

(1963) 11 MP CK 0005

In the Madhya Pradesh High Court

Case No : Second Appeal No. 491 of 1961

Babu Bhai Habib Bhai

APPELLANT

Vs

Bhagwandas Jagannath

RESPONDENT

Date of Decision : 28-11-1963

Acts Referred:

Madhya Bharat Accommodation Control Act, 1955 — Section 3, 4
Transfer of Property Act, 1882 — Section 109, 130

Citation : AIR 1967 MP 143 : (1966) ILR (MP) 761

Hon'ble Judges : Shiv Dayal Shrivastava, J

Bench : Single Bench

Advocate : B.L. Seth, for the Appellant; G.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

Shiv Dayal, J.—A decree for ejectment has been passed against the appellant on the ground that he committed default in payment of arrears of rent in spite of notice within the meaning of Section 4 (a) of the M. P. Accommodation Control Act, 1955, (hereinafter called the Act). It is urged for the appellant that the arrears of rent which fell due before the plaintiff became the owner of the suit property could not be called arrears of rent within the meaning of Section 4 (a) of the Act.

2. Material facts are that on 24 August 1959 the suit house was purchased by the plaintiff-respondent. On 28th August 1959, he gave a notice to the appellant and on 10 October 1959, he instituted the suit. As the notice was given within four days of his purchasing the property, it could not be said that any rent had fallen due to him. The plaintiff's case is that the defendant had to pay Rs. 20/- as arrears of rent to Ramdayal and Rs. 20/- to Deshraj, his predecessors-in-title and the said Ramdayal and Deshraj authorised the plaintiff in writing to recover the arrears of rent. These writings are Ex. P-4, dated 28 August 1959, and Ex. P-5, dated 30 August 1959 respectively.

3. According to the proviso to Section 109 of the Transfer of Property Act, the plaintiff was not entitled to arrears of rent due before 24 August 1959 on which date the suit house was transferred to the plaintiff. It is not as if in the sale deed itself the vendor transferred to the vendee his right to recover arrears of rent which had already- fallen due. That being so, it is unnecessary to consider whether such a right can be enforced u/s 109 without applying the proviso.

4. The position in this suit is that after the plaintiff had become the landlord, the former landlords transferred their actionable claims to the plaintiff. The arrears of rent which Ramdayal and Deshraj had to recover from the appellant were debts and they could be transferred u/s 130 of the Transfer of Property Act.

5. It is argued by Shri Singh that the arrears of rent even when transferred as an actionable claim do not lose their initial character and it is sufficient for the plaintiff to show that the dues recoverable from the defendant were arrears of rent. I am unable to accept this contention. In my opinion, whether an amount due by the tenant is payable to the landlord as arrears of rent or otherwise will have to be determined by reference to the provisions of the substantive law, the Transfer of Property Act. A distinction must be drawn between a case where a landlord who has to recover arrears of rent from his tenant, while continuing to be the landlord, transfers the actionable claim to a third person, and a case where a landlord while transferring the property also transfers his right to recover the arrears of rent to the transferee. In the first case, the arrears of rent will be recoverable as an actionable claim u/s 130 of the Transfer of Property Act; in the second case, perhaps, the transferee may recover the arrears of rent u/s 109 of the Transfer of Property Act without applying the proviso. It is not possible to say that even in the first case the assignee of the actionable claim will be able to sue the tenant for the recovery of arrears of rent as such, or, further, he will be entitled to eject the tenant u/s 4 (a) of the Act.

6. In the present case the transfer in favour of the plaintiff became complete on 24 August 1959. Rights which the plaintiff acquired by virtue of the transfer were u/s 109 of the Transfer of Property Act read with the proviso. When subsequently the previous landlords authorised the plaintiff to recover the arrears of rent which the defendant owed to them, it was transfer of actionable claims within the meaning of Section 130 of the Transfer of Property Act and the plaintiff was also entitled to a decree of the amounts due. They were merely debts which could not be recovered as arrears of rent because of the proviso to Section 109 of the Transfer of Property Act.

7. Shri Singh lays emphasis on the extended definition of the word "landlord" in Section 3 (c) of the Act. I do not see how that definition helps him on the point with which this appeal is concerned. The word "assignee" on which the learned counsel lays stress necessarily refers to an assignee of the rights of the landlord. In my opinion it does not include the assignee merely of arrears of rent which are actionable claims within the meaning of Section 130 of the Transfer of Property Act.

8. Shri Seth relies on *Bachchan Lal v. Ram Asre* 1960 All LJ 147. The observations of the learned Judge on the question whether a tenant will be called the defaulter because he refused to pay to the new landlord the rent which was due to the old, are obiter. The decision of that question was not necessary for the decision of the appeal because in the result the tenant's appeal was dismissed and the decree for ejectment was upheld on another ground. However, the reasoning can certainly be considered as persuasive. In that case under the sale agreement the previous owner had assigned to the new landlord the right to recover the amount of rent which had fallen due to her, but the learned Judge took the view that the new landlord was not entitled to demand rent for the period when no relationship of landlord and tenant existed between the plaintiff and the defendant. As that question does not arise in the present matter, I withhold my opinion on that further question.

9. Shri G.P. Singh then maintains that a decree for Rs. 44/- as claimed in the suit having been passed by the trial Judge and no appeal having been preferred against it, it has reached finality that the defendant was in arrears of rent. It is true that a decree for Rs. 44/- has been passed and also that that part of the decree of the trial Judge was not challenged in appeal. But it is quite clear from paragraph 14 of the plaint that the plaintiff demanded that amount of Rs. 44/- on the basis of the letters (Exs. P-4 and P-6) which authorised him to recover this amount. It cannot be said that the Court decreed that claim with the adjudication that they were arrears of rent within the meaning of Section 109 of the Transfer of Property Act or Section 4 of the Accommodation Control Act.

10. In the result, this appeal is allowed. The decree for ejectment is set aside and the plaintiff's suit to that extent is dismissed. However, in the circumstances of the case, I direct that the parties shall bear their own costs in both the appeal Courts.