
(2007) 09 MP CK 0113
In the Madhya Pradesh High Court
Case No : Second Appeal No. 404 of 2004

Indira Kumari Jain

APPELLANT

Vs

Vishnu Kumar Pawar

RESPONDENT

Date of Decision : 27-09-2007

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)(a), 12(1)(c), 12(1)(f), 25

Citation : (2008) 1 MPLJ 349

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

Bench : Single Bench

Advocate : K.C. Lalwani, for the Appellant; H.Y. Mehta, for the Respondent

Final Decision : Allowed

Judgement

S.K. Seth, J.

This appeal is by the Plaintiff landlord against the reversing judgment and decree passed by the 1st Additional District Judge, Neemuch in Civil Appeal No. 8-A/02. By the impugned judgment and decree the suit decreed by the trial Court in favour of the Appellant, was dismissed.

Appellant filed an eviction suit against the Respondent on two counts (i) non-payment of arrears of rent and (ii) bona fide need of the suit premises for starting business of herself. The Respondent is in occupation of a non-residential accommodation on payment of monthly rent of Rs. 350/-. It was specifically averred in the plaint that the Respondent is tenant of Plaintiff. It was also alleged that on the application filed by the Respondent u/s 25 of the M. P. Accommodation Control Act, 1961 (for short the Act), the Rent Controlling Authority (RCA) had found that the Respondent was tenant of the Plaintiff and he was directed to pay the rent to the Plaintiff. Despite order of RCA, Respondent did not pay the rent from November, 1998 to March, 1999. Therefore, a demand notice was sent calling upon Respondent to pay arrears of rent. Said demand

notice was refused by the Respondent; as a result, the suit for eviction was filed by the Appellant against the Respondent as stated hereinabove.

Respondent resisted the suit and denied all material allegations of fact including fact of relationship of landlord and tenant. It was alleged that there was a usufruct mortgage of the suit property in favour of the Appellant therefore he was not liable to pay rent. With these pleadings parties went to the trial and adduced evidence. Learned trial Judge appreciating the evidence found that the Appellant had made out ground for eviction covered under Sections 12(1)(a) and 12(1)(c) of the Act. So far bona fide need of the suit accommodation set up by the Appellant, it was negated by the trial Court. Being aggrieved by the judgment and decree passed by the trial Judge, Respondent preferred a First Appeal and the Appellant filed a cross objection. Learned Lower Appellate Court after examining the matter, allowed the appeal preferred by the Defendant and set aside the decree for eviction and affirmed findings of the Lower Appellate Court regarding bona fide need and as a result the cross objection filed by the Appellant was also dismissed. It is against this judgment and decree of the lower appellate Court this appeal has been preferred by the landlady.

This appeal was admitted for final hearing on the following substantial questions of law:

1) Has the learned first Appellate Court erred in reversing the findings of trial Court on the ground u/s 12(1)(c) of the M. P. Accommodation Control Act, 1961 though the claim that the Respondent had been mortgaged in possession had already been taken and discarded by the Rent Controlling Authority and still he persisted in such plea and denied the relationship which could be prejudicial and detrimental to the interest of the Appellant.

2) Have the Courts below erred in not finding ground u/s 12(1)(f) of the said Act proved on irrelevant considerations ?

I have heard learned Counsel for the parties at length and perused the records of the Courts below.

I would like to deal with second question first. Suffice it to say that both the Courts below have found that the Appellant could not establish bona fide need of the suit accommodation. The findings of the Courts below are based upon appreciation of evidence and as such in absence of any perversity or misreading of evidence such finding is binding upon this Court. Learned Counsel for the Appellant could not point out any defect with the aforesaid findings recorded by the Courts below. That being so, it is not open for this Court to reverse the findings recorded by the Courts below against the Appellant with regard to the eviction u/s 12(1)(f) is concerned.

Now only question remains for consideration is whether Appellant is entitled for a decree for eviction u/s 12(1)(c) of the Act. Section 12(1)(c) of the Act reads as under:

Restriction on eviction of tenants. - (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except, on following ground:

(c) that the tenant or any person residing with him has created a nuisance or has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation, or which is likely to affect adversely and substantially the interest of the landlord therein.

(emphasis is added)

From the material available on record it is clear that the Respondent went to the RCA u/s 25 of the Act for deposit of rent claiming himself to be the tenant of the suit accommodation. No doubt it is true that initially Appellant claimed that the Respondent was not her tenant but ultimately she accepted that the Respondent was tenant as is clear from the order passed by the RCA on 22-3-1999 and she received rent paid by Respondent through cheque. Despite the order of the RCA the Respondent did not pay rent from November, 98 to March, 99, therefore, Appellant sent a demand notice which was returned with the endorsement ""refused". Thereafter the Appellant filed the suit for eviction. After service of notice of summons, Respondent filed written statement and in the written statement he denied his liability to pay the rent on the ground that the suit accommodation was mortgaged with him as stated hereinabove. It is relevant to point out that the Respondent accepted the order of the RCA and it had attained finality between the parties. Thus, Respondent was well aware that there was an order holding that there was relationship of landlord and tenant existing between the parties yet he persisted with his claim that there was no relationship of landlord and tenant between the parties. Learned trial Judge had framed specifically Issue No. 1 to this effect whether relationship of landlord and tenant exists between the parties. Learned trial Judge on appreciation of evidence found that the denial of tenancy by the Appellant was an act inconsistent with the purpose for which the Respondent was inducted into the premises and plea of the Respondent was adversely and substantially affected the interest of landlord and accordingly passed a decree of eviction against the Respondent. The learned Appellate Court however found that since it was in a case of denial of title, trial Judge committed an error in passing of a decree for eviction u/s 12(1)(c). The finding recorded by the lower Appellate Court is clearly erroneous because even the repudiation of tenancy would entail forfeiture in a given fact and circumstance of a particular case. In the facts established on the record in the present case, the denial of tenancy by the Respondent, in the opinion of this Court would clearly amount to an act which is inconsistent with the purpose for which Respondent was inducted into the premises and the trial Court rightly held that a case for eviction u/s 12(1)(c) of the Act was made out. Learned Counsel for Respondent vehemently argued that no issue was framed regarding Section 12(1)(c), therefore, no decree can be passed u/s 12(1)(c) and in support of his

submission, learned Counsel for Respondent has placed reliance on the Single Bench decision reported in 1992(1) MPWN 199, Balibai v. Vidyavati. Though arguments seem very attractive, but on a probe it is found that they are devoid of any substance because it is well settled that when parties are aware of the case then non-framing of a particular issue pales insignificance. Therefore, non-framing of any issue with regard to Section 12(1)(c) would have no impact especially when Issue No. 1 was framed by the trial Judge regarding relationship of landlord and tenant between the parties.

In view of foregoing discussion, the impugned judgment and decree passed by the lower Appellate Court so far it pertains to Section 12(1)(c) is concerned, is unsustainable and accordingly it is hereby set aside and the judgment and decree passed by the trial Court for eviction u/s 12(1)(c) is restored and affirmed. Accordingly this appeal is allowed to the extent indicated hereinabove with cost throughout. Counsel fee Rs. 1000/- (one thousand) if certified.

At this stage learned Counsel for the Respondent prayed for reasonable time to vacate the suit premises because he is carrying on business from the suit premises and it would be difficult for him to find suitable accommodation to set up his business.

After considering the facts and circumstances of the case it is directed that in case Respondent files an undertaking in the trial Court that he would hand over vacant and peaceful possession of the suit accommodation to the Appellant on or before 31st December, 2007, the Appellant shall not take any steps to obtain possession of the suit accommodation provided further that the Respondent shall also give an undertaking and continued to pay a sum equivalent to the monthly amount of rent on or before 15th of each succeeding month. In the event of failure of Respondent to give an undertaking or recommit any default in payment of amount of rent on or before 15th of each succeeding month, in that eventuality this protection will not any how to the benefit of Respondent and the Appellant would be free to obtain the possession in accordance with law before 31st December, 2007.

Order accordingly.