vth Civil Judge, Class-II, Bhopal in Civil Suit No. 27-A/2001.

2. Plaintiff/respondent filed the instant suit for eviction of defendants/ tenants on the ground contemplated under Sections 12(1)(a), 12(1)(b), 12(1)(c) and 12(1)(f) of M.P. Accommodation Control Act (hereinafter referred to as 'the Act'). Plaintiff wanted to start the business of manufacture cum sale of ready-made garments, he was not having suitable alternative accommodation for that purpose, notice dated

10-7-2000 was served terminating the tenancy demanding the vacant possession, however the suit accommodation was not vacated hence suit was preferred.

3. Defendants contended that Ramchandra Dixit had obtained the accommodation in the name and style of Universal Motor Transport Corporation from the father of plaintiff, accommodation was not sub-let to anyone else, plaintiff was not the exclusive owner nor the accommodation had fallen to his share in the partition, rent was not accepted by the plaintiff in spite of the fact that it was tendered, plaintiff did not require the suit accommodation bona fide, he was having other alternative accommodation to carry on the business, if he so desired, area in question is used for the purpose of transport business, no obstruction was caused to the plaintiff hence suit be dismissed.

4. The Trial Court initially decreed the suit on the ground under Section 12(1)(f) of the Act. Civil Appeal No. 22-A/04 was preferred, it was partly allowed on 30-11-04, case was remanded to the Trial Court to decide the issue of ownership on the basis of evidence, thereafter fresh evidence was adduced by the parties. As against the decision of Appellate Court dated 30-11-2004, a Writ Petition No. 490/05 was preferred which was decided by this Court on 2-2-05, the defendants were given liberty to raise the questions in appeal to be filed as against the final decision to be rendered by the Trial Court. Remand order dated 30-11-04 was not interfered with. Thereafter Trial Court has as per judgment and decree dated 5-2-05 decreed the suit on the ground under Section 12(1)(1) of the Act. Dissatisfied with the same, 1st appeal was preferred, that has been dismissed by the impugned judgment and decree dated 19-12-2006. Consequently, the successive appeal has been preferred by the unsuccessful defendants/tenants.

5. Shri R.P. Agarwal, learned Sr. Counsel appearing with Shri Praveen Dave on behalf of defendants/appellants has submitted that plaintiff has failed to cross-examine the defendant Omprakash Dixit on crucial statement made by him in Para 8 of his deposition that there were other vacant suitable alternative accommodation situated in the back side of the house, thus, plaintiff was having reasonably suitable alternative accommodation to start the business, thus, decree could not have been passed on the ground under Section 12(1)(f) of the Act. He

has also submitted that accommodation in question could not be said to be a reasonably suitable accommodation for the purpose of business proposed by the plaintiff as locality is used for Transport Nagar, with the permission of local administration, thus, it could not be said that plaintiff would be able to conveniently carry on the business of manufacture of ready-made garments in the suit premises. Consequently, the decree passed under Section 12(1)(f) of the Act be set aside. Alternatively he has submitted that in case of dismissal of appeal, defendants/tenants be given reasonable time to vacate the accommodation.

6. Ms. Shobha Menon, learned Sr. Counsel appearing with Shri A.S. Handa for plaintiff/landlord has submitted that plaintiff has categorically stated in his deposition that he was not having any other suitable alternative accommodation of his own for the purpose of business, no cross-examination was made by defendant as to availability of any other shop in the back side of the house. She has also taken this Court to the partition decree passed, the plaint of Civil Suit No. 82-A/1976 and the map Exh. P-11. She has submitted that area marked with red colour was given on the ground floor to plaintiff Arvind Kumar Jain and that entire area is in occupation of the defendants as tenants. No other portion in the house was allotted in partition to plaintiff Arvind Kumar Jain, thus, it is apparent from plaint (P-10) and map (P-11) along with judgment and decree P-1 and P-2 of the partition case that there was no other alternative accommodation of his own available to plaintiff to carry on the business of manufacture of ready-made garments. The suit premises could very well be used conveniently by the plaintiff for the purpose of manufacture of ready-made garments.

7. I have heard the learned Counsel for parties at length and gone through the oral as well as documentary evidence on record with the help of learned Senior Counsel appearing for parties.

8. Coming to the first submission raised by Shri R.P. Agarwal, learned Sr. Counsel that suitable alternative accommodation was available in the back portion of the house as stated by Omprakash Dixit in Para 8 of his deposition. The submission cannot be accepted for several reasons firstly this suggestion was not given to the plaintiff in his cross-examination that he was having alternative accommodation

and there was a shop vacant in the same house behind the disputed portion, if it was the case of defendants, it ought to have been pleaded in the written statement that the said accommodation was vacant and available to the plaintiff, further more it was necessary to put the said case of defendants in the cross-examination of the plaintiff and his witnesses, but admittedly that has not been done. It is conceded that no such suggestion was made to the plaintiff or his witness examined in support of the case, thus, the bald statement made by defendant Omprakash Dixit in Para 8 of his deposition carries his case nowhere as rule of cross-examination is that parties must put their case and obtain explanation, cross-examination is not a mere form of procedure but is a matter of substance as held in Karnidan Sarda and Anr. v. Sailaja Kanta Mitra and Anr. AIR 1940 Palna 683, A.E.G. Carapiet v. A.Y. Derderian : AIR1961 Cal359 ,. Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. and Anr. and in Bhoju Mandal and Ors. v. Debnath Bhagat and Ors. : AIR 1963 SC1906 . It appears that in Para 18 of his deposition he was subjected to cross-examination by the plaintiff whether he was aware which portion, in the suit house, belonged to the plaintiff, he was not able to say with assertion which portion had fallen in the share of plaintiff on the ground floor, in the absence of making an assertion by the plaintiff that portion where he had suggested that alternative accommodation was vacant and available had fallen to the share of plaintiff, the statement of defendant could not have been relied upon, particularly when there was failure to put the case in cross-examination of plaintiff. Apart from that when we consider the judgment and decree P-1, P-2 and (P-10) and map (P-11) of the partition suit, it is clear that only the portion shown with the red colour on the ground floor had fallen to the share of plaintiff and that entire portion in undisputedly is in occupation of defendants as tenants. Thus, on merit also the statement made by defendant in Para 8 that there was alternative accommodation available to the plaintiff could not have been accepted. In view of the partition decree and the map on record, the portion that has been suggested as alternative accommodation could not be said to be owned by the plaintiff, even if any accommodation was vacant in the said portion on the back of the house, though it has not been established by defendant that any such accommodation was vacant in back portion of the house. In the circumstances Courts below have rightly held that there was no alternative accommodation of his own available to

the plaintiff for doing the business of manufacture of ready-made garments.

9. Coming to the submission raised by Shri R.P. Agarwal, learned Sr. Counsel that shop in question could not be said to be reasonably suitable for doing the business by the plaintiff. I find the submission to be legally unacceptable as well as untenable on facts. Section 12(1)(1) of the Act reads thus:

12. Restriction on eviction of tenants.-- (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:

(f) that the accommodation let for non-residential purposes is required bonafide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.

It is apparent from aforesaid provision that plaintiff should not have reasonably suitable alternative accommodation of his own for the proposed business for which suit has been filed, even if the accommodation owned by the plaintiff from which ejectment of tenant is sought, the plaintiff is not required to prove that suit accommodation is suitable for him, the plaintiff cannot be non-suited on the ground that accommodation in question was not reasonably suitable for his proposed business though he has no other accommodation of his own to do the business, it is with respect to alternative accommodation if it is available, the requirement of reasonably suitable accommodation has been engrafted under Section 12(1)(f) of the Act so as to provide protection to a tenant from unjust pretexts. On facts, the accommodation in question is quite spacious in which business of manufacture of ready-made garments could conveniently be started by the plaintiff. Merely by the fact that area in question is used as Transport Nagar, there was no legal bar for the plaintiff to start the business of manufacture of ready-made garments, no such provision creating bar has been pointed out.

10. Coming to the submission of grant of time in order to vacate the premises as accommodation is used for the purpose of business, it is considered appropriate to give time to appellants/defendants till 31st of March, 2008, however, the same shall be subject to following riders:

(i) The defendants/appellants to furnish undertaking within a period of fifteen days from today before the Executing Court to hand over peaceful vacant possession on or before 31st March, 2008.

(ii) Defendants shall deposit the arrears of rent, if any, within a period of fifteen days from today and shall continue to deposit the rent on or before 15th day of every month.

In case any of the aforesaid condition is violated, it would be open to the plaintiff/ decree holder to execute the decree forthwith.

No other point was raised.

11. Resultantly, the appeal being devoid of merit is dismissed. However, parties are left to bear their own costs as incurred of the appeal.

C.C. as per rules.

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