
(2003) 08 MP CK 0046
In the Madhya Pradesh High Court
Case No : Civil Revision No. 182 of 2002

Brindawan Chourasiya

APPELLANT

Vs

Jagdish Prasad Sahu and Another

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12

Citation : (2003) 4 MPHT 378

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : Mukesh Agrawal, for the Appellant; R.P., for the Respondent

Final Decision : Allowed

Judgement

S.K. Pande, J.—This revision u/s 115 of CPC is directed against the order dated 22-9-2001 passed by 14th Civil Judge, Class-II, Jabalpur in C.S. No. 224-A/94.

2. Non-applicants Jagdish Prasad Sahu, Arun Kumar Sahu and Mahendra Kumar Sahu instituted C.S. No. 224-A/94 for eviction of tenant/applicant Brindawan Chourasiya u/s 12 of the M.P. Accommodation Control Act. During the pendency of the suit 1/3rd share in the suit house has been purchased by the tenant/applicant from Mahendra Kumar Sahu vide Regd. Sale Deed 13-5-98. With reference to the dictum laid down in Hafiz Ullah and Anr. v. Smt. Shikhar Chandra Jain and Ors. 1997 (2) MPJR 258, tenant/applicant filed application u/s 7, Rule 11, CPC for rejection of plaint in C.S. No. 224-A/94. The application was resisted by the non-applicant on the ground that the suit for seeking partition since has been instituted by tenant/applicant himself, C.S. No. 224-A/94 would not entail dismissal. Civil Judge vide impugned order has held that 1/3rd share in the suit house has been purchased by the tenant/applicant during the pendency of the suit and non-applicant Jagdish Prasad, Arun Kumar are owners to the extent 2/3rd share. Since the suit for partition C.S. No. 21-A/98 filed by the tenant/applicant in the Court of 9th ADJ, Jabalpur has been decreed vide

judgment dated 30-4-2001 and preliminary decree has been framed, there is no necessity to reject the plaint under Order 7 Rule 11, CPC, instead stay of proceedings in C.S. No. 224-A/94 pending the final decision in C.S. No. 21-A/98 has been ordered.

3. In the judgment Hafiz Ullah and Anr. v. Smt. Shikhar Chandra Jain and Ors. 1997 (2) MPJR 258, it has been held that where defendant (tenant) himself has become co-owner albeit of undivided portion of the house how can he be evicted. The Division Bench decision of this Court in Smt. Hameeda Begam v. Smt. Champa Bai and Ors., C.R. No. 1676/2001, makes the law more clear on facts and circumstances of the instant case. It has been held that:--

If a tenant who has purchased the property from a co-owner and gets into the shoes of the co-owner need not file a suit for partition and separate possession and there is no obligation on his part to handover possession and thereafter sue for partition and separate possession. Any co-owner who wants to have possession, by meets and bounds may file a suit for partition and claim separate possession and thereafter seek eviction of the tenant from the part of reversion falling to his share after partition.

4. Accordingly, it is settled that where an undivided interest of co-owner vis-a-vis landlord has been purchased by tenant during the pendency of the suit for eviction, the proceedings at the instance of remaining co-owners would not be maintainable. Where the suit itself is not maintainable, it can not be kept alive by staying the proceedings till the decision in suit for partition.

5. In the circumstances, the order impugned rejecting the application under Order 7 Rule 11, CPC suffers from material irregularity. Revision is allowed. Order impugned is set aside. Civil Suit No. 224-A/94 being not maintainable is dismissed. However, parties to bear their costs. Counsel fee as per rules or certificate (whichever is less).