
(1999) 06 MP CK 0010

In the Madhya Pradesh High Court

Case No : Civil Revision No. 1934 of 1998

Madak Chand Jain

APPELLANT

Vs

Smt. Fatma Bai

RESPONDENT

Date of Decision : 23-06-1999

Acts Referred:

Court Fees Act, 1870 — Section 7(xi)(cc)

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

Citation : AIR 2000 MP 30 : (2001) ILR (MP) 409 : (1999) 2 JLJ 254 : (2000) 1 MPHT 46 : (1999) 2 MPJR 128 : (1999) 2 MPLJ 686

Hon'ble Judges : A.K. Mathur, C.J.; Dipak Misra, J

Bench : Division Bench

Advocate : R.I. Jain, for the Appellant; C.L. Kotecha, for the Respondent

Judgement

A.K. Mathur, C.J.

This is a reference made by the learned single Judge on account of two conflicting decisions of the single Bench -- one given by Justice Shiv Dayal (as he then was) in Kishanlal v. Rambharose 1976 Jab LJ (SN) 63 and another given by Justice Bachawat (as he then was) in Kevalchand Puranchand v. Suganchand 1983 MPLJ 381, on the following question of law, which reads as under :

"Whether a separate valuation for the purposes of jurisdiction and Court-fees with regard to the ejectment from the encroached portion is necessary to be put when eviction is sought on the ground u/s 12(1) of the Act ?"

The present revision has been preferred u/s 115 of the CPC against the order dated 24-7-1998 passed by the 1st Civil Judge, Class II, Khandwa, in Civil Suit No. 45-A/98 rejecting the objection raised by the applicant/ defendant regarding the Court-fees and jurisdiction of the Court for entertaining the suit without payment of Court-fees for eviction from the additional accommodation.

The brief facts which are necessary for disposal of this reference are that the respondent/plaintiff instituted the instant civil suit against the applicant/

defendant for his eviction from the suit accommodation as also for injunction. The eviction of the applicant was sought on the ground, inter alia that the applicant has taken possession of two rooms which were not Included in the premises let out to him. The applicant controverted the plaint allegation and pleaded inter alia that the valuation of the suit for the purpose of Court-fees and jurisdiction was not proper. The respondent/plaintiff was required to give a separate valuation regarding the ejectment from the encroached accommodation and also to pay the Court-fees thereon. The instant suit was filed by the plaintiff u/s 12(1)(o) of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as the ACT for short). Section 12(1)(o), which is relevant for our purposes, reads as under :--

"Section 12(1)(o) : that the tenant has without the written permission of the landlord 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."

As per Section 12(1)(o) of the Act, the landlord can maintain a suit for eviction against the tenant, who has occupied the premises without permission of the landlord or portion or portions of the accommodation which is not included in the accommodation let out to him and the tenant has not vacated inspite of a written notice of the landlord in that behalf. On account of this, the eviction is sought by the plaintiff. Justice Shiv Dayal (as he then was) took the view in the case of Kishanlal v. Rambharose 1976 Jab LJ (SN) 63 that in a suit where relief of possession is sought in respect of third room, which was not let out on the ground that the tenant has wrongly taken possession of the third room, the plaintiff has to pay the Court-fees and convert that part of the suit as one based on the title against a trespasser. As against this Justice Bachawat (as he then was), in Kevalchand Puranchand v. Sukan Puranchand 1983 MPLJ 381, took the view that no separate valuation for the purposes of jurisdiction and Court-fees with regard to ejectment from the encroached portion is necessary to be put when the suit is brought by the landlord against the tenant for ejectment on the ground u/s 12(1)(o) of the Act. Justice Bachawat has held that the plaintiff is only required to pay Court-fees according to annual rental value of the let accommodation in accordance with Sub-section (cc) of Clause (11) of Section 7 of the Court-fees Act. Therefore, in view of this two conflicting decisions as to whether a separate Court-fees is required to be paid encroached accommodation or not this reference has been made to resolve the two conflicting decisions of the single Bench of this Court.

We have considered rival submission of the parties. Section 7(xi)(cc) of the Court-fees Act reads as under :

"Section 7 : Computation of fees payable in certain suits

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

xxxx xxxx xxxx xxxx (xi) between landlord and tenant :-- in the following suits between landlord and tenant :

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

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."

A perusal of both the aforesaid decisions and the provision of law make it clear that when a landlord brings the suit for eviction on the ground of Section 12(1) (o) of the Act then essentially the eviction is sought on the ground of impertinence of the tenant to encroach upon the premises which were not let out to him. This is a ground on which eviction of tenant is sought and the consequential relief is the eviction from the encroached portion of the premises. Therefore, there has to be a one composite suit for eviction on the ground of impertinence on the part of the tenant to encroach over portion of the premises of the landlord which were not let out to him, that gives the cause for bringing the suit for eviction to the landlord. Therefore, it has to be a composite suit and for that the Court-fees could only be paid on the basis of Sub-clause (cc) of Clause (xi) of Section 7 of the Court-fees Act. After reading both these provisions together, what it emerges is that in such a situation like the present one, the landlord shall only be required to pay the Court-fees on the basis of Sub-clause (cc) of Clause (xi) of Section 7 of the Court-fees Act, i.e. annual rental value of the let out accommodation. Thus, we are of the view that the view taken by Justice Bachawat (as he then was) in *Kevalchand Puranchand's case* (1983 MPLJ 381) (supra), is more consistent with the scheme of the provision of the Court-fees Act as well as M.P. Accommodation Control Act and we are of the opinion that the view taken by Justice Bachawat (as he then was) in *Kevalchand's case* (supra) lays down the correct law and the view taken by Justice Shiv Dayal (as he then was) in *Kishanlal's case* (1976 Jab LJ (SN) 63) (supra) does not lay down the correct position of law. This reference is answered accordingly.