

(2001) 12 MP CK 0018
In the Madhya Pradesh High Court
Case No : Civil Revision No. 500 of 2001

Bhupendra Singh Rana and Others

APPELLANT

Vs

Ghanshyam Garg and Another

RESPONDENT

Date of Decision : 04-12-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1),
12(4), 12(5), 12(6)

Citation : (2002) 1 JLJ 168 : (2002) 1 MPHT 306 : (2002) 1 MPLJ 306

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : N.K. Jain, for the Appellant; Sanjeev Jain, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.

Heard the learned counsel for the defendants/applicants as well as the learned counsel representing the plaintiffs/respondents who has put in appearance at this stage.

Perused the record.

The tenant/defendant has approached this Court invoking its revisional jurisdiction u/s 115, CPC, feeling aggrieved by an order passed by the Trial Court allowing an amendment in the plaint.

It may be noticed that Ghanshyam Garg had filed a suit giving rise to this revision for eviction of his tenants from the premises in dispute, recovery of the arrears of rent and damages for use and occupation. The suit was based on the grounds envisaged under Sections 12 (1) (a) and (h) of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter referred to as the "Act", for short).

The ground contemplated u/s 12 (1) (a) of the Act is to the effect that the tenant

has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner.

The ground contemplated u/s 12 (1) (h) of the Act is to the effect that the accommodation is required bona fide by the landlord for the purpose of building or re-building or making thereto any substantial additions or alterations and that such building or alterations cannot be carried out without the accommodation being vacated.

During the pendency of the suit, the plaintiff, Ghanshyam Garg sold the premises in dispute to Smt. Kamlesh Garg vide the sale deed dated 28-2-1996.

Smt. Kamlesh Garg, thereafter moved an application seeking the impleadment as a co-plaintiff which was allowed by the Trial Court vide the order dated 19-3-1998.

Thereafter, she filed an application which has given rise to the present revision praying for permission to amend the plaint. By way of amendment, she sought to add a new ground for the eviction of the defendant/tenant from the premises in dispute. The new ground was a ground contemplated u/s 12 (1) (f) of the Act.

The ground contemplated u/s 12 (1) (f) of the Act is to the effect that the accommodation let for residential purposes is required bona fide by the landlord for occupation as a residence for himself or for any member of his family, if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned.

The tenant/applicant contested the aforesaid application asserting that no such application was maintainable. Reliance was sought to be placed on Section 12 (4) of the Act which provides that where a landlord has acquired any accommodation by transfer, no suit for the eviction of tenant shall be maintainable under Sub-section (1) on the ground specified in Clause (e) or Clause (f) thereof, unless a period of one year has elapsed from the date of the acquisition.

In the present case, as has already been noticed hereinabove, the suit had been filed on 13-9-1993 and Smt. Kamlesh Garg, purchased the property in suit vide the registered sale deed dated 28-2-1996. Thereafter, she was impleaded as the second plaintiff by the Trial Court vide the order dated 19-3-1998. She had filed the present application which has given rise to the present revision on 13-2-2001.

The contention urged by the learned counsel for the applicant is that in case the amendment is allowed to stand, it will relate back to the date of filing of the suit i.e., 13-9-1993 and on that date no such suit could be maintainable by the transferee.

The Trial Court was of the opinion that the proposed amendment was not such

which could result in changing the nature of the suit.

The Trial Court was further of the view that any ground available during the pendency of the suit could very well be taken justifying the decree by bringing the same on record by way of amendment by the plaintiff.

In the aforesaid circumstances, the Trial Court directed the plaintiff to amend the plaint providing an opportunity to the defendant/tenant to make the consequential amendments if any in the written statement.

The learned counsel for the applicant has strenuously urged that taking into consideration the bar envisaged u/s 12 (4) of the Act, no such amendment at the instance of a transferee could be permitted in law.

The learned counsel for the applicant however does not dispute that on the date when the application for amendment had been filed it was open to the plaintiff to file a separate suit for the same relief as claimed in the present suit. Such a suit could have been clearly entertainable and it could not have been hit by the provision contained in Section 12 (4) of the Act.

The aforesaid question had come up for consideration before this Court in the case of Bhanwarilal Trilokchand v. Bannatwala Jain & Co., reported in 1980 MPRCJ 187. In the said case, the plaintiff was a transferee landlord. The suit was one for ejectment of the tenant and the ground for ejectment became available to the plaintiff during the pendency of the suit.

The learned Single Judge of this Court in the aforesaid decision had observed that the landlord was entitled to add and claim relief of ejectment of his tenant on grounds which become available to him during the pendency of the suit.

There were conflicting opinions on the aforesaid question and the matter was referred to a Division Bench in the case of Munshi Khan v. Maya Devi, reported in 1993 JLJ 136, to resolve the conflict. There was difference of opinion in the Division Bench in the matter and thereafter it was referred to the third Judge.

The third Judge after taking into consideration various aspects of the matter including the implications arising u/s 12 (4) of the Act agreed with the opinion of one of the Judges constituting the Division Bench and affirmed the decision in the case of M/s. Bhanwarilal Trilokchand (supra).

The aforesaid decision was therefore affirmed by the Division Bench.

While affirming the decision of this Court in the case of M/s. Bhanwarilal Trilokchand (supra), the third Judge had taken notice of the decision of the Apex Court rendered by a Three Judge Bench in the case of B. Banerjee Vs. Smt. Anita Pan, , indicating that the ratio of that decision had a direct bearing on the controversy involved. It was observed that "institution of a fresh suit was ruled out to pre-empt "litigative waste" and no statutory sanction was also found for such a course."

It was further observed as follows:--

"To be more precise and candid, right of a transferee of evicting his tenant on a "ground" envisaged under Clause (e) or (f) of Section 12 (1) arises really in terms of Section 12 (4) because his cause of action cannot arise without the basic requirement contemplated therein being fulfilled of his completing one year's waiting period. It will be a travesty of justice if he is held not entitled to continue suit already filed on any other ground or grounds and claim the same relief of "eviction" on any additional "ground" specified in Clause (e) or (f). If a fresh suit on one of those grounds after expiry of one year from the date of his purchase of the suit premises is maintainable during the pendency of the suit earlier filed on other ground or grounds, by what logic his right to add a "new ground" in the pending suit for the same relief of "eviction" can be negated when the language of Section 12 (4) does not yield to that construction ? Provisions neither of Order VI Rule 17, CPC nor of Order VII Rule 8, bar his right to do so. To exercise the substantive right of evicting his tenant on expiry of one year from the date of his purchase on the ground of his bona fide need of the suit premises, procedural entitlement is contemplated in terms of Order VI, Rule 17 which enables a Court to entertain and allow prayer made for amending the plaint "for determining the real question in controversy between the parties" which would be the question indeed of landlord's obtaining possession of suit premises in terms of Sub-sections (5) and (6) of Section 12."

It was also indicated that the imperative underlying Section 12 (4) is only that on the date of making the "order" of eviction, Court must be satisfied that a transferee has completed one year's waiting period contemplated u/s 12 (4) and he is entitled to have an "order" from the Court which may be enforced in terms of Sub-section (5) or (6) of Section 12 to "obtain possession" of the suit premises from his tenant.

It was further indicated that the real purport of Section 12 (4) and that plain legislative intent cannot be frustrated by importing consideration of any extra-statutory theory of equitable content from the realm of uncodified procedural jurisprudence.

There can be no exception to the position in law as indicated hereinabove in the opinion of the learned third Judge in the case of Munshi Khan (supra).

I am further of the view that the ratio of the decision of the Apex Court in the case of B. Banerjee (supra) as well as the decision of this Court in the case of Munshi Khan (supra) stands clearly attracted in the facts and circumstances of the present case.

Taking into consideration the facts and circumstances brought on record, no justifiable ground can be said to have been made out for any interference in the impugned order while exercising the revisional jurisdiction envisaged u/s 115, CPC.

This revision in the circumstances is dismissed. Since the revision itself has been dismissed, this application is also dismissed.

Civil Revision dismissed.