

(1997) 05 MP CK 0012
In the Madhya Pradesh High Court
Case No : S. No. No. 163 of 1991 (I)

Kundanmal

APPELLANT

Vs

Hukumchand (deceased) through L.Rs. Vasantibai and Others

RESPONDENT

Date of Decision : 09-05-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)(c),
12(1)(e)

Citation : (1998) 1 MPJR 486

Hon'ble Judges : A.R. Tiwari, J

Bench : Single Bench

Advocate : P.M. Bapna, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

A.R. Tiwari, J.

The landlord has filed this Second Appeal under Sec. 100 of the CPC against the judgment and decree dated 14.11.90 passed by IX Addl. District Judge Indore in Civil Regular Appeal No. 11-A/89 thereby dislodging the judgment and decree dated 31.07.89 passed by XIII Civil Judge Class II. Indore in COS No. 2-A/88 and dismissing the suit for eviction.

Facts lie in a narrow compass.

The appellant is the owner of House No. 168/1 situated at Netaji Subhash Marg. Indore. One room of the ground floor of this house was let to late Hukumchand for residential purpose at a monthly rent of Rs. 12/-. The appellant filed the suit for eviction on the ground of bonafide requirement for occupation as residence for himself and for the members of his family as a result of non-availability of any other suitable residential accommodation of own in occupation at Indore, The trial Court framed the issue No. 2 (a) and 2 (b) in this regard. On evaluation of evidence, the trial Court decreed the suit for eviction u/s 12 (1) (c) of the M.P.

Accommodation Control Act, 1961 (For short the "Act") as also for recovery of rent/mesne-profits against the original tenant Hukumchand. Hukumchand expired. His Legal Representatives Rajendra, Bhagirath, Poonam. Durgabai and Basantibai (Respondent No. 1 to 5 in this appeal) filed the first appeal which was allowed and the decree of eviction was vacated. The landlord therefore, filed this Second Appeal against all the legal representatives of the deceased original tenant Hukumchand.

On 12.08.1991, this appeal was admitted for its final hearing on the following substantial question of law:-

Whether on the facts and in circumstances the learned lower Appellate Court erred in law in arriving at a perverse finding that the appellant had not made out a ground under Second 12 (1) (e) of the M.P. Accommodation Control Act, 1961. ?

-X-X- -X-X- -X-X-

I have heard Shri P.M. Bapna, learned counsel for the appellant. None appeared for the legal representatives of the deceased Hukumchand i.e. the Respondents.

The counsel for the appellant submitted that the conclusion reached by the First Appellate Court is perverse and that the decree passed by the Trial Court is erroneously dislodged. He submitted that the Respondents are not paying the rent-mesne-profits which is just Rs. 12/- per month. He, therefore, submitted that even defence against eviction be struck out u/s 13 (6) of the Act.

The Trial Court had granted the decree for eviction, but the First Appellate Court incinerated the same holding that there was no case or cause to disnest the tenant. Appellate Court can set aside the finding of the trial Court only on existence of certain situation. Perversity is one and illogicality is another factor In Baburao Bagaji Karemore and Others Vs. Govind and Others, , it is held as under:-

Before a finding of fact by a Trial Court can be set aside it must be established that the Trial Judge's findings were clearly unsound, perverse or have been based on grounds which are unsatisfactory by reason of material inconsistencies or inaccuracies.

-X-X- -X-X- -X-X-

Order XLI Rule 31 of the CPC requires that judgment of the Appellate Court shall state (a) the points for determination, (b) the decision thereon, (c) the reasons for the decision and (d) and relief to which the appellant is entitled in case of reversal or variance.

The First Appellate Court is the final Court on facts. As held in 1997 Supreme Court and Full Bench Rent Cases 171 (Panchugopal Barua and others V. Umesh Chandra Goswamy and others), scope under amended Section 100 of the Code is quite restrictive and exercise of jurisdiction depends on existence of a

"substantial question of law". This then is sine qua turn. The First Appellate Court has thus, to bestow serious attention and to supply tenable "reasons" for its "decision", more so in case of reversal or variance.

Placing reliance on AIR 1943 PC 23 (Ram Lal Dutta Sarkar v. Dhirendra Nath Ray and others), this Court had held in 1964 MPLJ 44 N (Swamicharan V. Raghunath) that if the lower Appellate Court does not examine the facts and the evidence for itself and does not fully mention the points which the case raises, it must be inferred that it has failed to perform the duty cast on it by law.

In the instant case. I find that the First Appellate Court has failed to perform the duty imposed on it by law and as such, I proceed to examine the facts and evidence because finding of fact reached by the First Appellate Court without considering thoroughly and minutely "every bit of evidence" and without seriously applying its mind to remarkable features and legal provisions is no finding and such a finding, perse vitiated, is not binding on this Court in Second Appeal despite its restricted scope after amendment.

Initially the case for eviction was filed on 04.06.84 before the Rent Controlling Authority, Indore which was registered as Case No. 396/84. Later, this was transferred to Civil Court where it was received on 04.03.85 for disposal in accordance with law. There is clear pleading in terms of Section 12(1) (e) of the Act. PW- 1 Kundanmal deposed about the need (paras No. 2 and 3). DW-1 Rajendra Kumar Shrivastava did not categorically state in his statement that the tenanted accommodation was not bonafide required by the landlord. DW-2 Basantibai Baria also did not depose anything substantial against the statement of the landlord. The statements of DW-3 Pobnam Baria and DW-4 Anwar khan do not inspire confidence The Trial Court evaluated the evidence and concluded in para 10 of its judgment as under :-

Issue No. 1 related to the nature of tenancy i.e. composite tenancy for residential and non-residential purpose. The trial Court found that the accommodation was let only for residential purpose. The First Appellate Court reversed the conclusion and held that the tenancy was for dual purpose (para 8 of the impugned judgment). Even if this finding is sustained, it would not make much different because even in ease of composite tenancy, the need for one of the purposes is sufficient to entitle the landlord to secure eviction from the entire tenanted accommodation. 1982 JLJ 319 (Jagjit Kumar V. Jagidshchandra may be referred.

True it is that the need is to be assessed objectively. However, I find from para 19 of the impugned judgment that the First Appellate Court erroneously demolished the conclusion of the Trial Court. The First Appellate Court negated the plea of need on surmises and conjectures.

I find that the conclusion reached by the trial Court is on firm foundation and is not liable be dislodged. The First Appellate Court, therefore, committed an error in vacating the decree of eviction.

The decree of the First Appellate Court is thus, found to be subvertible.

On reappraisal of the evidence, I indicate my general agreement with the conclusion of the trial Court. Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, is pertinent. In Mrs. Meenal Eknath Kshirsagar Vs. M/s. Traders and Agencies and another, , it is held as under: -

As pointed out by this Court it is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement. If the landlord desires to beneficially enjoy his own property when other property occupied by him as a tenant or on any other basis either insecure or inconvenient it is not for the Court to dictate him to continue to occupy such premises.

-X-X- -X-X- -X-X-

Bonafide need is held to be cogently established and respondents are liable for eviction u/s 12(1)(e) of the Act.

Ex-consequenti, I allow this appeal, vacate the judgment and decree passed by the First Appellate Court and restore the judgment and decree passed by the Trial Court, but with no orders as to costs. Counsel fee for the appellant is fixed at Rs. 750/-, if certified. Decree be drawn up accordingly.

Records of the Courts below shall now be returned.