

(2023) 08 MP CK 0041
In the Madhya Pradesh High Court
Case No : Second Appeal No. 2754 Of 2022

Gurudayal Arora

APPELLANT

Vs

Urmila Gupta And Others

RESPONDENT

Date of Decision : 07-08-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100, Order 41 Rule 27, 41 Rule 27(b)
Madhya Pradesh Accommodation Control Act, 1961 — Section 12(1)(f)

Citation : (2023) 08 MP CK 0041

Hon'ble Judges : Sunita Yadav, J

Bench : Single Bench

Advocate : C.P. Singh, Kamal Kumar Jain

Judgement

Sunita Yadav, J

1 This second appeal under section 100 of Civil Procedure Code (for brevity, CPC) arises out of judgment and decree dated 14/10/2022 passed by 8 t h District Judge, District Gwalior in RCA No. 120/2021 arising out of judgment and decree dated 30/09/2021 passed in Civil Suit No. 7000541-A/2016 by 2 n d Civil Judge, Junior Division, District Gwalior.

2. The brief facts giving rise to filing of this appeal are that a house bearing No. 45/557 situated at Lohiya Bazar, Lashkar, District Gwalior belongs to the respondents /plaintiffs, out of which, on 19/11/1977 one shop was given on rental basis to the appellant /defendant at the rent of Rs. 400/- per month. In the said house, two shops are situated out of which, in one shop respondent/ plaintiff No. 2 is doing business and the shop shown in the plaint map by red lines is occupied by the appellant /defendant as a tenant (for brevity, 'disputed shop'). The rent of the disputed shop is outstanding against the appellant / defendant @ Rs. 400/-per month from October, 2013. The plaintiff No. 4 is working in the shop of plaintiff No. 3 at Bhopal. The plaintiff No. 4 namely Bhupendra Gupta is bonafidely needed the disputed shop for opening a shop of Chemicals and Steel materials and for this purpose, the plaintiff has no other

alternative shop in the Gwalior District. Apart from the said two shops, the rest part of the said house is residential and water pipe line of the washroom constructed on the first floor over the disputed shop goes into the government drainage chamber. At the time of construction of disputed shop, drainage of water of the disputed shop has been shown in the map by green points as 1, 2, 3 & 4 indicating construction of four chambers. However, in order to cause harm and loss to the plaintiffs, the defendant by applying tiles over the said four chambers had closed them. The defendant put clothes and other materials in the pipe lines of the said chambers, due to which, bad smell comes out and the moisture gets logged on the wall and when the plaintiff opposed for the same, the defendant started quarreling with the plaintiffs.

3 The defendant had given assurance to vacate the disputed shop by May, 2016, therefore, even after issuance of notice, the plaintiffs have not filed the suit. The plaintiff No. 2 Rajendra Gupta and his wife told the defendant to vacate the disputed shop, on which, the defendant used obscene words against them and refused to vacate the disputed shop. The disputed shop is situated in the business area of Lohiya Bazar, Gwalior, therefore, the plaintiffs would earn atleast Rs. 8,000/- per month from the disputed shop. On the basis of aforesaid, prayed to handover the peaceful vacant possession of the disputed shop to the plaintiffs from the defendant, recovery of outstanding rent amount of Rs. 14,400/- and till the disputed shop is vacated interim rent amount of Rs. 8,000/- per month may kindly be granted to the plaintiffs.

4. On the other hand, defendant had filed his written statement and admitting the factual aspect of the matter has denied the rest of the averments made in the plaint. Defendant has stated that in the house of the plaintiffs, total shops are three and not two. In one shop son of plaintiff No. 2 namely Bantu @ Rohit is doing the business of iron doors and furniture and second shop is occupied by the defendant as tenant at the rent of Rs. 400/- per month and third shop which is vacant is in the possession of the plaintiffs and the area of this third shop is more than the disputed shop and the same is good and viable for running business. The plaintiff No. 4 is residing in Bhopal for last more than 15 years and is doing the business of chemicals and industrial goods. The plaintiff No. 4 is not in bonafide need of disputed shop. The ground floor of the said house is totally used for commercial purpose. The defendant has no knowledge in regard to four chambers situated in the disputed shop. The defendant has neither closed the said chambers nor put clothes and other materials in the pipe lines of the said chambers.

5. It is further pleaded that the defendant has paid the rent of the disputed shop to the plaintiffs upto September, 2013 and thereafter the plaintiffs themselves have not taken the rent of the disputed shop. The defendant vide registered post dated 19/08/2014 has sent a cheque amounting to Rs. 9,600/- as rent of the disputed shop to the plaintiff No. 2 Rajendra Gupta, which is deliberately and intentionally not accepted by the plaintiffs. After receiving the notice of civil suit,

the defendant has deposited the entire rent of the disputed shop in the court. Now, outstanding rent amount of the disputed shop is not pending against the defendant. The plaintiffs are not in bonafide need of the disputed shop. The defendant has not given any assurance to the plaintiffs in regard to vacation of the disputed shop. The disputed shop is the only earning source of income to the defendant and his family members. The plaintiffs are not entitled to get any relief. On the basis of aforesaid, prayed to dismiss the civil suit filed by the plaintiffs.

6. On the basis of pleadings, learned trial Court has framed as many as seven issues and after recording evidence of both the parties allowed the civil suit filed by the plaintiffs and granted decree under section 12(1) (f) of M.P. Accommodation Control Act.

7. Being aggrieved by the judgment and decree dated 30/09/2021 passed in Civil Suit No. 7000541-A/2016 by 2 n d Civil Judge, Junior Division, District Gwalior, the defendant has filed RCA No. 120/2021 before learned 8 t h District Judge, District Gwalior and the learned first appellate court after hearing learned counsel for the rival parties vide judgment and decree dated 14/10/2022 passed in RCA No. 120/2021 has affirmed the judgment and decree dated 30/09/2021 passed in Civil Suit No. 7000541-A/2016 by 2n d Civil Judge, Junior Division, District Gwalior. The learned first appellate court also dismissed the application filed by the defendant under Order XLI Rule 27 of CPC. Hence, this second appeal.

8. Learned counsel for the appellant/defendant argued that the judgment and decree passed by learned courts below are based on perverse findings and are against the settled principles of law. The learned Courts below erred in passing the judgment and decree on the ground of bonafide requirement, whereas, the same has not been proved by the respondents/plaintiffs. It is further argued that learned first appellate court has wrongly dismissed the application filed under Order XLI Rule 27 of CPC. It is further argued that learned courts below committed error in not considering the third shop which is admittedly vacant and is in possession of the plaintiffs. On these grounds, prays to quash the impugned judgment and decree passed by both the courts below.

9. On the other hand, learned counsel for the respondents/plaintiffs supported the impugned judgment and decree passed by both the courts below and prayed for dismissal of the instant appeal being bereft of merit and substance.

10. Heard learned counsel for the rival parties and perused the materials available on record.

11. The respondent/plaintiff No. 2 has examined Rajendra Kumar Gupta as (PW/1), Bhupendra Gupta as (PW/2) and Akhilesh Gupta as (PW/3). Plaintiffs have also adduced documentary evidence as Ex. P/1 to P/36.

12. On the other hand, appellant/defendant Gurudayal examined himself as

DW/1 and Ramesh Jain as DW/2.

13. For the purpose of getting decree on the ground of section 12(1)(f) of M.P. Accommodation Control Act, plaintiff or landlord is required to prove that :-

“the accommodation let for non-residential purposes is required bonafide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably non-residential accommodation of his own in his occupation in the city or town concerned”.

14. Perusal of the record reveals that learned trial court upon due appreciation of evidence on record recorded the findings that plaintiffs have successfully proved that there is bonafide requirement of disputed shop to start business of chemical and steel materials. For which he does not have any suitable accommodation in the City of Gwalior. The first appellate court reconsidered the entire evidence and discussed the same in its judgment from para 12 to para 77 and found that no illegality has been committed by the learned trial court while allowing the suit and granting decree under section 12 (1) (f) of M.P. Accommodation Control Act.

15. Learned first appellate court has dismissed the application filed by the appellant/defendant under Order XLI Rule 27 of CPC for filing certain photographs and\ memory card.

16. For ready reference and convenience Order XLI Rule 27 (b) of CPC is reproduced herein below :-

27. Production of additional evidence in Appellate Court.-

(1), (a) & (aa) xxx

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

17. In this case, the photographs and memory card filed along with application are not required to enable the appellate court to pronounce the judgment as they are not relevant to show alternate accommodation, therefore, learned first appellate court has not erred in dismissing the application in the light of provisions of Order XLI Rule 27 (b) of CPC. Similarly, learned first appellate court has rightly observed that both the parties have adduced sufficient evidence on record in respect to alternate accommodation, therefore, issuance of commission and obtaining commissioner report on this point is not required.

18. It is well settled that High Court in second appeal cannot go into the question of facts unless the findings of courts below are perverse or against the evidence available on record. It is also well settled that mere appreciation of fact, the documentary evidence or meaning of the entries and the contents of the

document cannot be held to be raising substantial question of law. In this case, it is apparent that learned trial court on the basis of oral as well as documentary evidence decreed the suit in favour of the respondents/plaintiffs on the ground of section 12(1) (f) of M.P. Accommodation Control Act. The learned first Appellate court has also discussed in details the evidence and re-appreciated it. Both the courts below have recorded impeccable evidence based on proper appreciation of materials available on record. No question of law arises warranting interference by this Court under section 100 of CPC.

19. Consequently, this appeal sans merit and is hereby dismissed in limini.

20. At this stage, learned counsel for the appellant/defendant prays for an alternate prayer to grant him atleast one year time to handover the peaceful vacant possession of the disputed shop to the respondents/plaintiffs.

21. In view of facts and circumstances of the case, this Court is of the considered opinion that six months time is reasonable and sufficient for the appellant/defendant to handover peaceful vacant possession of the disputed shop to the respondents/plaintiffs.

22. Accordingly, appellant/defendant is granted four (4) months time to handover peaceful vacant possession of the disputed shop to the respondents/plaintiffs on the following terms and conditions :-

1. Appellant shall continue to be in possession of the suit premises upto 7th December, 2023.

2. Appellant shall continue to pay the rent every month by the 15th Day of each succeeding month without default till rented premises is vacated and shall also pay arrears of rent, if any.

4. Appellant shall not change nature of the property or create third party rights.

Appellant shall hand over the peaceful vacant possession of the suit premises to the respondents/plaintiffs without hindrance on or before 7th December, 2023. An undertaking to the aforesaid effect shall be submitted before the Execution Court within a week.