
(2000) 02 MP CK 0042

In the Madhya Pradesh High Court

Case No : Civil Second Appeal No. 243/99

Ku. Maya Sharma and Others

APPELLANT

Vs

Smt. Shashi Goel and Others

RESPONDENT

Date of Decision : 03-02-2000

Acts Referred:

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

Citation : (2000) 2 MPHT 250 : (2000) 2 MPLJ 356

Hon'ble Judges : R.B. Dixit, J

Bench : Single Bench

Advocate : K.M. Mishra, for the Appellant; V.K. Bharadwaj, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Dixit, J.

Feeling aggrieved by the judgment and decree dated 7-1-99, passed by 11th Addl. Judge to District Judge, Gwalior in Civil Appeal No. 9A/98 confirming the judgment and decree of eviction dated 2-2-98 passed by IInd Civil Judge, Class 2 Gwalior in Civil Suit No. 121-A/95, the defendants/appellants have come up in this second appeal praying for dismissal of the suit of the plaintiff/respondents.

Deceased Mahesh Chandra Goel husband of respondent Shashi Goel and father of respondent Anil, Versha and Ritu had filed a suit for eviction and recovery of arrears of rent on the ground that defendants are tenant for Rs. 30/- per month of a portion of his house No. 548 situated at Sarafa Bazar, Lashker, Gwalior. Defendants have not paid rent since 20-8-84. The plaintiff himself is residing with his family in a rented house of Omprakash Bansal situated at Janakganj and therefore, he requires the accommodation for residential purposes of himself and his family. The plaintiff has further pleaded that he had no alternative accommodation available in the city of greater Gwalior.

The defendant/appellants contested the suit of the plaintiff on the ground that apart from the accommodation in dispute, the plaintiff is owner of three houses

situated Patankar Bazar, Vinay Nagar and Sikander Kampoo. However, the trial Court came to the conclusion that the accommodation in dispute is bonafidely needed for residential purposes of the family of the plaintiff. It was also found that there is no alternative suitable accommodation in possession of the plaintiff and therefore, the suit was decreed accordingly. The learned first appellate Court also agreed with the findings of the trial Court in dismissing the appeal of the defendant/appellants.

Following short substantial question of law is involved in the present appeal:

"Whether, for non-consideration of alternative accommodation owned and possessed by plaintiffs No. 2 to 4 the decree for bonafide need is vitiated ?".

The learned counsel for the appellant/defendants has taken me through the evidence recorded by the trial Court to show that the plaintiff Shashi Goel (P.W. 1) herself had admitted three different houses jointly possessed by the family. However, it should not be lost sight of that the plaintiff had clearly stated that these houses were divided between the members of joint family by a family arrangement Ex. P-I and the suit accommodation fell in the share of her husband. This document Ex. P-I which was also proved by another witness Omprakash Agrawal (P.W. 2) and Samir Kumar Jain (P.W. 3) indicates that a judgment Ex. P-2 and decree Ex. P-3 were also passed on the basis of this document. In the circumstances, this document cannot be considered as fake or forged. According to this document, the house situated at Patankar Bazar fell in the share of Bajrang Das and father-in-law of plaintiff Shashi and a portion of house situated at Sarafa Bazar (disputed accommodation) fell in the share of deceased/plaintiff Mahesh Chandra.

Plaintiff Shashi Goel in her statement has denied that the house of Sikandar Kampoo belongs to her. However, that house is said to be in dilapidate condition. Although witness Omprakash (P.W. 2) has admitted different houses of the joint family, however, he had made it clear that the house at Patankar Bazar came in the share of Bajrang Das, Savitri and Ajay. Except the disputed accommodation, no other house was allotted in the share of plaintiff, according to the family arrangement Ex. P-I. Although, a part of the house situated at Sarafa Bazar has been converted into Goel Guest House, but that portion had come in share of Vijay Goel, younger brother of deceased/ plaintiff.

By a later amendment in the written statement, it has been pleaded for the defendant/appellants that a portion of house situated at Sarafa Bazar which was let out to one Shivnarayan had also been vacated. However, defendant Bhuvnesh Sharma (D.W. 1) has admitted that this portion was got vacated by Bajrangdas, naturally, that portion was not allotted to the share of plaintiff. Defendant Bhuvnesh Sharma has admitted that other houses are the property of joint family. Another witness Vinod Kumar Jain (D.W. 2) had no knowledge that the plaintiff had any other house in his possession except accommodation in dispute.

Ramesh Chandra Pathak (D.W. 3) has also admitted that some of the members

of the plaintiffs family are carrying on the business in their shops situated at Sarafa Bazar. On the basis of this admission, it has been argued for respondent/ plaintiffs that the suit accommodation is more suitable for their residence instead of the house as situated at Vinay Nagar or Sikandar Kampoo which are outer areas of the city. This witness has further admitted that the house at Vinay Nagar was used as a marriage hall. It means that the house at Vinay Nagar is not suitable for residential purposes. This witness has further testified that in the house situated at Sikandar Kampoo, other family members of the plaintiff alongwith some tenants had been residing. From the evidence discussed hereinabove, it is amply clear that except the disputed accommodation, no other house of the joint family fell in the share of deceased/plaintiff. In the circumstances when other houses after family partition fell in the share of other family members, the question of considering alternative accommodation does not arise. In so far as house at Vinay Nagar is concerned, even if it is proved to be in possession of the plaintiff, seems to be used for earning purposs of the family and is also not suitable for residential purpose. In the circumstances, the concurrent findings returned by both the Courts below that the plaintiff/ respondents had no suitable alternative accommodation, does not suffer from any error or perversity from the evidence as brought on record.

The learned counsel for the appellants has cited a decision of this Court in the case of Hakimuddin Saifi Vs. Prem Narayan Barchhiha, , wherein, it has been held that if the landlord has suppressed availability of alternative accommodation, then eviction suit is liable to be dismissed. Of course, in the plaint, there are averments that the plaintiff had no alternative suitable accommodation in his possession, but it has been proved by cogent evidence that the plaintiff's family is owner of three other houses situated in the city. I am of the considered opinion, that the plaintiff has not suppressed anything on the point of alternative accommodation as the suit premises is the only house which fell in his share in family partition.

It has further been argued by the learned counsel for the appellants that where the availability of suitable alternative accommodation is not pleaded, then the evidence at this stage cannot be looked into and no decree can be passed under the provisions of Section 12 (1) (f) of M.P. Accommodation Control Act. Reliance is placed on a decision of this Court in the case of Tikamchand v. Prakash Chandra, 1991 J LJ 642. In my opinion, as has already-been pointed out that there is sufficient pleading in the plaint, itself in respect of the non-availability of alternative suitable accommodation. In the facts and circumstances, this argument is not acceptable for the purpose of this appeal.

Similarly, another decision cited by the learned counsel for the appellants in the case of Amarjit Singh Vs. Smt. Khatoon Quamarain, is not applicable, in the facts and circumstances of the present case, as no other suitable alternative accommodation in possession of the plaintiffs, has been proved.

Although, it is not proved that the plaintiffs had in their possession any other

alternative suitable accommodation for their residential purpose, however, assuming that there is one house situated at Vinay Nagar though not proved to be in possession of the plaintiffs or a house situated at Sikandar Kampoo, are not fit for residential purposes as these houses are situated in outer area of the city and at a distance of about 3 to 5 kms. from the main city where, the family members of the plaintiff are carrying on their business. Therefore, the alternative accommodation if any is wholly unsuitable for residential purposes of the plaintiffs. In a decision of Hon''ble Supreme Court, rendered in the case of Mrs. Meenal Eknath Kshirsagar Vs. M/s. Traders and Agencies and another, , it has been observed that it is for the landlord to decide how and in what manner, he should live and he is the best judge of his residential requirements. If the landlord desires to beneficially enjoy his own property when the other property occupied by him as a tenant or on any other basis is either insecure or inconvenient it is not for the Courts to dictate to him to continue to occupy such premises.

In a decision of this Court in the case of Rajendra Donald v. Smt. Violet Singh 1990 MPACJ 553, it has been held that a landlord who does not wish to occupy a house which he does not feel to be suitable to his need cannot be compelled to occupy the same or not to sale it least the said house be treated as an alternative accommodation.

In a case where alternative accommodation was congested and the accommodation let out on rent had fallen in the share of landlord, it was held in the case of Ramarao v. Dr. Prem Kumar 1990 JIJ 692 that the landlord is entitled to get such accommodation vacated. In a similar decision of this High Court in the case of Susheela Devi v. Shri Ved Prakash 1991 (I) MPW 171, it was observed that while assessing bonafide requirement of the plaintiff, it has to be seen whether, he really requires accommodation or whether, there is any malafide behind it and that the accommodation in his possession is insufficient. It was further observed that the differences in the joint family do not occur all of sudden. It creeps in and increases gradually. The members of the family may decide to live separately and as and when occasion arises and as and when suitable accommodation is made available. It is not necessary that they should quarrel in the street before separation or partition. In such circumstances, the plaintiff and her other adult members of family can plan out to make arrangement for suitable accommodation and separate residence, by metes and bounds. The family settlement is not necessary for getting an eviction u/s 12 (1) (e) of the Accommodation Control Act.

In view of the concurrent findings of both the Courts below, which are in no way adverse or against the evidence brought on record, no interference in this second appeal is warranted. Since it is not proved that the plaintiffs are in possession of any alternative suitable accommodation, both the Courts below had rightly held plaintiffs entitled for a decree of eviction.

Learned counsel for the appellants has submitted that the parties had already

filed compromise before the first appellate Court, wherein, appellants/defendants agreed to vacate the premises subject to allowing time till 30-6-99. However, the compromise could not be verified as the same was filed after passing of the impugned judgment. In the circumstances, the appellants be given sufficient further time to vacate the premises in case of dismissal of this appeal. Reliance is placed on a decision of Delhi High Court in the case of Prabha Patel v. Satinder Singh, reported in 1998 (2) RCJ 88, and also a decision of this Court in the case of Omprakash Gupta v. Smt. Prema Agrawal, S.A. No. 252/98 dated 31-1-98 of the Gwalior Bench. In my opinion, looking to the compromise filed by both the parties, it is directed that the appellants are to vacate the suit premises on or before 8th May, 2000.

Except, observations made hereinabove, this appeal fails and is dismissed accordingly.