
(2003) 08 MP CK 0019
In the Madhya Pradesh High Court
Case No : Second Appeal No. 174 of 2003

Ashok and Others

APPELLANT

Vs

Shakuntala Bai and Shantilal Jain and Others

RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)

Citation : (2004) 1 MPHT 417

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : S.S. Garg, for the Appellant; M.L. Agrawal and M. Tare, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—Having heard learned Counsel for the appellant and having perused record of the case, I find no merit in this appeal. In other words, the appeal does not involve any substantial question of law within the meaning of Section 100 of CPC and hence, the appeal has no substance. The appeal is filed by the defendant u/s 100 of CPC against the judgment/decreed, dated 6-3-2003, passed by learned Additional District Judge, Barwah, West Nimar, in C.A. No. 17-A of 1999, which in turn arises out of Civil Suit No. 72-A of 1987, decided by Civil Judge, Class I, Barwah, on 23-8-1999.

2. Two Courts have held against the appellant (defendant) who is admittedly the tenant of the suit accommodation that the need set up by the respondent/plaintiff (landlord) for residence of her son - Umesh as also for doing business is genuine and bona fide and secondly, plaintiff does not have any other reasonable and alternative suitable accommodation of her own in city where she can accomplish her need, i.e., need of her son except in the suit house. It is this finding of concurrence rendered by the two Courts in an eviction suit which is sought to be assailed by the defendant/tenant in this appeal.

3. It is now a too well settled principle of law laid down by the Supreme Court in series of cases and which is being consistently followed by the High Courts as law laid down under Article 141 of Constitution of India that a question of bona fide need set up by the plaintiff (landlord) whether for residential purpose or non-residential, is a question of fact. It is only when the finding so recorded on this issue is found to be de hors the pleading or against the evidence led or is based on no evidence, or is against the statutory requirement of law [12 (1) (f) of the Act], or it is so bad that no judicial man can ever reach to its conclusion, then such finding is amenable to interference in second appeal. When I examine the facts of this case keeping in view these parameters then I am unable to notice any such infirmity in the impugned judgment and hence, it deserves to be upheld.

4. Submission of learned Counsel for the appellant was that the need in question was in fact a need for reconstruction of the suit house as falling in Section 12(1) (h) of the Act and hence, in the absence of any pleading and requisite proof necessary for passing a decree on the ground falling u/s 12(1) (h) *ibid*, the impugned decree is bad in law. I do not agree. In my view, the submission is factually bad. It is in fact a bona fide need for residence and business, i.e., composite need falling u/s 12 (1) (c) and (f) and not a need exclusively u/s 12 (1) (h) as alleged. The requirement of Section 12 (1) (h) is to be complied with only when the ground is taken u/s 12 (1) (h) but not otherwise. Both the Courts have rightly decided the case of need that being the case pleaded by the plaintiff for eviction of the defendant. In a case of this nature, the only inquiry that was required to be gone into in the case was, whether a case u/s 12(1) (e) and (f) of the Act is made out or not. As held *supra*, it was held to be made out and hence, the decree for eviction on the two grounds was rightly passed.

5. As a consequence of aforesaid discussion, the appeal fails and is dismissed in *liinine* holding that it does not involve any substantial question of law. However, taking into account all facts and circumstances of the case and the fact that defendant has been in possession, I grant appellant/defendant three months time to vacate the suit accommodation from the date of this judgment, provided appellant deposit entire arrears of rent together with the cost, if awarded within two weeks from the date of this judgment. The appellant shall also deposit three months rent in advance by way of damages for use and occupation within fifteen days and shall further submit an undertaking before the Executing Court duly supported by an affidavit that he shall vacate the suit accommodation on the expiry of three months from the date of this judgment. In case, if appellant complies with these conditions, the respondent will not execute the decree upto three months. Failure to comply, will entitle the respondent to execute the decree.