

(2010) 08 MP CK 0020
In the Madhya Pradesh High Court
Case No : S.A. No. 171 of 2001

Jagdish Singh

APPELLANT

Vs

Rajmal Jalori (dead) through L.Rs., Virendra Kumar Jalori and
others

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 6 Rule 17
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1),
12(1), 14(1)

Citation : (2010) 4 MPLJ 502

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

Bench : Single Bench

Advocate : D.D. Bansal, for the Appellant; K.N. Gupta , with Anmol Khedkar, for
the Respondent

Judgement

S.K. Gangele, J.

Defendant has filed this appeal against the judgment and decree dated 14th February, 2001 delivered by First Additional District Judge, Vidisha, in Civil Appeal No. 17-A/2000 partly reversing the judgment and decree dated 1-5-1998 passed by the trial Court in Civil Suit No. 94-A/94.

This appeal has been admitted for hearing vide order dated 25-6-2007 on the following substantial question of law :-

Whether the judgment and decree passed by the Courts below stand vitiated because the Courts below have failed to consider the alternative accommodation admitted by plaintiff and his son Rajesh Jalori situated near railway station, Durganagar and failed to consider the fact that there is material difference between pleading and proof adduced by the plaintiff?

Original plaintiff, Rajmal Jalori, filed the suit for eviction of the defendant from the suit premises. He pleaded that the suit accommodation was rented out to the

defendant on a monthly rent of Rs. 43/- . The suit accommodation is needed for the purpose of doing business by his son, Mr. Rajesh Jalori because his son is doing the business of Luna Moped Sales and Service in a rented premises. He further pleaded that there were four other shops, which were also rented out and those shops were also needed for the purpose of business for his son, because the total area of the premises is near about 1000 sq.ft. and it is sufficient for doing business for his son. Plaintiff further pleaded that the defendant did not pay the rent of the suit premises regularly.

Defendant denied the pleadings of the plaintiff and pleaded that there were other shops available to the plaintiff for the purpose of doing business for his son. He further denied the fact that there was any arrears of rent.

The trial Court after appreciation of evidence on record has held that the need of the plaintiff is bona fide and the trial Court further held that the defendant did not pay the rent regularly and there was arrears of rent and granted a decree of eviction u/s 12(1)(f) and 12(1)(a) of the M.P. Accommodation Control Act, hereinafter referred to as the "Act". On appeal, the Appellate Court affirmed the judgment and decree passed by the trial Court on the ground of bona fide need u/s 12(1)(f) of the Act, however, set aside the decree of eviction on the ground of arrears of rent u/s 12(1)(a) of the Act. During pendency of this appeal, original plaintiff, Mr. Rajmal Jalori, died and his legal representatives have been brought on record.

Learned Counsel, appearing on behalf of defendant-appellant, has submitted that during pendency of the appeal the plaintiff constructed other accommodation, which is sufficient for the purpose of business of the son of the plaintiff. It has further been submitted that the need of the son of the plaintiff, as pleaded in the plaint, is not genuine and the lower Appellate Court as well as the trial Court have not considered the availability of alternative accommodation for the business of Mr. Rajesh Jalori, son of the plaintiff. Appellant-defendant also filed number of applications for taking additional documents on record and for amendment in the written statement and Learned Counsel submitted that those applications have to be allowed. In support of his contentions, Learned Counsel relied on the following judgments of the Hon'ble Supreme Court:-

(1) Prabha Arora and Another Vs. Brij Mohini Anand and Others, , (2) Mohd. Ismail Vs. Dinkar Vinayakrao Dorlikar, (3) Maganlal Godha Vs. Nanasaheb Gadewar, (4) Jaipur Development Authority Vs. Smt. Kailashwati Devi, (5) Deena Nath Vs. Pooran Lal, (6) Hasmat Rai and Another Vs. Raghunath Prasad,

Contrary to this, learned Senior Counsel, appearing for respondents has submitted that the plaintiff has already got possession of four shops which are adjacent to the suit shop and the suit shop is needed for the purpose of business for the son of plaintiff. Both the Courts below have after appreciation of the evidence on record, recorded a finding that the alternative accommodation is not sufficient for the purpose of business for the son of plaintiff, hence the findings

are as per law. In support of his contentions, Learned Counsel for respondents relied on the following judgment of the Hon''ble Supreme Court:-

(1) Ragavendra Kumar Vs. Firm Prem Machinery and Co., (2) Prativa Devi Vs. T.V. Krishnan, ; and (3) Smt. Shashi Jain Vs. Tarsem Lal (Dead) and Another,

Plaintiff has specifically pleaded that the suit shop is needed for the business to his son, Rajesh Jalori, who had been doing the business of Luna Moped Sales and Service in a rented premises. During pendency of the suit the son of the plaintiff vacated the said premises. The plaintiff further admitted that near railway line, Durga Nagar road, Mr. Rajesh Jalori constructed a show room for service of Maruti vehicles, but the aforesaid place was not sufficient for the purpose of business for the son of the plaintiff. Subsequently, the aforesaid premises was rented out to an Insurance Company. It is also an admitted fact that the plaintiff had already got possession of four shops, which are adjacent to the suit shop and the plaintiff has specifically pleaded in the plaint that all the shops were needed for the purpose of business for the son of the plaintiff. The plaintiff has specifically deposed in his evidence as P.W. I that at the premises at Durga Nagar, there is no market and the aforesaid place is not in the heart of the city. There were some petty shops, however, the place is not suitable for the purpose of business to the son of the plaintiff.

Madanlal (DW-3), the witness of defendant, has admitted the fact that at Durga Nagar there were petty shops. The Appellate Court as well as the trial Court in the impugned judgments have considered in detail the evidence of the parties and recorded a finding that the premises at Durga Nagar, situated near railway station, is not sufficient for the purpose of business of the son of the plaintiff.

Hon''ble the Supreme Court in Ragavendra Kumar Vs. Firm Prem Machinery and Co., has held as under in regard to bona fide need of the landlord and the fact that the landlord is free to choose the suitable accommodation :-

The learned Single Judge of the High Court while formulating the first substantial question of law proceeded on the basis that the plaintiff landlord admitted that there were a number of plots, shops and houses in his possession. It is true that the plaintiff landlord in his evidence stated that there were a number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that the suit premises was suitable for his business purpose. It is settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. In the case in hand the plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.

The Hon''ble Supreme Court further in Prativa Devi Vs. T.V. Krishnan, has held as under in regard to choice of the landlord to choose the accommodation for his need :-

The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court was rather solicitous about the age of the appellant and thought that because of her age she needed to be looked after. That was a lookout of the appellant and not of the High Court. The gratuitous advice given by the High Court was uncalled for. There is nothing to show that she had any kind of right whatever to stay in the house of the family friend. On the other hand, she was there merely by sufferance. There is no law which deprives the landlord of the beneficial enjoyment of his property. The High Court was in error in laying down that the test is availability of alternative accommodation and not the legal right to such occupation in adjudging the bona fides of the claim of the landlord u/s 14(1)(e) of the Act. In considering the availability of alternative accommodation, the Court has to consider not merely whether such accommodation is available but also whether the landlord has a legal right to such accommodation. The appellant had established her bona fide personal requirement of the demised premises u/s 14(1)(e) of the Act and her claim could not be disallowed merely on the ground that she was staying as a guest with a family friend by force of circumstances.

Hon"ble the Supreme Court in Maganlal Godha Vs. Nanasaheb Gadewar, , has held as under in regard to consideration of need of the landlord :-

In the light of the evidence on record, we are of the opinion that the order of the Division Bench of the High Court cannot be sustained. The entire approach of the Division Bench in setting aside the finding recorded by the Rent Controller and affirmed by the learned Single Judge was erroneous and the Division Bench misdirected itself while considering the question of bona fide requirement in terms of Clause 13(3)(vi) of the Rent Control Order, which postulates that there must be an element of need as opposed to a mere desire or wish of the landlord.

this Court in Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Others, , held that it is always a prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business, this is no ground to say that the landlords are already having their business at Chennai and Hyderabad, therefore, it is not a genuine need. Further, it is held that it is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of the business.

In Pratap Rai Tanwani and Another Vs. Uttam Chand and Another, it was held that the bona fide requirement of the landlord has to be seen on the date of the petition and the subsequent events intervening due to protracted litigation will not be relevant. It was held that the crucial date is the date of petition; therefore, the normal rule is that the rights and obligations of the parties are to be determined on the date of petition and that subsequent events can be taken into consideration for moulding the reliefs, provided such events had a material

impart on those rights and obligations. It was further observed that it is a stark reality that the longer is the life of the litigation and more would be the number of developments sprouting up during the long interregnum. Therefore, the Courts have to take a very pragmatic approach of the matter.

It is common experience in our court that especially landlord-tenant litigations prolong for a long time. It is true that neither can the person who has started the litigation sit idle nor can the development of the event be stopped by him. Therefore, the crucial event should be taken as on the date when the suit for eviction was filed, unless the subsequent events materially change the ground of relief.

In *Gaya Prasad vs. Pradeep Srivastava*, (2001) 2 SCC 604, this Court held that the landlord should not be penalised for the slowness of the legal system and the crucial date for deciding the facts of the requirement of the landlord is the date of his application for eviction. It is also observed that the process of litigation cannot be made the basis for denying the landlord relief unless the litigation at least reaches the final stages. However, it is further added that subsequent events may, in some situations, be considered to have overshadowed the genuineness of the landlords' needs but only if they are of such nature and dimension as to completely eclipse such need and make it lose the significance altogether.

In the present case, the plaintiff has got possession of four adjacent shops and the case of the plaintiff is that all the five shops are needed for the purpose of business of his son. The area of the premises, as per the landlord, is sufficient to construct a commercial complex for the purpose of business for his son. It is an admitted fact that the son of the plaintiff was already doing the business in a rented premises, Learned Counsel for defendant-appellant has argued that the Luna Company has already been closed. However, the fact remains that the son of the plaintiff had been also doing the business of Sales and Service of Kinetic Honda and that business is still in existence. The suit was filed on 23-12-1986 and for the last 35 years the proceedings are pending, hence some developments must have taken place. However, on this ground alone the suit of the plaintiff could not be dismissed, as observed by the Hon'ble Supreme Court in *Maganlal, son of Kishanlal Godha vs. Nanasaheb son of Udhaorao Gadewar* (supra) until and unless some material change has taken place in the ground of relief. In my opinion, no material change has taken place in the ground of relief.

The appellant defendant has also filed I.A. No. 2677/03, application under Order 41, Rule 27, CPC mentioning the fact that one shop fallen vacant during pendency of the suit proceedings and it has to be allowed. Another I.A. No. 3744/03 has been filed mentioning the fact that plaintiff got one premises. Appellant-defendant has also filed another application, I.A. No. 5478/10 under Order 41, Rule 27, CPC and I.A. No. 5479 an application for amendment in the written statement filed under Order 6, Rule 17, CPC and also an application, I.A. No. 5957/10 for amendment in written statement and I.A. No. 5958/10 an

application under Order 41, Rule 27, CPC for taking additional documents on record. After going through all the applications this Court has gathered the opinion that the applications have been filed in order to delay the suit proceedings. this Court has already held that the need of the plaintiff is bona fide and real. Both the Courts below have considered the evidence properly and there is no material contradictions in the pleadings, hence the aforesaid applications are hereby rejected.

I answer the substantial question of law by holding that the Courts below have not committed any error of law in considering the availability of alternative accommodation in regard to business of the son of the plaintiff. Mr. Rajesh Jalori, situated near railway station, Durga Nagar and has not committed any error of law in appreciation of evidence in this regard. There is no material difference between the pleadings and evidence, adduced by the plaintiff. I answer the substantial question of law accordingly.

Consequently, I do not find any merit in this appeal. It is dismissed accordingly. Looking to the facts of the case, there shall be no order as to costs.

The defendant-appellant is granted six months time to vacate the suit premises subject to furnishing an undertaking that he shall pay of all arrears of rent, if any, and he shall regularly pay the monthly rent on 15th day of every month to the plaintiffs-respondents till peaceful handing over of vacant possession of the suit premises. Immediately after expiry of six months from the date of this judgment, the defendant-appellant shall hand over peaceful vacant possession of the suit premises to the plaintiffs-respondents, failing which the plaintiffs-respondents shall be at liberty to execute the decree in accordance with law.