

(2003) 07 MP CK 0084

In the Madhya Pradesh High Court

Case No : Civil Revision No. 214 of 2002

Anand Ram

APPELLANT

Vs

Dhanpatiya Bai (dead) through her L.Rs. Mewalal and Others

RESPONDENT

Date of Decision : 17-07-2003

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 2, 23, 23A

Citation : (2004) 2 MPHT 207

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : A.K. Jain, for the Appellant; Arvind Shrivastava, for the Respondent

Judgement

S.K. Pande, J.—Being aggrieved by the order dated 28-1-2002, passed by R.C.A., Katni in Eviction Case No. 5-A-90/7-99-00, the applicant/tenant has preferred this revision u/s 23 of the M.P. Accommodation Control Act (for short "the Act").

2. Late Dhanpatiya Bai (widow) filed application u/s 23-A of the Act seeking eviction of tenant/applicant Anand Ram from the suit house No. 364-364/2 situated at Katni fully described in map attached to the application on the ground that it is required bona fide by her for occupation, as residence for herself and other family members and a part of it shall be used for the purpose of shop by her grand son. The application was resisted by the applicant/tenant Anand Ram on the ground that there is no need of the suit house and the application seeking eviction has been filed without any ground. Since Dhanpatiya Bai is living in a house consisting of several rooms and few of tenanted premises were vacated, the need as stated is false. R.C.A. decided the application vide impugned order dated 28-1-2000 and directed the applicant/tenant to deliver vacant possession of the suit house to late Dhanpatiya Bai within a period of one month time. Being aggrieved by the order aforesaid, this revision has been preferred on the ground that the need, as stated in the application u/s 23-A of the Act, since had not been proved, order of eviction passed by R.C.A. is erroneous,

3. Dhanpatiya Bai (P.W. 1) has stated that her grand sons Santosh Kumar and Surendra Kumar since have become major, their marriages are to be performed. Portion of suit house is required for starting shop by grand son Surendra. Same are the statements of Ramchandra (P.W. 2), Mewalal (P.W. 3), sons of late Dhanpatiya Bai. In cross-examination, Dhanpatiya Bai (P.W. 1) has admitted that her son Mewalal is in the employment of M.P.E.B. at Birsinghpur Pali. Grand son Santosh is already having a grossary shop and Surendra Kumar is a student of Engineering at Jabalpur. Santosh Kumar and Surendra Kumar are sons of Mewalal (P.W. 3). Mewalal (P.W. 3) has also admitted that his son Santosh is doing his business in the shop adjacent to the suit house and son Surendra Kumar is a student of Engineering. Anandram (D.W. 1) has stated that Mewalal resides at Birsinghpurpali and another son of Dhanpatiya Bai (P.W. 1) is in service at Allahabad. The youngest son is also employed in Ordnance Factory at Katni. Santosh is doing his business in the shop adjacent to the suit house and Surendra Kumar is a student of Engineering. Father of these grand sons Santosh Kumar and Surendra Kumar is Mewalal (P.W. 3), he is in the service of MPEB. In the circumstance, it has been contended that Santosh Kumar and Surendra Kumar can not be said to be members of family of late Dhanpatiya Bai, they also can not be said to be dependent on her.

4. In *Koyilerian Janaki and Ors. v. Rent Controller (Munsif) Cannore and Ors.*, (2000) 9 SCC 406 , it has been held that where the eviction is claimed for occupation by any member of the family dependent on land lady, without any ambiguity makes it plain that she must lead and substantiate three ingredients : (i) person needing building is member of her family, (ii) such person is dependent on her; (iii) the need is bona fide - If anyone of the three ingredients is absent, the petition would fail. Referring to the decision *Baldev Sahai Bangia Vs. R.C. Bhasin*,), it has been contended that liberal meaning of the word family must be given. In the judgment *Baldev SahaiBangia v. R.C. Bhasin* with reference to family, it has been held :--

The word "family" has to be given not a restricted but a wider meaning so as to include not only the head of the family but all members or descendants from the common ancestors who are actually living with the same had. A beneficial provision must be meaningfully construed so as to advance the object of the Act, and curing any lacuna or defect appearing in the same. Thus the term "family" must always be liberally and broadly construed so as to include near relations of the head of the family.

5. u/s 2 (e) of the Act, the member of the family has been defined as under :--

(e) "member of the family" in case of any person means the spouse, son, unmarried daughter, father, grand father, mother, grand mother, brother, unmarried sister, paternal uncle, paternal uncle's wife or widow, or brother's son or unmarried daughter living jointly with, or any other relation dependent on him.

6. Santosh Kumar and Surendra Kumar are grand sons as such they can not be

termed to be members of family in the absence of being dependent on Dhanpatiya Bai (P.W. 1) grand mother, Surendra Kumar and Santosh Kumar are sons of Mewalal (P.W. 3). Santosh Kumar is doing his business of Kirana shop and Surendra Kumar is student of Engineering at Jabalpur. Therefore, by any stretch of imagination, it can not be said that suit house is bona fide required for their need. Dhanpatiya Bai (P.W. 1) in cross-examination has stated that applicant/tenant often makes a report to the police and irritates her. The relations with him are not cordial, therefore, she intends to seek eviction of the applicant/tenant.

7. As discussed above, with reference to the evidence adduced, it has not been proved that grand sons Surendra Kumar and Santosh Kumar in fact were dependent of grand mother Dhanpatiya Bai. Further, it has been proved that Santosh is doing his business of Kirana independently and Surendra Kumar is a student of Engineering at Jabalpur, therefore, R.C.A. has erred in recording the finding that the suit house is bona fide required by late Dhanpatiya Bai for occupation as residence, shop for herself or for any member of her family. Accordingly, order impugned passed by R.C.A. deserves to be set aside.

8. Consequently, revision succeeds and is allowed. Impugned order passed by R.C.A. u/s 23-A of the Act is set aside. Parties to bear their cost. Counsel fee as per rules or certificate (whichever is less).