

Rajaram. Vs. Mukesh Kumar and ors.

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Court : Madhya Pradesh Jabalpur

Decided On : Jul-30-2010

Judge : U.C.Maheshwari, J.

Acts : M.P. Accommodation Control Act, 1961 - Sections 12(1)(a)(c)(e), 12 (1) (o), 13(1) ; [Code of Civil Procedure \(CPC\)1908](#) - Section 100(1) ;

Appeal No. : SECOND APPEAL NO.338 of 2010.

Appellant : Rajaram.

Respondent : Mukesh Kumar and ors.

Advocate for Def. : Shri K.S. Jha, Adv.

Advocate for Pet/Ap. : Shri Sanjay Sarwate, Adv.

Judgement :

1. The appellant/defendant has directed this appeal under Section 100 of the CPC being aggrieved by the judgment and decree dated 18.1.2010 passed by Ist Additional District Judge Khurai, District Sagar in regular civil appeal no.43-A/08 whereby, the judgment and decree dated 15.9.09 passed by Ist Civil Judge Class-I Khurai in original civil suit No. 135-A/06, decreeing the suit of the respondents for eviction against the appellant on the grounds enumerated under Section 12(1)(a),(c)and (e) of the M.P. Accommodation Control Act, 1961 (In short 'the Act') have been affirmed while the same was set aside with respect of the ground of Section 12 (1) (o) of the Act.

2. The facts giving rise to this appeal in short are that one Dwarka Prasad the predecessor in title of respondents No.1 to 4 and respondent no.5 filed the eviction suit against the appellant contending that the appellant being their tenant at the rate of Rs.160/- per month, is in occupation of the disputed premises situated at Subhash ward, Raikwar Gali, Khurai, for residential purpose. As per further averments, the appellant being defaulter in payment of the contractual rent and encroached some other part of the house and also caused them injury by denying their title and they are in bonafide genuine need of such disputed accommodation for the residence of their family members for which, they did not possess any other alternate suitable accommodation of their own in such town. In such premises, the suit for eviction on the grounds available under Sections 12(1) (a),(c)(e) and (o) of the Act is filed.

3. In the written statement of the appellant, the averments of the plaint are denied. In addition, it is stated that he has not encroached any part of the premises. The entire rent of the accommodation has been paid to the respondents. It is also stated that the plaintiffs are not the owner of the property hence on the ground of bonafide genuine requirement enumerated under section 12(1)(e) of the Act they are not entitled to get the decree of eviction. The same was the property of one Kashi Bai, the elder mother of the deceased plaintiff No.1 and the appellant was of her tenant since last 15 years at the rate of Rs. 150/- per month. In further pleadings it is stated that with intention to evict the appellant, the respondent by disconnecting the electricity supply has obstructed the essential necessity of the tenanted premises. With these pleadings the prayer for dismissal of the suit is made.

4. On denying the title of the respondents by the appellants in the written statement the ground of disclaimer of title the nuisance enumerated under section 12(1)(c) of the Act for eviction was also taken in the plaint by way of amendment.

5. In view of the pleadings of the parties, after framing the issues the evidence was recorded, on appreciation of the same, the trial court decreed the suit in favour of the respondents on the grounds enumerated under section 12(1)(a),(c),(e) and (o) of the Act. However, such suit was dismissed with respect of Rs.918/- relating to

electricity bill and also for the compensation with respect of the room which was encroached by the appellant. On challenging such decree before the appellate court, on consideration, by affirming the findings of the trial court on the grounds enumerated under section 12(1)(a),(c) and (e) of the Act, the same was dismissed till this extend. While the findings of the trial court on the ground of section 12(1)(o) of the Act was set aside. On which, the appellant/defendant has come forward to this court with this appeal.

6. Shri Sanjay Sarvate, learned appearing counsel of the appellant, after referring the aforesaid facts of the case and taking me through the evidence and the exhibited documents argued that the relationship of the landlord and tenant between the respondents and the appellant, has not been established by the cogent, reliable and admissible evidence. In spite that by holding such relationship, the impugned decree of eviction has been passed under wrong premises by the trial court and the appellate court has also committed error in affirming such findings of the trial court on its turn. In this respect, he also argued that initially the appellant was inducted in the disputed premises by the owner of the accommodation namely Kashi Bai, the elder mother of the deceased plaintiff No.1, in such premises, appellant being her tenant had neither attorned such tenancy in favour of the respondents after demise of Kashi Bai. In the lack of any evidence regarding such attornment, the courts below have committed error in holding such relationship between the parties. In continuation of it, he said that if such relationship is not held to be established then the decree is not sustainable. In this regard, he placed his reliance on a case of the Apex Court in the matter of Sheela and others v. Firm Prahlad Rai Prem Prakash-2002(3) SCC 375. In continuation he said that in the lack of proper demand notice of arrears of rent, the decree has wrongly been passed by the courts below on the ground under section 12(1)(a) of the Act. He further said that before filing the suit on behalf of the respondents, a notice intimating to vacate the premises was given to the appellant. In such notice the averments regarding their bonafide genuine requirement of the accommodation for residential purpose was not stated and on filing the suit such new grounds of eviction was pleaded in the plaint. Looking to such conduct of the respondents, the decree for eviction under section 12(1)(e) is also not sustainable as the same has been passed contrary to the law laid down by this court in the

matter of Lalchand Choithram Sindhi v. Laxmandas Narayandas Sindhi-1992 MPLJ 352.

7. So far the ground under section 12(1)(c) is concerned, he said that unless the relationship of the landlord and tenant is established between the parties, the appellant had a right to deny the derivative title of the respondents and, such denial could not be termed to be the disclaimer of the title under section 116 of the Evidence Act and the same could not be a ground for eviction under section 12(1)(c) of the Act and prayed for admission of this appeal on the proposed substantial questions of law stated in the appeal memo.

8. Having heard the counsel, I have carefully examined the record of both the courts below and also perused the impugned judgment. It is apparent on record that on appreciation of the evidence led by the parties, the courts below concurrently by holding the existence of relationship between them as tenant and landlords held the appellant to be defaulter in payment of the regular rent as even after receiving the demand notice the out standing rent was neither paid within two months to the respondent nor deposited the same within one month from the service of the summons with the trial court and also committed error in depositing the regular monthly rent in accordance with the provision of section 13(1) of the Act. On elaborate consideration the courts below have concurrently held that the appellant by denying the title of the respondents caused substantial injury to their right and title in the property in dispute. The above alleged bonafide genuine requirement of the respondents of the disputed premises for the residence of their family members for which they did not possess any other reasonably suitable accommodation in such town has been concurrently found to be proved on appreciation of the evidence. In such premises the decree for eviction under section 12(1)(a)(c) and (e) has been passed against the appellant.

9. In the aforesaid premises for the purpose of admission of this appeal this court has to examine whether aforesaid concurrent findings of the courts below, being based on appreciation of evidence, are giving rise to any question of law in the matter or in other words whether this appeal is involving any substantial question of law which could be interfered under section 100 of the CPC at this stage by

reappreciation of evidence or in the light of any existing legal position or not.

10. Coming to consider the question regarding the relationship of the landlord and tenant, the same could not be termed to be a question of law rather than the substantial question of law as the concurrent findings of the courts below holding such relationship between the parties being based on appreciation of evidence could not be interfered by this court at this stage under section 100 of the CPC as laid down by the Apex Court in the matter of Kalyan Singh v. Ramswaroop and another-1996 JLJ-247 in which it was held as under :-

"3. The contention of the learned counsel for the appellant is that it was not established that the appellant was a tenant of Smt. Gyasibai and that he was a tenant of the two sons. We are afraid this contention cannot be accepted in view of the findings of the two courts below and such finding of fact is not open to challenge before this court in appeal under Article 136 of the Constitution."

11. On arising the occasion, such principle of the Apex Court is further followed by this Court in the matter of Machala Bai v. Nanak Ram-2006(2) MPLJ-484. In such premises this appeal is not involving any of such question.

12. So far the concurrent findings of the courts below holding the appellant to be defaulter in payment of outstanding rent and also the recurring rent and, in such premises, the decree under section 12(1)(a) of the Act is concerned, firstly such concurrent finding are based on appreciation of the evidence and the same does not appear to be perverse and, secondly, in view of the law laid down by the Apex Court in the matter of Jamnalal and others v. Radheshyam (2000) 4 SCC 380, such findings, in the available set of proved facts, could not be interfered under section 100 of the CPC and, in such premises, this appeal could not be admitted by framing any substantial questions of law on this point.

13. So far the decree under section 12(1)(c) of the Act is concerned, after starting to pay the rent of accommodation by the tenant like appellant to the landlord like respondents, if such tenant denies the title of such landlord either in reply of the notice or in the written statement and, on appreciation of the evidence such fact is found to be proved, then the the suit of the landlords, on the ground of disclaimer

of the landlord's title under section 12(1)(c) of the Act, deserves to be decreed as laid down by the Apex Court in *Majoti Subbarao v. P.V.K Krishna Rao* -1990(1) MPWN- Note 192. Such view is also followed by this court in the matter of *Ramgopal Kanhiyalal v. M/s Din dayal*-2006(1) MPLJ 445.

14. So far the concurrent findings of both the courts below holding bonafide genuine requirement of the landlords for the alleged accommodation are concerned, the same being based on appreciation of the evidence, are findings of fact and could not be interfered by reappreciation of the evidence at this stage under section 100 of the CPC in view of the law laid down by the Apex Court in the matter of *Dr. Ranbir Singh v. Asharfi Lal*-(1995) 6 SCC 580 in which it was held as under :- 13.....The trial court and the first appellate court on a close analysis of the evidence also recorded a definite finding that the plaintiff's requirement of the suit premises was genuine and bona fide but the High Court set aside the same on unreasonable grounds.

14. Sub-section (1) of section 100 of the Code of Civil Procedure contemplates that an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. Sub section (4) of section 100 further provides that when the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. But it may be pointed out that the High Court formulated no such question of law on basis of which it proposed to interfere with the findings of facts. It has been the consistent view of this Court that there is no jurisdiction to entertain a second appeal on the grounds of erroneous finding of fact, based upon an appreciation of the relevant evidence. There is a plethora of case law in support of this view. To quote a few, references may be made to the decision in *V. Ramachandra Ayyar v. Ramalingam Chettiar* wherein this court took the view that even if the appreciation of evidence made by the lower appellate court is patently erroneous and the finding of fact recorded in consequence is grossly erroneous, that cannot be said to introduce a substantial error or defect in the procedure and the High Court cannot interfere with the conclusions of fact recorded by the lower appellate court. This view has been reiterated by this court in *Bhagwan Dass v. Jiley Kaur*. This being the position, the

High Court was not justified in reappreciating the evidence and substituting its own conclusions for the well-reasoned findings recorded by the courts of fact."

On arising the occasion, again such principle was followed by this court in the case of Machla Bai (supra).

15. In view of the aforesaid, this appeal is not involving any substantial question of law requiring any consideration at this stage.

16. So far the case law Sheela and other v. Firm Prahlad Rai Prem Prakash-2002(3) SCC 375 cited by the appellants counsel is concerned, the same is based and decided on different facts and context. In view of the aforesaid discussion, the same is not helping to the appellant in the present circumstances of the case. Although, this court did not have any dispute regarding the principle laid down in such cited case. The another case law in the matter of Lalchand Choithram Sindhi (supra) is also not helping to the appellant in the present circumstances.

17. In view of the aforesaid discussion, I have not found any perversity or infirmity in appreciation of the evidence by the courts below or any circumstance giving rise to any question of law, muchless, the substantial question of law requiring any consideration at this stage under section 100 of the CPC, hence this appeal being devoid of any such question deserves to be and is hereby dismissed at the stage of admission. There shall be no order as to the cost.

18. However, taking into consideration that the appellant is in possession of the disputed accommodation since long, therefore, it would not be possible for him to vacate the same within short period. Therefore, subject to some conditions, I deem fit to extend some time to him for vacating the disputed premises. Hence, it is directed that on depositing the entire decretal sum including the arrears of the rent, if any, and on furnishing appropriate surety to the satisfaction of the trial court within thirty days from today along with an undertaking that the appellant shall vacate the disputed premises and hand-over its peaceful possession to the decree holder on or before 31.01.2011, then subject to payment of regular monthly mesne profit of the disputed accommodation at the rate of the monthly rent as held by the courts below within 15 days from the end of such tenancy month, the appellant is

extended the time to vacate the premises up to 31.1.2011. Failing in compliance of any of the aforesaid condition, the respondents/decreed holder and the executing court shall be at liberty to execute the decree of eviction forthwith with all aspects.

19. The appeal is dismissed as indicated above.

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