

(1983) 01 MP CK 0025

In the Madhya Pradesh High Court

Case No : Civil Second Appeal No. 226 of 1981

Kevalchand Puranchand and another

APPELLANT

Vs

Suganchand Puranchand

RESPONDENT

Date of Decision : 31-01-1983

Acts Referred:

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

Citation : (1983) J LJ 302 : (1983) MPLJ 381

Hon'ble Judges : U.N. Bhachawat, J

Bench : Single Bench

Advocate : N.K. Jain, for the Appellant; R.C. Lahoti, for the Respondent

Final Decision : Dismissed

Judgement

U.N. Bhachawat, J.

This is an appeal by the defendants against the judgment and decree dated 31st October 1981 of the Court of the Additional Judge to the Court of the District Judge, Guna, in Civil Appeal No. 70-A of 1979, whereby it has confirmed the judgment and decree dated 2-7-1979 of the Court of Civil Judge, Class II, Guna, in Civil Suit No. 5-A of 1976.

The plaintiff-landlord-respondent herein had filed a suit against the appellants herein for their ejection from the suit accommodation on the grounds u/s 12(1) (f) and (o) of the M. P. Accommodation Control Act, 1961, (for short, hereinafter referred to as "the Act"). The suit has been decreed by both the Courts on these grounds. Thus, the defendants have filed the present appeal, which has been admitted on the following questions:-

(i) Whether no decree on the ground u/s 12(1)(o) of the Act, could be granted, inasmuch as the plaintiff did not put a separate valuation for the purpose of jurisdiction and court-fees, with regard to the portion which is alleged to have been encroached by the defendants, and, at any rate, no decree could be passed

for ejecting the defendants from the encroached portion?

(ii) Whether the decree on the ground u/s 12(1)(o) of the Act is vitiated also for the reason that there is non-compliance of section 12(11) of the Act?

I shall deal with these questions ad seriatim.

The few facts may be stated to have a proper grip of the matter, so as to properly appreciate and decide the question at hand in its true perspective. The defendants are the tenants of the plaintiff. The plaintiff filed the present suit for ejectment of these defendants on grounds u/s 12(1) (f) and (o) of the Act. The tenanted premises is a part of a raised platform (chabutara) over which the defendants have been carrying on their pan shop. According to the plaintiff, the width of the portion, that was included in the tenancy of the defendants, was 5 feet west to east (hereinafter referred to as "the let accommodation"), whereas in July 1975, without the written permission of the plaintiff, the defendants took possession of a portion measuring 5'10" running west to east-a portion which was not included in the accommodation let to them -hereinafter referred to as "the encroached accommodation."

The plaintiff after giving the requisite notice calling upon the defendants to vacate the let accommodation as also the encroached accommodation, filed the present suit for the ejectment of the defendants on grounds u/s 12(1) (f) and (o) of the Act. The suit was resisted by the defendants. With regard to the encroached accommodation, the case of the defendants was that it was included in their tenancy. As already stated here-inbelow, the two Courts below negated the contentions of the defendants and decreed the suit.

The plaintiff had valued the suit for purposes of jurisdiction and court-fees as under:-

Valuation. Court-fees.

(1) Rs. 1,000, (for recovery of the amount of arrears of rent calculated for the let accommodation and Rs. 154, (the amount of compensation in respect of the encroached accommodation). Rs. 100.

(2) Rs. 300 (for ejectment from the let accommodation as well as the encroached accommodation, being the annual rent, of the let accommodation, calculated at Rs. 25 p. m.) Rs. 30.

The rival arguments advanced by the learned counsel for the parties are capsulised as under: -

According to the learned counsel for the defendant-appellants, since the plaintiff has claimed ejectment of the defendants from the encroached accommodation on the allegation that that portion is not included in the tenancy, and the defendants unauthorisedly occupied it, substantially, the allegation is that the defendants are trespassers with regard to that portion, and liable to be ejected. The valuation, therefore, for that portion for the purposes of jurisdiction and

court-fees should have been u/s 7(v) of the Court Fees Act, which is distinct from the valuation u/s 7(xi)(cc) of the Court Fees Act for the ejectment of the defendants from the let accommodation in view of section 17 of the Court Fees Act. Whereas according to the learned counsel for the respondent-plaintiff, the valuation for ejectment from both the accommodations i. e., the let accommodation and the encroached accommodation, made u/s 7(xi)(cc) of the Court Fees Act is proper, as the suit is between a landlord and a tenant for the ejectment of the tenant on a ground based u/s 12(1)(o) specially provided by the Act, and the case is governed by proviso to sub-section (2) of section 17 of the Court Fees Act, as substituted by the Central Provinces and Berar Amending Act IX of 1941 and in force in the State of Madhya Pradesh. The relief of possession from the encroached accommodation, it was urged, is a necessary consequence of the relief of ejectment of the defendants from the let accommodation.

The question arising is an interesting one, and calls for interpretation of sections 7(xi)(cc) and section 17 of the Court Fees Act read with section 12(1)(o) of the Act. It is a well settled law that proper court fees, which a plaintiff is required to pay on the plaint, has to be assessed from the nature of the suit which he institutes, and this nature of the suit has to be determined from the plaint that he puts in the Court, and not from the contentions taken up by the defendants, nor from the written statement filed by the defendants. Bearing this settled position in mind, the question at hand has to be examined. For an intelligent understanding, it is advisable to extract hereinbelow the provisions of sections 7(xi)(cc), 17 of the Court Fees Act and section 12(1)(o) of the Act, so far as they are relevant: -

The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

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(xi) In the following suits between landlord and tenant:

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(cc) for the recovery of immovable property from. a tenant, including a tenant holding over after the determination of a tenancy.

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according to the amount of the rent of the immovable property to which the suit refers, payable for the year next before the date of presenting the plaint.

(1) In any suit in which two or more separate and distinct causes of action are joined and separate and distinct reliefs are sought in respect of each, the plaint shall be chargeable with the aggregate amount of the fees with which the plaints would be chargeable under this Act if separate suits were instituted in respect of each such cause of action:

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(2) Where more reliefs than one based on the same cause of action are sought jointly in any such, the plaint shall be chargeable with the aggregate amount of the fees with which the plaints would be chargeable under this Act, if separate suits were instituted in respect of each such relief:

Provided that if a relief is sought only as ancillary to the main relief, the plaint shall be chargeable only in respect of the main relief.

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Restriction on eviction of tenants. - (i) Notwithstanding any-thing 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 one or more of the following grounds only, namely :

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(o) that the tenant has without the written permission of the land-lord also taken possession of such portion or portions of accommodation which is not included in the accommodation let to him and which the tenant has not vacated in spite of a written notice of the landlord in that behalf;

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The Act restricts the general right of a landlord of ejecting a tenant by providing protection to the tenant, inasmuch as it provides that the landlord cannot evict the tenant, unless any of the grounds enumerated in section 12(1) of the Act exists. One of such grounds is as provided in section 12(1)(o). This ground enumerated in clause (o) is available to the landlord on the existence of the following conditions, viz., (i) that the tenant has without the written permission of the landlord taken possession of a portion or portions of accommodation, which is not included in the accommodation let to him, and (ii) that the tenant has not vacated such portion or portions despite the written notice of the landlord to vacate the same. At this stage, it would be pertinent to refer to section 12(11) of the Act which reads as under:-

(11) No order for the eviction of a tenant shall be made on the ground specified in clause (o) of sub-section (1), if the tenant within such time as may be specified in this behalf by the Court vacates the portion or portions of accommodation not let to him and pays to the landlord such amount by way of compensation as it may direct." On the analysis of the provisions of this sub-section (11) of section 12, it is obtainable that the sub-section affords further protection to a tenant, who has lost the protection against his ejectment under the ordinary law, on account of the default committed by him u/s 12(1)(o) of the Act, provided the tenant (i) restores the possession of the encroached accommodation to the landlord within the time specified by the Court, and (ii) pays to the landlord that amount by way of compensation which the Court directs

him to pay.

Thus, on a cumulative reading of section 12(1)(o) and section 12(11) of the Act, in the light of the discussion made hereinabove, it is obtainable that in a suit for ejectment of the tenant by the landlord on ground u/s 12(1)(o), which even if be proved, the tenant can avoid his ejectment from the let accommodation by vacating the encroached accommodation within the time specified by the Court, and by making payment of such amount as compensation for the period during which he occupied such accommodation, as may be determined by the Court. To put it differently, in a suit for ejectment by the landlord against the tenant, on ground u/s 12(1)(o), an injunction is issued to the Court by section 12(11) not to order the eviction of the tenant on the ground specified in Clause (o) of sub-section (1) of section 12 of the Act, unless the tenant is given an opportunity to vacate the encroached accommodation and pay the compensation determined by the Court, and the tenant fails to avail of that opportunity. The provision u/s 12(11) therefore, arms the Court in a suit for ejectment by the landlord against his tenant on ground u/s 12(1)(o) from the let accommodation, to direct the tenant to vacate the encroached accommodation also. [See *Kanwarlal v. Badrinarayan* 1980 M P R C J 2 (para 2).] This power of the Court is clear from the expression contained in section 12(11) "if the tenant within such time as may be specified in this behalf by the Court vacates the portion or portions of accommodation not let to him.

The one significant fact, that has to be noted, is that to bring section 12(1)(o) of the Act into play, basic requirement is that the encroached accommodation forms part of that accommodation of which the let accommodation is also a part. In other words, the let part and encroached part form part of an accommodation. This intention of the Legislature is clear from the expression "of such portion or portions of accommodation which is not included in the accommodation", contained in section 12(1)(o), and the well settled rule of interpretation that the Legislature does not use word Which in redundant. Section 12(1)(o) would have been like this "that the tenant has without the written permission of the landlord also taken possession of accommodation which is not let to him, and which the tenant has not vacated in spite of a written notice of the landlord in that behalf." (Emphasis supplied).

I now revert to section 7(xi)(cc) of the Court Fees Act. It is plain enough that section 7(xi)(cc) covers every suit for the recovery of immoveable property from a tenant. As soon as it is shown that the plaint is founded on the relationship of landlord and tenant, this section comes into play, irrespective of the fact whether the lease is determined or not. The question then arising for decision is whether the words "recovery of immoveable property" relate to the let-out property only, or whether they include property other than the let out property also, of which the tenant has unauthorisedly taken possession. The expression "the rent of the immoveable property to which the suit refers" in this section makes it clear that the words "recovery of immoveable property" refer to the let out property.

Therefore, ordinarily section 7(xi)(cc) of the Court Fees Act would apply to suit, which is only for ejectment from the let out property, and if the suit is also for ejectment from the property other than the let out property on the basis of title, then the suit shall have to be valued u/s 7(xi)(cc) for the let out property and u/s 7(v) for the encroached property in View of section 17(1) or section 17(2) of the Court Fees Act, as the case may be; but this cannot hold true in the suits of the present nature. The present suit is predominantly a suit between the landlord and tenant grounded u/s 12(1)(o), where the tenant in his character as a tenant takes possession, without the written permission of his landlord of a portion or portions of the landlord's accommodation of which a portion /portions is/are let to Mm. Under the general law, a suit for ejectment of a person, from an immoveable property, who unauthorisedly takes possession thereof, has to be brought on the basis of title as against a trespasser, but section 12(1)(o) provides for such ejectment in a suit of the tenant by the landlord from the let accommodation, based on the ground of contract of tenancy, as already discussed hereinabove in paragraphs 10 and 11. Thus, the suit for ejectment of a tenant on the ground u/s 12(1)(o) is essentially a suit for ejectment of the tenant from the let accommodation on the ground that he is claiming to be the tenant of the accommodation, which has not been included in the tenancy. He is sued in his character as a tenant. The cause of action for the suit is the facts mentioned in section 12(1)(o), as analysed by me hereinabove. In this view of the matter, the cause for eviction of the tenant from the let accommodation and encroached accommodation is the same. The substantial relief claimed is the relief of ejectment of the tenant from the let accommodation to which, by virtue of the special provision made in section 12(1)(o) read with section 12(11) of the Act, the relief of ejectment from the encroached accommodation necessarily follows that relief as a matter of law. To put it in legal terms, the relief of ejectment from the encroached accommodation is an ancillary relief. In this view of the matter, no separate court-fees for that relief is necessary in view of proviso to section 17(2) of the Court Fees Act. Though not directly in point with the question involved in the instant case, yet supporting the view that for ancillary relief no separate court-fees is necessary, are the following authorities of the Nagpur High Court and Allahabad High Court:-Hajrabi v. Mohd. Ibrahim A I R 1948 Nag. 289, Abdul Shakur v. Badaruddin A I R 1936 874. I may make it clear that the position would be different if the plaintiff alleges in his plaint regarding the encroached accommodation, that the defendant, when asked to vacate that encroached accommodation, not only refused to do that but also repudiated the plaintiff's title over it, and hence the suit; such is not the position in the instant case. In essence, the averment in the plaint for ejectment of the tenant on the ground u/s 12(1)(o) of the Act should be that the defendant-tenant in his character as a tenant has taken possession of the portion/ portions, not included in the accommodation let to him.

In the light of the foregoing discussion, the suit for ejectment is covered u/s 7(xi)(cc) of the Court Fees Act, and the valuation made and court-fees paid for that

purpose on the plaint are proper. The learned counsel for the appellants had debated the point with the following citations: Kishanlal v. Ramkharose 1976 JL J 63 , Ganesh Gopal Vs. Moreshwar Narayan, , and Krishna Subala Bose and Others Vs. Dhanapati Dutta and Others, but, out of these citationsj none deals with the point at hand. In Kishanlal's case (supra),- a contrary view is taken. It says :

Since the plaintiff has claimed possession of the third room also, he has to pay court-fees and convert that part of the suit asone based on title against a trespasser.

This order was admittedly passed in motion hearing. It cannot, therefore, be taken as precedent; so on my disagreement with that decision, I need not make a reference of the case to a larger Bench.

In the light of the foregoing discussion, question No. (i) is answered as under :-

No separate valuation for the purposes of jurisdiction and court-fees with regard to the ejectment from the encroached accommodation is necessary to be put when the suit is brought by the landlord against the tenant for ejectment on ground u/s 12(1)(o). The valuation for the purposes of jurisdiction and court-fees put for ejecting the tenant from the let accommodation as well as the encroached accommodation according to the annual rental value of the let accommodation in accord-ance with sub-clause (cc) of clause (xi) of section 7 of the Court Fees Act is proper, and a decree, on the proof of the ground u/s 12(1) (o) of the Act, for ejectment from the encroached accommodation subject to the affording of an opportunity to the tenant u/s 12(11), of the Act, can be passed.

I now turn to the discussion of question No. (ii). In the instant case, the decree for ejectment is granted on ground u/s 12(1)(f) also and, tberfore, even if the opportunity u/s 12(11) of the Act is not granted, that defect is of no consequence in the instant case. I need not dilate on this point at length in view of the fact that the point is covered by a decision of this Court in Pooranchand v. Laxminarain 1980 M P R C J 257, with which I agree. The relevant portion of the decision in Pooranchand's case (supra) is extracted hereinbelow :-

I may mention here that when a decree u/s 12(1)(o) of the Act is granted, it is the duty of the Court to pass a conditional decree, namely, that is within the period given by the Court, the defendant vacates the portion on which he has committed the trespass, and pay damages for the purpose, then the decree for eviction cannot be enforced. This direction, neither the trial Court has given, nor the appellate Court has given. Therefore, I will have to see what will be the effect of not giving such a direction and whether it is necessary for me to modify the decree accordingly. I may say here that if I confirm the decree on other "grounds also, then whether there is a direction as required u/s 12(1)(o) of the Act or not will make no difference, because if the suit is decreed on other ground, the result will be that the defendant will have to vacate the whole premises in his occupation. Giving of such a direction which is contemplated u/s 12(1)(o) of the

Act will be of no consequence.

Thus, both the questions are answered against the appellants and in favour of the respondent.

In the result, the appeal fails and is dismissed. The impugned judgment and decree of the Court below are confirmed. However, in the facts and circumstances of the case, I direct that the appellants shall be given six months' time from today to vacate the premises. I make no order as to costs.