

(1951) 11 MP CK 0003

In the Madhya Pradesh High Court

Case No : Second Appeal No. 255 of 1950

Haji Mulla Sulaimanjee Haji Uysfali

APPELLANT

Vs

Ganpatlal Jogannath and Another

RESPONDENT

Date of Decision : 08-11-1951

Acts Referred:

Madhya Bharat Sthan Niyamtran Vidhan, 1950 — Section 12, 3, 4

Citation : (1951) 11 MP CK 0003

Hon'ble Judges : Chaturvedi, J

Bench : Single Bench

Advocate : S.D. Sanghi, for the Appellant; Samvatsar, for the Respondent

Final Decision : Dismissed

Judgement

Chaturvedi, J.—This is landlord Plaintiff's second appeal who had instituted a suit on 19-1-1948 against the Defendants tenants for ejectment from a shop on the ground floor of a house No. 79 in Hathipala Road, Indore, for arrears of rent and mesne profits. The House Rent Control Order of 1943 was at that time in force and did not apply to Shops. Plaintiff had given a notice to quit on 12-12-1947 asking the Defendants to vacate the shop on 31-12-1947. The Defendants resisted the suit on the ground that the M.O. of Rs. 48/- was sent to the Plaintiff for arrears of rent but he had refused to accept it, that he is willing to deposit the rent in the Court and that the suit was premature as there was an oral agreement that the lease would continue for a period of two years. He also stated that the place is suitable for residence and should fall within the definition of the word "house" and according to the provisions of the Rent Control Order cannot be vacated. Issues were framed on the pleadings, but in May 1948 change in the Indore House Rent Control Order of 1943 was effected. The new law applied to non-residential premises and the definition of the "house" was widened. Defendant amended his written statement and added:

u;s jsUV daV?ksy vkMZj ds ewftc nkfo;k nqdku [kkyh ugha gks ldrk A

The Plaintiff on this, filed a reply to the application for amendment on 11-8-1948 in the written statement in the following words:

nkok nk[khy gksus ds ckn jsUV daV?ksy vkMZj esa tks la"kks/ku gq, gS dkuwu ls ykxw ugha gks ldrs A

vxj dksVZ us ;g Bgjk;k fd ;s la"kks/ku bl ekeys dks ykxw gks ldrs gSa rks ml gkyr esa Hkh oknh dk dguk gS fd oknh dks nkoh;k txg viuh [kqn dh Qseyh ds jgus o O;ikj djus okLrs cM+h t:jr gS vkSj blhfy, gky dk nok is"k djuk gqok Fkk mlh edku dk nkfo;k fgLlk NksM+dj ckdh dk fgLlk tks oknh ds ikl gS oks mudks cgqr de iM+rk gS vkSj cM+h raxh HkqxruiM+rh gS A

Three additional issues were framed and evidence was adduced by the parties on 9-2-1950 the present Madhya Bharat Sthan Niyamtran Vidhan came into force. Again issues were re-cast and for the purposes of this second appeal only the following first two issues are relevant:

1. Has there been a failure on the part of the tenant to pay the arrears of rent and the notice charges within one month from date of service of notice?
2. Whether the Plaintiff landlord genuinely requires the accommodation for his own residence and whether the Plaintiff has no other place to live in Indore?

ISSUE No. 1:

2. It is not disputed that an M.O. of Rs. 48/- was sent and the Plaintiff declined to receive the payment. The issue had been rightly decided against the Plaintiff and in favour of the deft. Mr. Sanghi contends that notice charges (only seven annas) were not sent by the Defendant and that should furnish sufficient ground of ejectment. I do not think this contention has any force. The emphasis in the Act of 1950 is on the payment of arrears of rent and not on the payment of notice charges. In this case the tenant in 1947 could not have dreamt that the Act of 1950 will make the payment of notice charges also compulsory. The money was sent in 1947 and I have no compunction in holding that the Defendant made no default in payment within the meaning of Sub-clause (A?) of Section 4 of the Madhya Bharat Sthan Niyamtran Vidhan (Act 5 of 1950).

ISSUE No. 2:

3. The application of the Plaintiff on 11-8-48 begins with the words:

vxj dksVZ us ;g Bgjk;k fd ;s la"kks/ku ykxw gks ldrsa gSa rks ml gkyr esa oknh dk dguk gSa A

This shows that the Plaintiff had to state this new ground in order to come within one of the grounds specified in Section 4, without which a decree could not have been passed in a pending case (vide Section 12). This, from the context of the case, could not have been a genuine ground; but the Plaintiff was compelled to state it in order to obtain a decree of ejectment under the Act of 1950. The artificiality of the ground stated is apparent.

4. The two Courts below have held that the place was required by the Plaintiff for the purposes of a shop or for carrying on business and not for his residence. This is a concurrent finding of fact binding on me in second appeal.

5. The words in the statute are:

१४४? ;g fd Hkweh Lokeh dks Lo;ae ds fuokl ds fy, ml LFkku dh okLrfod :i ls vko";drk gS vkSj ml uxj vFkok uxjh esa mlds jgus ds fy;s dksbZ vU; LFkku ugha gS A

The word fuokl is a Sanskrit word derived from the verb ol~ (ubhayapadi) meaning "to dwell". The word "dwell" is stronger than "reside" (Halsbury Vol. 11, page 817, 1952 Reprint) and refers to a place of permanent abode (Vol. 8 page 189). The word " fuokl means "dwelling place" or "residence" There is no authorised English translation of the Madhya Bharat Act, but the first portion of Section 4 x has been taken from Section 3 x of the Accommodation Control Ordinance Gwalior State (Samvat 2004) where in the English and Hindi version were as follows:

१३४? ;g fd Hkwfe Lokeh dks vius futh fuokl ds fy, ml LFkku dh okLrfod :i ls vko";drk gS A

(3g) that the landlord genuinely requires accommodation for his own residence.

Section 4(g) of the Madhya Bharat Act corresponds to Section 13(3)(VIa) of the C.P. and Berar House Rent Control Order 1949 which runs as follows:

VI that the landlord needs the house or a portion thereof for the purpose of (a) his bona fide residence, provided he is not occupying any other residential house of his own in the city or town concerned.

6. The corresponding provisions in Section 13(1)(g) of the Bombay Rent Control Act of 1947 is different from the above and is in the following words:

13(1g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held.

The word "occupation" in the above provision is of wide import for "occupation" may be for business or for residential purposes - Rustomji Dinshaw Billimoria Vs. Dosibai Rustomji Master, ; - "Nowroji Hormasji v. Srinivas Prabhu" AIR 1922 Bom 222 (B). The Madhya Bharat Act had however deliberately left out the word "occupation" and has adopted the word fuokl (residence) and has further elucidated the point by the additional clause:

vkSj ml uxj vFkok uxjh esa mlds jgus ds fy;s dksbZ vU; LFkku ugha gS A

7. The place in dispute in this case is hardly 5 to 8 feet broad ? ,d p"ek ? and could not have been needed for residence. It was rented as a shop and could have been required only for carrying on business. As it was not needed for residential purposes within the meaning of Section 4 x of Madhya Bharat Sthan

Niyantran Vidhan no interference is called for in the judgments, of the Courts below. I therefore dismiss the appeal with costs.