

(2003) 11 MP CK 0009
In the Madhya Pradesh High Court
Case No : Second Appeal No. 510 of 1996

Gouri Shankar

APPELLANT

Vs

Naveen Chand (Dead) through L.Rs. Smt. Snehlata Jain and
another

RESPONDENT

Date of Decision : 14-11-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, 100

Citation : (2003) 11 MP CK 0009

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

Bench : Single Bench

Advocate : P. Navlekar, for the Appellant; N.K. Patel, for the Respondent

Final Decision : Allowed

Judgement

S.K. Pande, J.—Being aggrieved by the judgment-decree dated 16-4-1996, passed by 9th ADJ, Jabalpur in C.A. No. 15-A/95 reversing the judgment-decree dated 3-1-1992, passed by 1st Civil Judge Class-L Jabalpur in C.S. No. 235-A/91, the defendant/appellant, has preferred this appeal u/s 100 of Civil Procedure Code.

2. The appeal has been admitted on the following substantial questions of law:

(1) Whether the lower appellate Court was right in reversing the decree passed by the trial Court on the grounds mentioned by it in the judgment?

(2) Whether in view of the fact that the respondent admitted that there was an agreement to sell between the appellant and the wife of the respondent and he was an attesting witness to that agreement, the appellant still remains the tenant of the respondent ?

3. Late plaintiff/respondent Naveen Chand Jain instituted C.S. No. 235-A/91 in the Court of 1st Civil Judge Class-I, Jabalpur seeking eviction of tenant/defendant/appellant -Gourishankar from the suit house No. 822, East Niwarganj,

Jabalpur on the ground that the defendant/appellant was inducted into the tenancy of the suit house on monthly rent of Rs. 80/- per month. The defendant/appellant did not pay rent from October, 1976 to February, 1981, therefore, a notice of demand has been served on him to liquidate the claim of arrears of Rs. 4000/-. The defendant/appellant since had not complied with the demand, the suit aforesaid was filed on 22-4-1981. During the pendency of the suit late Naveen Chand Jain sold the suit house to respondent - Pradeep Kumar Jain vide Registered Sale Deed dated 20-1-1989. However, he further proceeded with the suit which ultimately was dismissed vide judgment dated 3-1-1992 passed by Civil Judge. The suit was resisted by the defendant/appellant stating inter alia that no relationship of landlord and tenant has ever been created between him and late Naveen Chand Jain. The suit house belonged to Smt. Shanti Bai wife of plaintiff/respondent late Naveen Chand Jain. Smt. Shanti Bai entered into an agreement to sell the suit house to Ajay Kumar and Kamlesh Kumar minor sons of defendant/appellant and had received the earnest money from the defendant/appellant himself. The possession of the suit house accordingly remained with the defendant/appellant and his sons as owner thereof. The defendant/appellant and his sons have improved the suit house after spending a huge amount. The plaintiff/respondent has filed a false suit seeking eviction from the suit house.

The Civil Judge vide judgment dated 3-1-1992 held that vide agreement dated 8-2-1977 (Ex. P/2) wife of plaintiff/respondent late Naveen Chand Jain agreed to sell the suit house to the minor sons of defendant/appellant and had received the earnest money vide receipt dated 15-1-1977. Since then the possession of the defendant/appellant remained as owner thereof. Accordingly, the Civil Judge vide said judgment dismissed the suit. Being aggrieved the plaintiff/respondent late Naveen Chand Jain preferred C.A. No. 15-A/95 before 9th ADJ, Jabalpur. The Court below held that relationship of landlord and tenant since has been proved, the defendant/appellant being in arrears of rent is liable to be evicted. Accordingly, vide impugned judgment dated 16-4-1996, setting aside the judgment-decree passed by the Civil Judge, the Court below decreed the Civil SuitNo.235-A/91.

4. It has been contended that the Court below erred in reversing the judgment-decree passed by the Civil Judge on the grounds mentioned by it in the judgment and in view of the fact that the plaintiff/respondent himself admitted that there was an agreement to sell the suit house by his wife. The Court below also erred in holding that the relationship of landlord and tenant existed between the parties. Further, it has been contended that during the pendency of the suit C.S. No. 235-A/91, plaintiff/respondent late Naveen Chand Jain since had sold the suit house vide Registered Sale Deed dated 20-1-1989 to Pradeep Kumar Jain, suit ought to have been dismissed. In any case plaintiff/respondent late Naveen Chand Jain was not entitled to prefer the appeal against the judgment-decree dated 3-1-1992 passed by Civil Judge in C.S. No. 235-A/91.

5. DW/1 Gouri Shankar has stated that wife of plaintiff/respondent late Naveen

Chand executed an agreement dated 8-2-1977 (Ex. P/2) to sell the suit house to his minor sons Ajay and Kamlesh Kumar. The earnest money has been paid to her vide receipt dated 15-1-1977 said to have been acknowledged in the agreement Ex. P/2. DW/1 Gouri Shankar has stated that since then the family remained in possession of the suit house as owner thereof. No relationship of landlord and tenant ever existed between him and PW/1 Naveen Chand Jain. However, PW/1 Naveen Chand Jain stated that the defendant/appellant DW/1 Gourishankar was inducted into the tenancy of the suit house on monthly rent of Rs. 80/-. He did not pay the rent since the year 1976. In cross-examination PW/1 Naveen Chand Jain has admitted that agreement Ex. P/2 was signed by him. Further, it has been admitted that earnest money Rs. 500/- has been received out of the stipulated sum of Rs. 4000/-. Therefore, the statement of DW/1 Gourishankar is correct that vide agreement dated 8-2-1977 (Ex. P/2) the suit house was agreed to be sold to his minor sons for a sum of Rs. 4000/- and Rs. 500/- by way of earnest money has been received by Smt. Shanti Bai wife of PW/1 Naveen Chand Jain. Accordingly, he was placed in possession and was permitted to renovate the house. DW/1 Gourishankar has been cross-examined with reference to receipt dated 18-11-1979 (Ex.D/1) to state that subsequently, the agreement of sale Ex. P/2 has been cancelled. Even in Ex. D/I, it has been agreed that on cancellation of agreement within a month time, the defendant/appellant shall vacate the suit house and deliver its vacant possession to the plaintiff/respondent late Naveen Chand Jain. This all make it clear that possession of the defendant/appellant on the basis of Ex. P/2 agreement was that of an owner on behalf of his minor sons. There had been no relationship of landlord and tenant between him, and the plaintiff/respondent late Naveen Chand Jain. Even after the cancellation of agreement Ex. P/2, the fresh agreement of tenancy never accrued between the parties and the possession of the suit house retained by the defendant/appellant continues under agreement Ex. P/2. The Court below therefore, committed error in reversing the findings of fact recorded by the civil judge in respect of relationship of landlord and tenant between the parties.

6. C.S. No. 235-A/91 was instituted by the plaintiff/respondent late Naveen Chand Jain on 22-4-1981. Thereafter during its pendency on 20-1-1983, it has been sold to Pradeep Kumar Jain. An application under Order 22, Rule 10, CPC was not filed and the transferee Pradeep Kumar Jain has not been brought on record as co-plaintiff with PW/1 late Naveen Chand Jain. On dismissal of suit C.S. No. 235-A/91 vide Judgment dated 3-1-1992 by the Civil Judge, C.A. No. 15-A/95 has been preferred by late Naveen Chand Jain only. It has been contended that the plaintiff/respondent late Naveen Chand Jain having sold the house vide Registered Sale deed dated 20-1-1989 had no right to proceed further with the suit C.S. No. 235-A/91. The suit for eviction could not have been proceeded further at the instance of late Naveen Chand Jain, however, for recovery of arrears of rent, the suit was rightly triable by Civil Judge. Since the relationship of landlord and tenant has not been established, the plaintiff/respondent late

Naveen Chand Jain has been non-suited. In any case, late Naveen Chand Jain had no right to prefer C.A. No. 15-A/95 seeking eviction of the defendant/appellant.

7. In Shakti Chand Vs. Chamaru and Others, in a different context relying on the judgment in Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another, , it has been observed that the law does not require that if property is transferred during the pendency of an appeal and the transferor is already on the record, it is necessary that the transferee should be brought on record. The facts of the instant case are different. The suit for eviction after the sale of suit house by the owner could not have been prosecuted further in the absence of bringing the transferee on record. The Court, below therefore, erred on every count in reversing the judgment-decree passed by Civil Judge in C.S. No. 23 5-A/91 instead decreeing the suit for eviction and recovery of arrears of rent, as claimed.

8. The judgment-decree of Court, below in C.A. No. 15-A/95 is perverse and illegal. Accordingly, the appeal succeeds. Setting aside the judgment-decree dated 16-4-1996, passed by 9th ADJ, Jabalpur in C.A. No. 15-A/95, the suit of the plaintiff/respondent late Naveen Chand Jain (C.S. No. 235-A/91) stands dismissed. Plaintiff/respondent shall bear their costs and pay the cost of the defendant/appellant. Counsel fee as per rules or certificate (whichever is less).