
(1983) 04 MP CK 0028

In the Madhya Pradesh High Court

Case No : Second Appeal No. 242 of 1981

Chironjilal Phulchand and another

APPELLANT

Vs

Ghanshyam Das Sharma and others

RESPONDENT

Date of Decision : 22-04-1983

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)(a)

Citation : (1983) JLJ 526 : (1983) MPLJ 595

Hon'ble Judges : U.N. Bhachawat, J; R.C. Shrivastava, J

Bench : Division Bench

Advocate : R.A. Roman, for the Appellant; A. S. Tomar, for the Respondent

Judgement

U. N. Bhachawat, J.

The matter has come up before us on a reference of the following question by Single Bench :-

Whether in a suit for ejectment, the Court is competent to grant a decree for rent from the date of the suit till the date of decree, while dismissing the suit for ejectment ?

The facts leading to the present reference essential for giving our opinion are these:

The plaintiff-respondent No. 1 filed the suit against the defendants, out of whom two are the appellants, viz., defendants No. 5 and 6, in this appeal, for ejectment, arrears of rent, electric charges and mesne profits from the date of the suit till the delivery of possession. The suit was filed on the basis of contract of tenancy. The ejectment was sought on various grounds including the ground under 12(1)(a) of the M. P. Accommodation Control Act, 1961, (for short, hereinafter referred to as "the Act") which need not be enumerated here. The two courts below, i. e., the trial court as well as the first appellate court, found that only defendants Nos. 5 and 6 are the tenants and that no ground for

ejectment under the Act was made out. The trial court had, thus, dismissed the suit for ejectment and for mesne profits against all the defendants, and decreed the suit for arrears of rent from June 1967 to 30th November 1969 and for electric charges of Rs. 49.50 p. The plaintiff-respondent No. 1 being aggrieved by this had preferred an appeal against the partial dismissal of his suit by the trial court, as indicated hereinabove. The lower appellate court modified the decree of the trial court, inasmuch as, while maintaining the decree of the trial court in all other respects, it decreed the claim of the plaintiff for arrears of rent from the date of the suit till the date of decree also. In other words, the ultimate decree is that the suit of the plaintiff stood dismissed in toto against defendants Nos. 1 to 4; decreed for arrears of rent upto the date of the suit as also for the rent accrued during the pendency of the suit upto the date of decree, and for electric charges Rs. 49-50 p. against defendants Nos. 5 and 6, the present appellants. The appellants have, thus, filed the present appeal in which the question stated hereinabove in paragraph 1 has arisen and been referred for the opinion of this Bench.

There is a conflict in the views of the two Single Bench decisions of this court on the above question. In *Shankar Sahai v. Kanmal and others* 1971 M P L J 436 : 1971 J L J 102, the view taken is as under :-

There is yet another ground on which the decree of the court below must be set aside. As said above, although the suit was initially both for ejectment and arrears of rent the decree was passed only for arrears of rent and the suit for ejectment was dismissed because the plaintiff was held to have no right to ejectment after June 4, 1957. That being the position the plaintiff could not get a decree in this suit for rent for any period after the date of the suit. It is plain enough that in a suit for arrears of rent a decree can be passed only for the rent which has accrued due upto the date of the suit. No decree can be passed for future rent accruing from the date of the suit, and not even during the pendency of the suit. Here the suit was instituted on January 28, 1957, but the decree has been passed for rent from June 4, 1957 to October 31, 1963. This decree is contrary to law.

The view taken in *Rani Premkumari and others v. Ramnath S. A.* No. 190 of 1969, decided on 20-9-1976, is as under:-

As regards the claim for rent upto the date of the suit and thereafter, admittedly the plaintiffs in the plaint had claimed rent upto the date of the suit at the rate of Rs. 18 per month. They had also claimed rent from the date of the suit till delivery of possession. The learned courts below disallowed the claim for rent from the date of the suit on the ground that they had claimed rent and not mesne profits, and therefore, mesne profits could not be decreed. Apart from the technical difference between mesne profits and rent, in the present suit, the suit for eviction has been dismissed and the plaintiffs' claim for rent from the date of the suit could not therefore be said to be bad.

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Consequently, the present appeal is partly allowed and it is directed that the plaintiffs shall be entitled to a decree for rent as decreed by the courts below upto the date of the suit and in addition to a decree for future rent upto the date of decree. However, if the plaintiffs claim future rent in execution they shall have to pay court fee on the quantum of rent claimed by them.

In the Civil Procedure Code, there is Order 20, Rule 12 which deals with the decree to be passed in a suit for possession of immovable property and for rent of mesne profits against a person in possession of such property. The relevant part of this Rule is set out hereinbelow:-

12. Decree for possession and mesne profits.-

(1) Where a suit for the recovery of possession of immoveable property and for rent of mesne profits, the court may pass a decree-

(a) for the possession of the property;

(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;.

(ba) for the mesne profits of directing an inquiry as to such mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until-

(i) the delivery of possession to the decree-holder, (ii) the relinquishment of possession by the judgment debtor with notice to the decree holder through the court, or

(iii) the expiration of three years from the date of decree, whichever event first occurs.

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On a plain reading of the fore-quoted Rule, it is clear that the court is competent in a suit for possession of immoveable property to pass a decree for possession of the property; for the rents, or for the mesne profits, as the case may be, upto the date of the suit and can direct an inquiry as to rent or mesne profits from the institution of the suit until the delivery of possession to the decree-holder. To put it in other words, in a suit for recovery of possession of property with future rent of mesne profits, a decree for rent from the date of suit to the date of decree can be given on decreeing recovery of the property. The question then that arises is : can this Order and the Rule be interpreted to mean that no like decree for rent from the date of the institution of the suit till the date of decree can be given on disallowing recovery of possession of the property. It is a clear position that there is no Rule in the Code of Civil Procedure, nor any other law has been brought to our notice, which requires the court to refuse a decree for rent from the date of the suit till the date of decree, claimed in a suit for recovery of property

whenever recovery of property is disallowed.

From a decision of their Lordships of the Supreme Court in *Girdhari Lal (Dead) by Lrs. Vs. Hukam Singh and Others*, , it is deducible that Order 20, Rule 12 does not prohibit the passing of such a decree. To appreciate this deducement it is advisable to state the essential relevant facts of that case and the holdings hereinbelow. It may be stated that, though it is not mentioned in so many words in the narration of the facts of the case in the report, that the suit was for possession as also for recovery of pendente lite rent and the suit for possession was dismissed, it becomes unequivocally clear on the totality of the facts narrated in the relief granted, Jhat there was a claim for pendente lite rent.

1. In *Girdharila's* case (*supra*), the plaintiff, who was receiver appointed of property specifically for realisation of rent from tenants of that property, had brought the suit. In the suit he had, for the claim of arrears of rent, being not quite certain, whether the rent was agreed or settled, based that claim on alternative rate of rent. One of those alternative prayers regarding the rent was that in case no rent was found to be either agreed upon or settled, the standard rent under the provisions of section 6 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, be fixed. The plaintiff had furthermore .prayed for the fixation of a provisional rent to be paid during the pendency of the suit, and had also prayed that in case the rent so fixed was not paid, the defendant be ordered to vacate the premises. The defendant had resisted the suit on various grounds. One of them, to extract from the report was :

The defendant had pleaded, inter alia, that proper court-fee should have been paid for relief by way of eviction of defendant from the premises, which had been taken on rent for the purposes of running a hotel.

2. The trial Court, i.e., the Court of Civil Judge, decreed the suit for arrears of rent after fixing the standard rent of the premises, and dismissed the suit for the remaining reliefs. To quote :

The Civil Judge, overruling technical objections, had passed a decree for Rs. 42,797.50 np. as arrears of rent, after fixing Rs. 782 per month as the standard rent of the premises. The arrears of rent were payable in instalments of Rs. 5000 every two months, beginning from 1st June 1961, with interest at 6% per annum incase of default. The suit for the remaining reliefs claimed had been dismissed with proportionate costs." 6.03. The High Court on counter-appeals by the receiver as well as by the tenant against the civil Judge's judgment, dismissed the tenant's appeal, but partially allowed the plaintiff-receiver's appeal by raising the amount regarding arrears of rent. The High Court had overruled the objections of the defendant that a decree for rent or mesne profits during the pendency of the suit could not be granted under Order 20, Rule 12 of the Code of Civil Procedure. This has been confirmed by the Supreme Court. To quote:

The High Court had reached the conclusion that this was also the basic rent under the first proviso to section 6 of the Act. It has dismissed the tenant's

appeal but had partly allowed the Receiver's appeal by passing a decree for Rupees 75,718 instead of Rs. 42,797.50 np. awarded by the trial Court.

The High Court had, in our opinion rightly overruled the objection that a decree for rent or mesne profits during the pendency of the suit could not be granted under Order 20, Rule 12, CPC in this case. The defendant had himself pleaded here that the suit was for ejectment on which the additional court-fee had to be paid. The High Court pointed out that the plaintiff had paid the additional court-fee for .a suit for ejectment. Hence, it held that it was not open to the defendant to object to the award of mesne profits on the ground that there was no suit for ejectment before the Court. This was, we think, quite a frivolous objection.

In view of our above holding about the view of the Supreme Court, it is not necessary to dilate further on the legal position for answering the question referred. We, however, propose to discuss the question furthermore.

Before we proceed further it would be pertinent to advert to the decision of the Supreme Court in V. Dhanpal Chettier v. Yasoda Ammal 1979 MP L J 719 : 1980 J L J 1 wherein their Lordships have on the survey of the provisions of the Rent Acts of the various states including the "Act" held that a notice for determination of the contractual tenancy under the provisions of the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination, tenant continues to be so even thereafter. The termination of tenancy comes into effect when a case is successfully made out for the eviction of the tenant under the State Rent Act. We propose to extract hereinbelow the relevant parts of the decision : -

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The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or a decree for eviction. Until then, under the extended definition of the word "tenant" under the various State Rent Acts, the tenant continues to be a tenant even though the contractual tenancy has been determined by giving of a valid notice u/s 106 of the Transfer of Property Act.

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It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. In spite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent etc., in accordance with the law." In the light of the decision of the Supreme Court in V. Dhanpal Chettier's case (Supra), on account, of the dismissal of the plaintiff-respondent's suit for eviction the defendant-appellant has been continuing as a tenant, despite the termination of his contractual tenancy by the

landlord. In other words, even during the pendency of the suit the status of the defendant-appellant had been that of a tenant. As a corollary to this, it follows that the tenant-defendant owes the obligation to pay the rent to his landlord-plaintiff. At this stage, we consider it advisable to point out a decision of the Supreme Court in *Chander Kali, v. Jagdish Singh* A I R 1977 S C 23627 which in our opinion, gives a reflection on this point and reinforces our this view. Their Lordships of the Supreme Court after quoting the definition of tenant given in section 2(i) of the Act proceeded to say :

On a plain reading of the definition aforesaid it is clear that a tenant even after the determination of his contractual tenancy does not become an unauthorised occupant of the accommodation but remains a tenant. It has been pointed out by this Court in *Damadilal and Others Vs. Parashram and Others*, that such a tenant is conveniently called a statutory tenant. Whether the expression aforesaid borrowed from the English law is quite apposite or not, but, what is certain is that a person continuing in possession of the accommodation even after the termination of his contractual tenancy is a tenant within the meaning of the Act and on such termination his possession does not become wrongful until and unless a decree for eviction is made. If he continues to be in possession even after the passing of the decree, he does so as a wrongful occupant of the accommodation.

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In *Kikabhai Abdul Hussain v. Kamlakar* 1974 M P L J 485, a Bench of the Madhya Pradesh High Court seems to have opined even with reference to the 1961 Act that if a person continues to be in occupation after the termination of the contractual tenancy then on the passing of the decree for eviction he becomes a wrongful occupant of the accommodation since the date of termination. It seems a theory akin to the theory of "relation back" has been applied in the sense that if no decree for eviction is passed then the person is not in unlawful occupation but on the passing of such a decree his possession becomes unlawful not from the date of the decree but such a decree makes his occupation unlawful from the date of the termination of the contractual tenancy. Whatever could be said with reference to the provisions of 1955 Act it is clear to us that the law so enunciated by the High Court with reference to 1961 Act is not correct.

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For the reason stated above, it is manifest that the defendants remained in-occupation of the accommodation on and from 1-1-1973 as a tenant, conveniently to be called statutory tenant, under the Act. Their occupation was "not unauthorised or wrongful until a decree for eviction was passed by the First Appellate Court on 11-8-1975. Their occupation became unauthorised or wrongful only from that date. They are not, therefore, liable to pay any damages or mesne profits for the period commencing from 1-1-1973 and ending on 10-8-1975. Decree for damages either in respect of the two months prior to the

institution of the suit or for the subsequent period must therefore be set aside. The defendants-appellants will be liable to pay damages or mesne profits @ Rs. 125 per month (the rate of damages could not be and was not challenged before us) from 11-8-1975 only, until the delivery of the vacant possession of the accommodation.

Our view that till an ejectment decree is passed, the defendant-tenant owes an obligation to pay rent to his landlord-plaintiff gets buttressed from the provisions contained in section 13(1) of the Act. In this respect, we would quote with advantage the observation of a Division Bench decision of this Court in *Inderlal Balkiram v. Mahngi Bai Imratlal* 1967 M P L J 125, which stimulates our view :-

The object and purpose of section 13 also point to the conclusion that a finding by the Court that the defendant is a tenant is not necessary for the operation of section 13(1) or for the exercise of the powers conferred on the Court by the various sub-sections of section 13. The object of section 13(1) is clearly to prevent a tenant from stopping payment of rent the moment a suit for ejectment is filed against him. It is also to relieve the landlord of the necessity of filing separate suits for rent for the period covered by the pendency of his suit for eviction.

The upshot of the foregoing discussion is that the Court is competent to pass a decree for pendente lite rent even while dismissing the suit for ejectment.

We would also like to examine the validity of our view on the rule of justice, equity and good conscience. A plaintiff-landlord institutes a suit for arrears of rent and ejectment, for mesne profits pendente lite till the date of delivery of possession, on one or more of the grounds mentioned in section 12(1) of the Act. He does not know the ultimate result of the suit. The suit goes on for a quite a good number of years and ultimately the prayer of ejectment is refused on the ground, that none of the grounds u/s 12(1) is made out. If the view canvassed by the learned counsel for the defendant-appellant and the one taken by the Single Bench in *Shankar Sahai's* case (*supra*) is accepted, no decree for pendente lite rent can be passed, as a consequence whereof the plaintiff is driven to a separate suit for the recovery of pendente lite rent. No one can predict the time for the final disposal of the suit, so a situation may arise that on the date when the suit is finally decided refusing the decree for ejectment against the tenant, rent for a period beyond 3 years preceding the date of that decree" would become barred by time, as the cause of action for the suit for recovery of rent arises on the date it falls due for payment and, therefore, the plaintiff would not be entitled to get that rent for no fault of his. The defendant-tenant, who can successfully prolong the case for a longer period, would get the premium in the shape of residing as a tenant without payment of rent for a period for which its recovery has become barred by time during the pendency of the suit, which is against the rule of justice, equity and good conscience. It cannot be gainsaid that a tenant owes an obligation to pay rent on the date it accrues, so during the pendency of the suit that obligation continues. The cause

of action accrues to the plaintiff-landlord during the pendency of the suit for the rent accruing during that period. In such a situation in absence of any prohibition in the Code, and the right having accrued to the plaintiff, the Court has to meet the ends of justice for enforcing the right of the plaintiff *ex debito justitiae* also. u/s 151 of the CPC the Court can grant a decree for *pendente lite* rent while dismissing the suit for ejectment. The question, whether a decree for rent for which the plaintiff has a right and the Court has also a jurisdiction to grant, should be granted in this suit or in a fresh suit, is merely a procedural question, and it is well settled that when a topic does not fall within the ambit of the express provisions of the statute, the inherent powers of the Court can be exercised to meet the ends of justice. Every Court is constituted for the purpose of doing justice according to law and must be deemed to possess, as a necessary corollary and as inherent in its very constitution, all such powers as may be necessary to do the right and undo the wrong in the course of administration of justice. From" this angle also, we are fortified in our view.

In the light of the above discussion, the view taken by the Single Bench in Shankar Sahai's case (*supra*) is not correct and our opinion is that in a suit for ejectment of the tenant, the Court is competent to grant a decree for rent from the date of the suit till the date of decree, while dismissing the suit for ejectment. Consequently, our answer to the question is in the affirmative.