

(2009) 11 MP CK 0036
In the Madhya Pradesh High Court
Case No : S. A. No. 372 of 2009

Kewalchand

APPELLANT

Vs

Aachalgachha Kachhi Bisa Oswal Jain Swetamber Dharamik
Evam Parmarthdc Nayas and Others

RESPONDENT

Date of Decision : 23-11-2009

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 3

Citation : (2010) 1 MPLJ 158

Hon'ble Judges : K. K. Lahoti, J

Bench : Single Bench

Advocate : A. S. Garg, with Aditya Garg, for the Appellant; Sachin Subnis, for the Respondent

Final Decision : Dismissed

Judgement

K. K. Lahoti, J.

This appeal is directed against the judgment and decree dated 29-4-2009 by the Additional District Judge, Shujalpur, District Shajapur in Civil Appeal No. 39-A/2007, by which the judgment and decree dated 28-9-2008 in Civil Suit No. 100-A/2005 by the Civil Judge Class-I, Shujalpur, was affirmed.

The judgment and decree passed by the Court below have been assailed by the appellant on following grounds:-

(a) That the Appellate Court has not dealt with all the issues decided by the trial Court, which was the mandatory duty on the part of Appellate Court as held by the Apex Court in Madhukar and Others Vs. Sangram and Others, .

(b) That though the State Government granted exemption u/s 3 of the M. P. Accommodation Control Act, 1961 (hereinafter referred to as "Act" for short), but the plaintiff has failed to prove that the whole of income derived by it was utilised for that institution, in absence of which decree could not have been

passed. Reliance is placed to the Apex Court judgment in Ramgopal and Another Vs. Balaji Mandir Trust and Others, .

(c) That the plaintiff failed to prove how the property was acquired by it in which the defendant was tenant. He referred the trust deed in support of his contention and submitted that in absence of vesting of property to the trust the plaintiff was not entitled for a decree.

It was submitted that this appeal be admitted on the aforesaid substantial question of law.

(a) To appreciate the aforesaid contention, factual position in the case may be stated. The respondents filed a suit for eviction on the ground that in the execution proceedings of District Judge, Shujalpur in Case No. 39/Samvat 1979, the suit property was purchased by Shwetambar Jain Beesa Oswal Samaj in accordance with law. The defendant is a tenant in the said premises @ Rs. 100/- per month and is carrying on business of oil-cake etc. The tenancy of defendant is in accordance with English calendar month. The plaintiff is a registered trust under the M. P. Public Trust Act. It was registered by the Registrar, Public Trust, Shujalpur on 10-2-1992. Before the registration of trust the said institution was working as Shri Achal Gach Kachi Beesa Oswal Jain Shwetambar Dharmik Avam Parmarthak Nyas, Shujalpur.

That in the house owned by the trust, defendant is the tenant of plaintiff. The defendant had paid rent upto 31-3-2004 of which receipt No. 71 dated 31-3-2004 was issued to the defendant. The defendant has also attorned plaintiff as landlord. Rent is due since 1-4-2004. That the defendant is not paying rent regularly. The suit accommodation is required by the trust for expansion of its trust activities namely Mahaveer Chikitsalaya, Religious School, and for other activities of the trust. By resolution dated 27-10-2003, the plaintiff trust in the general meeting resolved to get the suit accommodation vacated. Notice was served on the defendant determining his tenancy.

That the suit accommodation is the property of the trust and is exempted from the provisions of the Act by the State Government u/s 3 of the Act.

(b)(i) The defendant denied the allegations of the plaintiff. He denied the registration of the trust and its ownership of the accommodation. He pleaded that plaintiff is not the exclusive owner of the suit accommodation. The defendant is the tenant of a different house, map is also not correct. The plaintiff has not disclosed the details of acquisition of the property and in absence of specific averments in the plaint defendant cannot file the reply.

(ii) That apart from the plaintiff there are other owners of the property. The defendant entered into a contract of tenancy with one Megjibhai @ Rs. 31/- per month. Megjibhai had not disclosed in respect of his transfer of interest to plaintiff Trust. Till 31-3-2004 the rent was paid to Vallabjibhai, the son of Megjibhai and he had issued the receipt. The said Vallabjibhai never disclosed

that he was receiving rent for and on behalf of the trust. Vallabjibhai is the landlord. The plaintiff had also not disclosed that they are the landlord of the suit accommodation. If the plaintiff proves itself to be the owner of the suit property then the defendant is ready to accept plaintiff as landlord.

(iii) That the rent is not due from 1-4-2004. That there is no need to the trust. On 27-10-2003 no general meeting of the trust was called. No resolution of the trust was passed for eviction of defendants.

(iv) The defendant is tenant since 1970 when the trust was not in existence. Even after formation of the trust, neither the plaintiff nor any other person intimated to the defendant that the property has been vested to the trust or the trust has become the landlord of defendant.

(v) That various properties of the trust are lying vacant which may be utilised by the trust for such activities. That the income of trust is not utilised, for the objects of the trust. The plaintiff is not fulfilling the requirement of section 3(2) of the Act, so the suit is liable to be dismissed.

The trial Court framed the issues and after recording evidence of the parties arrived at following findings:-

(a) That the plaintiff is a registered public trust.

(b) That the plaintiffs are entitled for filing of suit on behalf of the trust.

(c) That the defendant is a tenant of plaintiff trust of the suit accommodation @ Rs. 100/- per month.

(d) That Rs. 500/- rent is not due upto 31-2-2004.

(e) The trial Court found that u/s 3(2) of the Act the trust is exempted from the provisions of the Act by the State Government by Notification. The tenancy was duly determined and granted decree of eviction, arrears of rent and mesne profit @ Rs. 100/- per month.

Against the judgment and decree passed by the trial Court the appellant preferred an appeal before the Additional District Judge, Shujalpur. The Appellate Court by the impugned judgment and decree considered the contentions raised before it and dismissed the appeal. This judgment and decree is under challenge in this appeal.

Now the crucial question in the case may be looked into that whether u/s 3(2) of the Act, the plaintiff trust was exempted from all the provisions of the provisions of the Act. The State Government issued a Notification dated 7-9-1989 by which all the accommodation owned by wakf registered under Wakf Act, 1954 and the public trust registered under the M. P. Public Trust Act, 1951 were exempted from all the provisions of the Act. This Notification was challenged before this Court and ultimately the matter travelled upto Apex Court in State of M. P. and another vs. Chintamani Agarwal and others, 1999 (2) JLJ 379. The Apex Court

held that Notification dated 7-9-1989 was valid. A Division Bench of this Court in Baburam vs. State of M. P., 1997(I) MPWN 3 considered this aspect and held that such Notification exempting the public trust from all the provisions of the Act was valid.

In view of the settled law by the Apex Court and Division Bench of this Court, the contention of the appellant that plaintiff was not entitled to take benefit of section 3(2) of the Act has no merit.

Now the question may be seen, whether the respondents successfully proved in respect of requirement that whole of the income derived by the trust was utilised by the trust for its purposes, is concerned, this question was considered by the Court below. The trial Court in para 48 of the judgment recorded finding that all the income of the trust was utilised by the trust for the purposes of trust. The Appellate Court also in para 23 of the judgment affirmed the finding of the trial Court. In view of aforesaid concurrent finding of fact it is apparent that all the income of the trust was utilised by the trust for its purposes and the contention of appellant that the aforesaid income of the appellant was not utilised for the trust has no merit.

Another contention of appellant is that there was no attornment in favour of plaintiff, so the suit was not maintainable. The appellant has challenged the finding of trial Court in respect of receipt Ex.P-7 and submitted that the aforesaid receipt was obtained by playing fraud on the defendant, but in this regard no specific plea was raised by the appellant. Once the appellant paid the rent to the trust by Ex.P-7, the appellant was not entitled to deny the landlord-tenant relationship. Apart from this, the plaintiff has examined Vallabjibhai, son of Megjibhai. The appellant has pleaded tenancy with Megjibhai, but Vallabjibhai specifically made a statement that the disputed property belongs to the trust and was not let out by his father to the defendant and in fact the defendant was the tenant of the trust. In view of aforesaid, both the Courts if recorded a finding that the appellant was the tenant of respondent trust, no fault is found.

The argument of appellant that how the property was transferred to the trust has not been explained by the plaintiff is concerned, from the perusal of trust deed Ex.P-2, it is apparent that previous Sangh namely Shri Achal Gach Kachi Beesa Oswal Jain Shwetambar Dharmik Avam Parmarthak Nyas, Shujalpur was converted into a trust and the said trust was registered. The sale certificate Ex.P-5 and Ex.P-6 are also in the name of Shwetambar Jain Beesa Oswal of which trust was created. Once the trust was created in respect of the property owned the Sangh, and rent was paid to it, the appellant was not entitled to challenge the title of landlord trust.

The last contention of the appellant is that Appellate Court has not re-appreciated the entire evidence, and the judgment of the Appellate Court is not in accordance with the law laid down by the Apex Court in Madhukar (supra) is concerned, in this case the Appellate Court has affirmed all the findings of the

trial Court. The Appellate Court after considering the findings recorded by the trial Court has affirmed the findings, in which no fault is found. For affirming the findings, it was not necessary for the Appellate Court to re-appreciate the entire evidence, as was done by the trial Court. The Apex Court in *Madhukar* (supra) considered the case where the findings of the trial Court were reversed by the Appellate Court without considering the grounds on which the suit was dismissed by the trial Court, it was held by the Apex Court that it was the duty of Appellate Court to deal with all the evidence led by the parties before reversing the findings. But the factual position in this case is entirely different. The Appellate Court considered all the issues and for affirming the issues it was not necessary for the Appellate Court to re-record the findings, which were already recorded by the trial Court. Apart from this, from the perusal of impugned judgment and decree of the Appellate Court, I find that the Appellate Court considered all the issues which were raised before it.

In view of aforesaid, no substantial question of law is involved in this appeal. This appeal is without merit and is dismissed.

While dismissing the appeal, I find it appropriate to allow six months time to the appellant to vacate the suit accommodation, but on following terms :-

The appellant to file an undertaking before the trial Court that the appellant shall vacate the suit accommodation on or before 31 st May, 2010 peacefully without creating any hindrance or third party interest in the accommodation.

Appellant to deposit all the arrears of rent and costs incurred in the Courts below, if already not deposited, within a period of thirty days from today and thereafter continue to deposit the mesne profit @ Rs. 100/- per month, till vacation of the accommodation.

Considering facts of the case, there shall be no order as to costs.