

(2010) 02 MP CK 0015
In the Madhya Pradesh High Court
Case No : S.A. No. 205 of 2006

Baby Bai Kesharvani and others

APPELLANT

Vs

Smt. Kamla Bai

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1),
12(1)(a), 12(1)(f), 12(1)(m)

Citation : (2010) 3 MPLJ 287

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : S.K. Dwivedi, for the Appellant; R.K. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

Alok Aradhe, J.—Shri S. K. Dwivedi, learned counsel for the appellants. Shri R. K. Tiwari, learned counsel for the respondent. Heard on the question of admission.

2. This appeal u/s 100 of the Code of Civil Procedure, has been preferred by the tenants, who have lost in both the Courts below.

3. Admittedly, appellants are the tenants in respect of suit shop on a monthly rent of Rs. 18/ -. The respondent-landlady filed a suit for eviction on the grounds enumerated u/s 12(1)(a), (h), (f) and (m) of the M. P. Accommodation Control Act, 1961 (hereinafter referred to as the "Act" for sake of brevity). It was pleaded that despite notice being served demanding arrears of rent, tenants have not tendered the rent. Decree u/s 12(1)(m) of the Act was sought on the ground that unauthorisedly, tenants have raised construction which has materially altered the accommodation without permission of the plaintiff. Decree u/s 12(1)(f) of the Act was sought on the ground that plaintiff needs the accommodation bona fide for the purposes of business of her sons.

4. Defendants/tenants filed the written statement and opposed the prayer. It was

pointed out that defendants have not raised any construction in the tenanted premises. It was further pleaded that since plaintiff had refused to accept the rent, therefore, the rent was sent by money order to the plaintiff. The factum of bona fide need was also disputed on the ground that plaintiff's sons are not unemployed and they have several vacant accommodations in their possession in the township of Katni.

5. Learned trial Judge on the basis of pleadings of the parties, framed issues. Trial Court thereafter vide judgment and decree dated 14-7-2005 decreed the suit on the ground u/s 12(1)(a)(f) and (m) of the Act. Trial Court held that summons of the suit were served on the tenant on 13-9-2003 within a month thereafter, they should have tendered the entire arrears of rent. However, belatedly the rent was deposited on 1-4-2005 and 18-2-2005 vide Ex.D/23 and D/24 in the Court, without permission of the Court. Trial Court held that on the issue of bona fide need, there has been no cross-examination of the plaintiff. No suggestion has been made to the plaintiffs witnesses namely PW-1 and PW-3 that they have any alternative accommodation. Although, it was alleged that plaintiffs sons are engaged in taking tuitions, but no particulars were furnished. Trial Court also granted a decree u/s 12(1)(m) of the Act on the ground that front portion of the suit accommodation was covered with tin shed and a courtyard was constructed without written permission.

6. On an appeal being preferred by the tenants, the decree passed by the lower Appellate Court has been affirmed.

7. I have heard learned counsel for the appellants and have perused the record.

8. Learned counsel for the appellants has argued that in order to succeed u/s 12(1)(a) of the Act, sine-qua-non that a notice demanding arrears of rent should be sent to the appellants. It has been pointed out that from perusal of Ex.P/1 i.e. quit notice, there is no demand with regard to arrears of rent. Learned counsel has drawn the attention of this Court to the map which has been produced by the plaintiff and has argued that plaintiff has miserably failed to prove that any construction was raised on the tenanted premises. The findings with regard to bona fide need has also been assailed on the ground that same was perverse, as plaintiff has alternative accommodation in her possession. In support of aforesaid, learned counsel has drawn the attention of this Court to paragraph 5 of cross-examination of PW-1 i.e. plaintiff.

9. From perusal of Ex.P/1 i.e. quit notice dated 8-3-2003, it is apparent that no arrears of rent have been demanded by this notice, therefore, Courts below have clearly erred in law in granting the decree u/s 12(1)(m) of the Act. From perusal of the map, which has been filed by the plaintiff herself, it is apparent that no construction was raised on the tenanted premises. Therefore, the Courts below have clearly erred in granting a decree u/s 12(1)(m) of the Act. Accordingly, the decree granted by Courts below so far as it relates to u/s 12(1)(a) and (m) of the Act is set aside.

10. Now coming to the question of bona fide need of the plaintiff. Both the Courts below have concurrently decreed the claim of the plaintiff on the ground of bona fide need. There has been no cross-examination of plaintiff PW-1 with respect to bona fide need. No suggestion was made to plaintiff's witnesses namely PW-1 and PW-3 that plaintiff has any alternative accommodation in the city. The burden to prove that plaintiff has alternative accommodation was on the defendants, which defendants have failed to discharge. From perusal of paragraph 5 of the cross-examination of PW-1, it cannot be inferred that any alternative vacant accommodation is in possession of the plaintiff.

11. Thus, the finding with regard to bona fide need is based on appreciation of evidence on record. Aforesaid finding cannot be said to be either perverse or based on no evidence.

12. Jurisdiction of this Court u/s 100 of CPC to interfere with findings of fact is limited to cases where the findings are based on either no evidence or are perverse, which is not the case here insofar as it pertains to ground of bona fide need. See : Thiagarajan and Others Vs. Sri Venugopalaswamy B. Koil and Others, , Gurdev Kaur and Others Vs. Kaki and Others, and Narayanan Rajendran and Another Vs. Lekshmy Sarojini and Others, .

13. In view of preceding analysis, I find that Courts below have not committed any error in granting the decree u/s 12(1)(f) of the Act. Moreover, no substantial question of law arises for determination in the instant appeal. Accordingly, the decree granted by lower Appellate Court is modified and is set aside insofar as it pertains to ground u/s 12(1)(a) and (m) of the Act, but the same is affirmed insofar as it pertains to ground u/s 12(1)(f) of the Act.

14. At this stage, learned counsel for the appellants prays that he may be granted reasonable time to vacate the premises.

15. The time to vacate the premises to the appellants is granted subject to following conditions :-

1. That the appellants shall furnish an undertaking within a period of 15 days from today that on expiry of four months from today, they shall handover the vacant possession of the accommodation to the respondent-landlady without creating any hindrance. 2. They shall deposit all the arrears of rent which may be due and shall continue to pay the same to the respondent-landlady till the time of vacation of the premises.

16. In view of aforesaid, the second appeal fails and is hereby dismissed. However, there shall be no order as to costs.