

(1972) 02 MP CK 0011
In the Madhya Pradesh High Court
Case No : S.A. No. 504 of 1971

Bhagwandas Tiwari

APPELLANT

Vs

Gaya Prasad and others

RESPONDENT

Date of Decision : 17-02-1972

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 13, 13

Citation : (1978) ILR (MP) 961 : (1973) JLJ 469 : (1973) 18 MPLJ 469

Hon'ble Judges : G.P. Singh, J

Bench : Single Bench

Advocate : S.L. Jain, for the Appellant; S. Awasthi, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, J.

This appeal arises out of a suit for ejectment. The suit was instituted by one Jirabai against the appellant Bhagwandas Tiwari on three grounds. The first ground was that the defendant was in arrears of rent and had not paid the arrears after notice of demand. The second ground related to the need of the plaintiff for residence. The plaintiff's case was that she was a very old, blind and feeble woman needing the help of her relatives for her daily work and, therefore, she wanted her four nephews, namely, Gaya Prasad, Rameshwar Prasad, Dwarka Prasad and Badri Prasad and their families to look after her, and as she had no sufficient accommodation in her possession for these four nephews and their families, she needed the suit accommodation. The third ground pleaded was that the house was needed for reconstruction. The defendant denied all the grounds raised in the plaint. During the pendency of the suit, the plaintiff Jirabai died and the four nephews, whose names have already been mentioned above, were substituted as legal representatives, as they were legatees under a will executed by the deceased. Some amendments were made in the plaint by the legal representatives. The trial Court decreed the suit. It was held by the trial Court that although the house could not be needed by the deceased plaintiff Jirabai, it

had come in evidence that the legal representatives were living in rented accommodation and needed the house for their residence, and as they could not be compelled to live in rented accommodation when they had a house of their own, the defendant was liable to ejectment on the ground of the need of the legal representatives. It was further held that the tenant did not pay the arrears of rent on demand and did not comply with section 13 of the M. P. Accommodation Control Act. It was also held that the house was needed for reconstruction and the work of reconstruction could not be carried out without vacating the house. In the appeal filed by the defendant, the learned District Judge, Jabalpur, agreed with the judgment and decree passed by the trial Court, except on the point that the house was needed for reconstruction. It was held by the District Judge that the house was not, in fact, needed for reconstruction. Against the decree passed in appeal, the defendant has filed the present second appeal.

Learned counsel for the appellant has argued that the Courts below were in error in holding that the appellant had not complied with section 13 of the Act. The facts and the reasoning on which it has been held that section 13 was not complied are that rent which ought to have been deposited on 15th May and 15th June was deposited on 17th June, and that although the Court was closed for vacation from 13th May to 16th June 1968, and the amount could not have been deposited during this period in Court, yet the default in depositing the rent on 15th May and 15th June could not be condoned though the rent was deposited on the opening day i. e. 17th June. In my opinion, the Courts below were entirely wrong in holding that the deposit of rent made on 17th June 1968 was not in accordance with section 13. Section 13, in so far as it is material, requires the defendant-tenant "to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent." This provision thus means that the tenant can either pay the rent to the landlord by the 15th of each succeeding month or can deposit the same in Court by the 15th of each succeeding month. The choice is left to the tenant. The requirement that the rent should be deposited in Court by the 15th of each succeeding month has to be read along with section 7 of the Madhya Pradesh General Clauses Act, 1957. This section reads as follows:

S. 7. Where, by any Madhya Pradesh Act, any act or proceeding is directed or allowed to be done or taken in any Court or Office on a certain day or within a specified period, then if the Court or office is closed on that day or the last day of the specified period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day on which the Court or Office is open.

The benefit of the section applies where, by any Madhya Pradesh Act, any act or proceeding is allowed to be done or taken in Court or Office on a certain day or within a specified period. The making of a deposit in Court is an act and the prescription u/s 13 of the M. P. Accommodation Control Act, that the deposit

should be made by the 15th of each succeeding month, is a prescription that the act of deposit should be done within a specified period. The condition for applicability of section 7 of the General Clauses Act is, therefore, satisfied. As a result, if the Court is closed on 15th, a deposit can be made on the next day on which the Court opens. In the instant case, the deposit in Court could not be made on 15th May or 15th June, because the Court was closed from 13th May to 16th June for the summer vacation. The deposit was made on 17th June 1968 when the Court reopened. The deposit was, therefore, validly made u/s 13 of the Accommodation Control Act. Learned counsel for the respondents argued that the office was open during the vacation and, therefore, the defendant could make the deposit in the office, although the Court was closed. There is no substance in this argument. According to the Rules and Orders, Chapter XXII paragraph 466, a person intending to make a deposit in Court has to make an application on which the presiding officer has to pass an order before a deposit can be accepted by the cashier. An order of the presiding officer is, therefore, necessary for making a deposit in Court. It was, therefore, not possible for the defendant to deposit the rent in Court during the vacation.

It was next argued by the learned counsel for the respondents that as the defendant had the choice of paying to the plaintiff by the 15th or of making the deposit in Court, the benefit of section 7 of General Clauses Act was not available. In my opinion, this contention also cannot be accepted. Section 7 of the General Clauses Act, which I have earlier quoted, does not say that it applies only when the act or proceeding directed or allowed to be done in Court is the only mode of doing it and that it does not apply to those cases where the act can also be done outside the Court. The word "allowed" used in section 7 suggests that even if the act is permitted to be done in Court and it is not compulsory that it should be so done, still the section applies. It cannot be denied that section 13 of the Accommodation Control Act allows the act of making the deposit to be done in Court by the 15th of each month. The benefit of section 7 of the General Clauses Act will be available to this act even though instead of depositing in Court the defendant had the choice of paying the same amount out of Court to the plaintiff. Reference in this connection was made by the learned counsel for the respondents to *Kabra and Co. Trading Cotton Seed Partnership Firm Vs. Union of India (UOI) and Another*, . Reliance in particular was placed on the following observations:

The provisions of section 10 of the General Clauses Act would apply only to a case where the act itself is directed or allowed to be done or taken by an act of the Parliament. Where the plaintiff has two courses open before him, one of paying the amount directly to the defendant and the other of depositing the amount in Court, he is not entitled to take advantage of section 10 of the General Clauses Act, if the last date of the deposit happens to be a holiday See *Ram Kinkar Singh and Another Vs. Smt. Kamal Basini Devi*, .

In *Krishna Chandra's* case the question related to performance of an agreement

within a stipulated time. The time was fixed not by any act of the Legislature, but by the contract. To such a case clearly section 10 was not applicable. It was, therefore, rightly held in Krishna Chandra's case that section 10 was not applicable. However, the opinion expressed, in that case that when the plaintiff has two courses open, one of paying the amount directly to the defendant and the other of depositing the amount in Court, section 10 is not applicable, which was based on the Patna case of Ram Kinkar v. Kamal Basini, was expressed without taking notice of an earlier Division Bench case, AIR 1949 141 (Nagpur) . In this case the Patna case of Ram Kinkar v. Kamal Basini (supra) was expressly dissented. The Patna case also did not relate to the construction of any Act, but related to a compromise decree under which the judgment-debtor had the choice of directly paying the decretal amount or making the deposit in Court of the instalments. Question often arises in the context of compromise decrees whether a deposit made on the opening day can be accepted as made within the terms of the decree. There has been a sharp difference of opinion on that point. The view of the Patna High Court is that such a deposit is not in accordance with the terms of the decree. After noticing the sharp cleavage of Opinion between different High Courts, it was held in Premchand Bhikabhai's case that the deposit made on the opening day should be taken to be in accordance with the decree, although the judgment-debtor had the option of paying the amount outside the Court to the decree-holder. The view expressed in Krishna Chandra's case, being in ignorance of a previous decision of this Court, cannot be accepted. Moreover, all these cases related not to the construction of any Act, but to constructions of agreements and decrees. Section 7 of the General Clauses Act does not apply directly for construing agreements or compromise decrees. For this reason, the aforesaid cases are not directly relevant. In my opinion, as I have already stated the language of section 7 cannot be limited in application only for construing those enactments in which a person who is allowed to deposit money in Court has no choice of paying the same outside the Court. Section 7 is worded in general terms and it will also apply to those enactments where the act allowed to be done in Court is not the only manner of doing it and the person concerned is also given a choice of doing a similar act outside the Court. As in my opinion, the defendant complied with section 13 of the Accommodation Control Act, he could not be ejected on the ground that he failed to pay the arrears of rent after notice of demand.

The next question in this appeal is, whether the Courts below were right in holding in favour of the respondents on the point of need. I have already stated that the need pleaded in the plaint was that the original plaintiff Jirabai needed the accommodation for the residence of her nephews, because she was old and the residence of the nephews and their families with her was necessary for looking after her. Even after the amendment, which was allowed at the instance of the legal representatives, the same allegations in substance continued to remain in the plaint. The issue of need was framed by the trial Court in these terms:

Whether the plaintiff bona fide required the suit accommodation for her and her nephews residence.

After the death of the plaintiff Jirabai and after the plaint was amended by the legal representatives, the issue was recast as follows:

Whether the late Jirabai bona fide required the suit accommodation for residence of the plaintiffs.

The answer to this issue was given by the trial Court in the negative. It was rightly held that after the death of Jirabai the question of her need disappeared. It was, however, held that the nephews, who were substituted as plaintiffs, needed the suit accommodation because they were living in rented accommodation. The question is, whether the trial Court as well as the first appellate Court were right in decreeing the suit on this finding. It is well settled that the legal representatives can continue the suit on the same cause of action on which the suit was filed by the deceased plaintiff; they cannot litigate their personal rights as legal representatives. It has been held that any amendment which could not have been made at the instance of the deceased plaintiff cannot be allowed at the instance of the legal representatives : [See Inaganti Venkatarama Row Vs. U.R.R.D.K. Venkatalingama Nayanim Bahadur Varu, , V.T. Elaya Pillai Vs. Ramasami Jadaaya Goundan, and AIR 1924 45 (Lahore) It was for this reason that by the amendment the legal representatives did not give up the need that was pleaded by the deceased Jirabai and did not state that they themselves needed the suit accommodation because they were residing in rented accommodation. The need established in the suit is a need which Jirabai could not have pleaded. The nephews were not dependants of Jirabai and were not joint with her. She needed the suit accommodation for their residence for her own benefit, so that she may be looked after. This need disappeared after her death. She could not have pleaded that simply because her nephews were residing in rented accommodation, the suit accommodation should be got vacated. On her death, the legal representatives who have to continue the suit only on the grounds available to the deceased-plaintiff could not be granted a decree on the basis of need personal to them. The learned District Judge thought that as the plaint was amended and the legal representatives were shown as plaintiffs and as the amendment was not objected by the defendant, a decree could be passed on the basis of the personal need of the legal representatives. In my opinion, the learned District Judge lost sight of the fact that the amendment made in the plaint was merely formal and the need originally pleaded by Jirabai was not amended. I have already indicated how the parties in the trial Courts understood the amendment as is clear from the change that was made in the issue relating to the need. As the amendment did not incorporate any personal need of the legal representatives, the defendant did not object to it. In my opinion, the learned District Judge did not take into account the issue that was framed on the question of need and the change that was made after the amendment. Had he looked into it, I am sure he would have not held that the

legal representatives" personal need has been incorporated by the amendment without any objection by the defendant. The need established, that the suit accommodation is required for the residence of the legal representatives, because they are occupying rented accommodation, cannot be spelt out from the pleadings or the issues. For all these reasons, the suit could not have been decreed on that ground.

Learned counsel for the respondents relied upon *Motilal Pannalal Vs. Kailash Narain*, . In that case a decree was passed in favour of the plaintiff-landlord on the ground that he needed the accommodation for his and his family's residence. After passing of the decree the plaintiff died. The question that arose in appeal was, whether the decree so passed could be available for the benefit of his widow and children who were joined as legal representatives. It was held that the decree enured for their benefit, because the personal need of the plaintiff includes the need of his dependents and, therefore, it could not be said that the original need pleaded in the plaint vanished the moment the plaintiff died. Another case relied upon is *Narsingh Rao Dania and others v. Mohammad Yasin* and another 1962 M P L J Note 93 (S. A. No. 319 of 1961, decided on 20th October 1961), which is also similar to the case of *Motilal v. Kailash* (supra). The distinguishing feature of both these cases is that in them a decree was passed in life-time of the plaintiff who died after the passing of the decree and the need pleaded was a composite need for himself and the dependants who were his legal representatives. In the instant case, the plaintiff died before the decree and the legal representatives cannot be said to be her dependents. The original need was strictly the need personal to the plaintiff, viz. she being old, required her nephews to reside with her. Although after the death of the plaintiff the nephews were substituted as legal representatives, their need to get the suit accommodation could not arise on the ground which was initially pleaded by the deceased-plaintiff as that need vanished on the plaintiff's death. They can no doubt claim the suit accommodation for their own residence on the ground that they are living in rented accommodation, but this can be done only by a separate suit. The nephews were not dependents or living jointly with the plaintiff and the need of the original plaintiff could not be called their need. These facts distinguish the two decisions relied upon by the learned counsel for the respondents.

It was lastly argued by the learned counsel for the respondents that the finding of the learned District Judge that the accommodation was not needed for reconstruction is erroneous. The finding reached is a finding of fact and does not disclose any error of law. In the circumstances, that finding cannot be reviewed in second appeal.

In the result, the appeal is allowed. The judgments and decrees passed by the Courts below are set aside and the suit is dismissed. In the circumstances, there shall be no order as to costs throughout.