
(2010) 09 CHH CK 0028
In the Chhattisgarh High Court
Case No : Second Appeal No. 457 of 1991

Mahavir Prasad	Vs	APPELLANT
Murarilal Agarwal and Others		RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)

Citation : (2011) 1 CGLJ 365

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Judgement

T.P. Sharma, J.—By this second appeal u/s 100 of the Code of Civil Procedure, 1908 (for short "the Code"), the Appellant has challenged the judgment & decree dated 8-10-91 passed by the 1st Additional District Judge, Raigarh in Civil Appeal No. 17-A/90, setting aside the judgment & decree dated 28-2-90 passed by the 3rd Civil Judge Class-II, Raigarh in Civil Suit No. 121 -A/82, whereby the lower appellate Court has decreed the suit for eviction in terms of Section 12 (1) (f) of the Chhattisgarh Accommodation Control Act, 1961.

2. Present second appeal has been admitted on the following substantial question of law:

Whether the learned lower appellate Court committed a mistake in not disposing of the application filed by the Appellant under Order 41 Rule 27 CPC by a specific order? & If so, the judgment and decree are vitiated on that account?

3. As per the case of the parties, the Respondents herein landlord filed suit for eviction against the Appellant herein on the ground of their bona fide for business of the suit accommodation which has been denied by the Respondents. After affording opportunity of hearing to the parties, the 3 Civil Judge Class-II dismissed the suit, same was challenged in appeal before the lower appellate and the lower appellate Court has decreed the suit by allowing the appeal.

4. During the pendency of first appeal before the lower appellate Court, the Appellant herein has filed application under Order 41 Rule 27 of the Code along with documents especially relating to obtaining possession of another shop during the pendency of appeal which was sufficient to satisfy the need of the Respondents herein. The lower appellate Court has provided opportunity of hearing on the aforesaid application and fixed the case for orders/judgment. The lower appellate Court has passed judgment & decree on 8-10-91, but has not decided the application filed under Order 41 Rule 27 of the Code along with the documents, either by a separate order or along with the main judgment & decree.

5. I have heard learned Counsel for the parties, perused the judgment & decree of both the Courts below and records of both the Courts below.

6. Learned Counsel for the Appellant submits that the Appellant herein had filed application under Order 41 Rule 27 of the Code along with details and documents stating therein that during the pendency of first appeal, the Respondents herein had obtained possession of another shop of sufficient size and execution of decree, therefore, the bona fide need of the Respondents herein came to an end and the Respondents are not entitled for eviction on the ground of bona fide need, but the lower appellate Court has not decided the application filed on behalf of the Appellant herein.

7. On the other hand, learned Counsel for the Respondents opposes the appeal and submits that if the contents of application and documents are considered, even then, same are not sufficient to satisfy the need of the Respondents. Therefore, any error in not deciding the application will not effect the merits of the case.

8. Admittedly, during the pendency of appeal, the Appellant herein has filed application under Order 41 Rule 27 of the Code for taking additional evidence along with documentary evidence of obtaining possession of another shop, but the lower appellate Court has not decided the application. While deciding appeal the Court was under obligation to consider and decided the application filed under Order 41 Rule 27 of the Code, but by not deciding the said application, the lower appellate Court has committed illegality and on this ground alone, the judgment & decree of the lower appellate Court are not sustainable under the law.

9. Consequently, the substantial question of law formulated for the decision of this appeal is decided as positive and on the basis of decision on the substantial question of law, the appeal deserves to be allowed and it is hereby allowed. Judgment & decree dated 8-10-91 passed by the 1st Additional District Judge, Raigarh in Civil Appeal No. 17-A/90 is hereby set aside.

10. The case is remitted back to the Court of Ist Additional District Judge. Raigarh for deciding the application filed under Order 41 Rule 27 of the Code afresh and also for passing judgment & decree in first appeal afresh after providing opportunity of hearing to the parties. Parties shall bear their own costs.

11. Advocate fees as per schedule.

12. Parties are directed to present before the Court of 1st Additional District Judge, Raigarh on 8-11-2010 for further progress of the case.