

**Durga Prasad and ors. Vs. Laxminarayan Deceased Through L.Rs.**

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**Court :** Madhya Pradesh

**Decided On :** Sep-17-2007

**Reported in :** 2008(3)MPHT233

**Judge :** S.K. Seth, J.

**Appellant :** Durga Prasad and ors.

**Respondent :** Laxminarayan Deceased Through L.Rs.

**Judgement :**

**S.K. Seth, J.**

1. This is plaintiff's appeal in an eviction suit. The appeal was admitted for final hearing on the following substantial question of law:

Have both the Courts below erred in not allowing withdrawal of the suit on application under Order 23 Rule 1(3) of the Code of Civil Procedure when actually cause of action arises month to month in a case between the landlord and tenant for eviction ?

2. Facts which are relevant for the disposal of the appeal are as under:

Undisputedly, this is second round of litigation between the landlord and the tenant. The suit accommodation is a room let out to the appellant on payment of monthly rent of Rs. 20/-. The respondent had filed a suit for eviction of the

appellant somewhere in the year 1964 and it was registered as Civil Suit No. 98-A/1964. The eviction was sought besides other grounds on the ground covered under Section 12(1)(f) of the MP. Accommodation Control Act, 1961 (hereinafter referred to as 'the Act'). In second appeal, this Court had held that the accommodation was let out for residential purposes, therefore, a decree under Section 12(1)(f) of the Act granted by the Courts below was set aside. Thereafter, a second suit was filed claiming eviction of the appellant under Section 12(1)(e) of the Act. The suit was contested by the appellant by denying all material allegations of Act. On the basis of the pleadings, learned Trial Judge framed issues and allowed parties to adduce evidence, Learned. Trial Judge after hearing final arguments had posted the case for pronouncement of judgment on 31-3-2001. On 30-3-2001 the application under Order 23 Rule. 1(3) of the Civil Procedure Code was submitted on behalf of the plaintiffs seeking permission of the Court to withdraw the suit with a liberty to file a fresh suit. Learned Trial Judge considered the application and by a separate order dismissed the same on 31-3-2001 and proceeded to pronounce the judgment in favour of the respondent. The matter was carried in appeal by the appellant, however, without avail. Hence, this second appeal at the instance of the tenant as pointed out hereinabove.

3. Learned Counsel for the appellant submitted that in absence of any fraud, collusion or coercion, the Trial Court had no option but to: allow the application and it could not have proceeded with the suit. In support of this contention, learned Counsel has relied upon the decision of the Allahabad High Court reported in : AIR1966 All318 , Smt. Raisa Sultana Begam and Ors. v. Abdul Qadir and Ors. and the decision of the Punjab and Haryana High Court reported in , Manmohan Singh Bedi and Ors. v. Smt. Santosh Kumari and Ors.

Per contra, learned Senior Counsel, appearing for the respondent has placed reliance on a decision of the Supreme Court reported in AIR 2000 SC 2132, K.S. Bhoopathy and Ors. v. Kokila and Ors. and a Division Bench decision of this Court reported in 1962 MPLJ 596, Shantilal Bardichand Mahajan (Defendant) v. Champalal Radhaji and Ors. (Plaintiffs). Learned Senior Counsel submitted that the question of law framed at the time of admission is, in fact, not a substantial question of law as has been held by the Supreme Court in Santosh Hajari v.

Purushottam Tiwari reported in AIR 2001 SC 965.

4. After having heard learned Counsel for the parties and going through the records of the Courts below, this Court is of the opinion that this appeal has no merit and substance as it does not involve any question of law much less substantial question of law. Order 23 Rule 1(3), Civil Procedure Code gives discretion to the Court to allow the withdrawal of the suit if the conditions laid down therein are satisfied. From a bare perusal of the provisions, it is clear that it does not cast any mandatory duty on the Court to allow the withdrawal application. It is pertinent to point out that application was submitted by the Counsel under his own signature and it was not supported by any affidavit of the plaintiff. Shri Agrawal, learned Senior Counsel, is correct in submitting that the application was made by the Counsel contrary to the facts established during the previous round of litigation and for such misconceived application, the respondent/landlord was not binding. In *Shantilal Bardichand Mahajan (supra)*, this Court had held as under:

The Court is not merely an umpire watching a battle of wit between the parties from a distance through a telescope. The Court is charged with the responsibility of guiding the procedure and apprising the parties whenever necessary of their duties. But the law is complicated, the individual litigant is most often a layman and legal advice at the bar cannot always be as efficient as can be desired. The Court may have to direct the party on the requirements of law whenever there has been a patent omission. Legal procedure is full of traps; if a litigant happens to stumble the Courts should give a helping hand, except when this is the result of an attempt to be clever and over-reach the Court or to do something inequitable to the other side. In the latter even the party concerned should be dealt with severely. But where it is the slip or inadvertence, the only consideration is whether in the interval the other side had acquired an equity by the operation of limitation or otherwise.

5. In the present case, it is clear that the application submitted by the Counsel was clearly an inadvertent mistake and the other side had not acquired any equity by operation of limitation or otherwise. Learned Trial Judge rightly rejected the application for legitimate reasons, therefore, it cannot be faulted with. Sufficient to say that reliance placed on the decisions of the Allahabad High Court and the

Punjab and Haryana (supra) are clearly distinguishable in the facts of the case in hand as in those cases the Court was dealing the application for unconditional withdrawal which was not the case here. In AIR 2000 SC 2132 (supra), the law had been explained by the Supreme Court and in view of the legal position, I do not find any infirmity with the impugned judgment and decree passed by the First Appellate Court or by the Trial Court.

6. In view of the foregoing discussion, the inevitable result is that this appeal must fail and is accordingly dismissed. Looking to the facts and circumstances of the case and the economic status of the parties, there shall be no order as to costs of this appeal and the parties shall bear their own costs so far as this appeal is concerned. Order accordingly.

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