

(1964) 04 MP CK 0027
In the Madhya Pradesh High Court
Case No : S.A. No. 431 of 1961

Mangilal and Others

APPELLANT

Vs

Pyarchand

RESPONDENT

Date of Decision : 08-04-1964

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (1966) JLJ 490

Hon'ble Judges : P.K. Tare, J

Bench : Single Bench

Advocate : K.A. Chitale, for the Appellant; S.T. Malgawa, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tare, J.—This appeal is by the Plaintiffs landlords against the decree, based, 21-11-1961 passed by Shri S.V.H. Pagare, District Judge, Ujjain, in Civil Regular Appeal No. 39 of 1961, affirming the decree, dated, 3-7-1961, passed by Shri R.L. Sanghani, Second Civil Judge, Class II, Ujjain in Civil Suit No. 228 of 1960.

2. The suit plot at the time of the lease was vacant land, Originally, it belonged to one, Kanchanlal, who gave it to the present Respondent on a lease for a period of 3 years as per the agreement, dated, 8-12-1949 (Ex. P. 8). It was indisputably given for non-residential purpose. The lessee was permitted to have a temporary structure of his own for locating a factory. Even after the expiry of three years, the Respondent continued in possession as a lessee. At this stage, it may be significant to note that the rent note, dated 8-12-1949 (Ex. P-8) specifically provided for termination of the lease on one month's notice.

3. Kanchanlal sold the plot to the present Appellants on 29-4-1959 by a registered deed (Ex. P-1). Kanchanlal also served a notice on the Respondent, dated 23-5-1959 (Ex. P.3). calling upon the tenant to at torn to the transferees of the original lesson. After purchase, the Appellants served a quit notice, dated, 10-6-1959 (Ex. P. 5) calling upon the tenant to vacate as the landlords

themselves wanted to construct a house. In the suit also, the Plaintiffs confined their claim to eviction u/s 4(i) of the M.P. Accommodation Control Act, 1955. That is the main question to be consideration in the present appeal.

4. The Respondent opposed the Plaintiffs' claim mainly on the ground that the land not being a vacant or open plot of land, Section 4 (i) pf the Act was not attracted. Further on, the quit notice was also challenged as invalid.

5. The learned Judge of the trial Court negatived the landlord claim u/s 4(i) of the Act mainly for the reason that the section permits eviction on the ground of the construction of a building for residential purpose; and as the evidence on record disclosed the intention of the landlords to use it for non-residential purpose, Section 4(1) of the Act could not be invoked. On the other hand, the learned appellate Judge negatived the landlords' claim mainly on the ground that it not being an open site or a vacant plot of land, Section 4(i) of the Act could not at all be availed of by the landlords. In that view, their claim for eviction was rejected and a money decree for arrears of rent only was passed.

6. The important question involved in the present appeal is whether Section 4(i) of the M. P. Accommodation Control Act, 1955 is attracted. What the Appellants mentioned in their quit notice, dated, 10-6-1959 (Ex. P.5) was that they wanted to constructed a house on the open plot of land. Similary, in their plaint they alleged that they wanted to construct a house on the said plot and also have a broader way for the passing of vehicle and cattle In the quit notice as also the plaint they did not clarify as to for what purpose the proposed house was meant for, whether for residential or non-residential purposes. However, at the evidence stage, the Appellants give an indication that they wanted to construct a house for non-residential purpose. Gokulchand (P.W.1) one of the Plaintiffs), Kanhaiyalal (P.W.2) and Bansilal (P.W.3) specifically stated that the Plaintiffs wanted to construct a house for non-residential purposes. It was this assertion of the Plaintiffs' witnesses which persuaded the learned Judge of the trial Court to hold that eviction u/s 4 (i) could not be claimed for constructing a house for non-residential purposes.

7. So far as that interpretation of the trial Judge is concerned, I find that the same is not warranted by the provisions of the Madhya Pradesh Accommodation Control Act, 1955. Section 3 (a) of the Act has defined "accommodation" to mean:

any land which is not being used for cultivation ; any building or part of a building, and it includes-

(1) garden, open land and outhouses, if any, appurtenant to such building or part of a building ;

(2) any furniture supplied by the landlord for use in such building or part of a building;

(3) any fittings affixed to such building or part of a building for the more

beneficial enjoyment thereof.

Therefore, accommodation will certainly include an open plot of land, as also a building on a plot which may be used for residential or non residential purposes as the case may be, Section 4(i) of the Act speaks of accommodation which is open land that the landlord requires for building his house on it. Its wording indicates that if there is an open plot of land over which a landlord intends to construct a house, he is entitled to evict the tenant. Houses need not necessarily be for residential purposes alone. They can as well be used for non-residential purposes as well. I am unable to accept the view of the trial Judge that having in view the dictionary meaning of "house", it can only be used for residential purpose. Therefore, It is not possible to accept the view of the trial Judge that no eviction can be claimed if a landlord wants to construct a house for a non-residential purpose on an open plot of land u/s 4(i) of the Act.

8. However, even if the view of the trial Judge were to be rejected, we have still to meet the view of the learned appellate Judge, who has expressed that the material date for deciding whether the plot is open land would be the date when eviction is sought. It was from that point of view that the learned appellate Judge held that Section 4(i) of the Act could not be invoked by the landlords; because on the date eviction was sought, there was a temporary structure raised by the tenant standing on the land. If we have in view the definition of accommodation as per Section 3(a) of the Act, it is clear that the accommodation can include not only a building, but also an open plot of land. What is contemplated by the Act is probably the accommodation or the premises that a landlord leases out to his tenant. In that sense only, the word "accommodation" has been used, and particularly the definition in the earlier part of the section.

9. Therefore, we have to test the view of the learned District Judge to ascertain if Section 4(1) of the Act cannot be invoked, if a tenant has been permitted to raise a structure on an open plot of land. In my opinion, that cannot be that real test. The real test, in fact, would be as to what is the subject matter of the lease. Therefore, if a landlord leases out an open plot of land without any structure, whatsoever and permits the tenant to raise a temporary structure either for a residential or for a non-residential purpose with a specific condition that on demand the tenant shall demolish his temporary structure, the plot so leased will, in my opinion, constitute open plot of land for the purposes of Section 3(a), as also Section 4(1) of the M.P. Accommodation Control Act, 1955. If this interpretation were not to be accepted, it will obviously lead to some anomalies and absurdities.

10. If the reasoning of the learned appellate Judge were to be accepted it will mean that the landlords cannot evict the tenant because the tenant has raised a temporary structure with the permission of the landlords. In that view, the learned appellate Judge would call it a building, and not an open plot of land. But if by the terms of the lease, if the landlords can call upon the tenant to remove the structure any time it will undoubtedly become open plot of land after removal of

the structure. From this point of view, the fact that the tenant raises a temporary structure can in my opinion, not be the determining factor. But the determining factor will be as to in what condition the landlord has leased out the premises to the tenant. If the landlord leases out the premises to a tenant with a temporary structure, even then it might be said that it is not a lease of open plot of land, but of a building, however, temporary the structure might be; and in such an event, the landlord may not be able to invoke Section 4(i) of the Act. But if the landlord has leased out an open plot of land to the tenant with permission to raise a temporary structure, Section 4(i) of the Act cannot in my opinion be held in applicable on the wrong premises that it is a building, and not an open plot of land. Therefore, in my opinion, the learned District Judge was in error in applying an incorrect rest to this question upon an misapprehension of the view expressed by me in *Vansraj v. Mst. Kusumawati* 1962 J LJ-SN 115: 1961 MPLJ-SN 120. In that case the landlord had let out the main bungalow to a tenant, while he had let out some open portion of the compound to another tenant with permission to raise a temporary structure. As the open plot of land was part and parcel of the compound wherein the bungalow was constructed, I negatived the tenant's contention about applicability of Section 4(1) of the Act. In that case, the landloard claimed eviction u/s 4(g) of the M. P. Accommodation Control Act, 1955. Therefore, those observations, in my opinion, do not at all apply to a situation as obtain in the present case.

11. To conclude, I am of opinion that Section 4(1) of the Act could be availed of by the Appellants in the present case. If it cannot be availed of by them, it might result in some absurdities and anomalies. Suppose if a person purchases an open plot of land and has the intention of constructing a house on it. He has no money for the present, and in order to earn some income he leases out the plot to some person with permission to raise a temporary structure. If the interpretation put by the learned District Judge were to be accepted, Section 4(1) of the Act would not be available to such a person who after having the necessary funds say after five years would like to have a residential or a non-residential building on the plot. According to the reasoning of the learned District Judge, it would not be a vacant plot of land or an open site, because the lessee has raised a temporary superstructure with the permission of the landlord. Such an absurdity and anomaly cannot be imputed to the legislature; and the provisions of the M.P. Accommodation Act, 1955 have to be construed rationally so as to not make a nonsense of the legislation.

12. The other question raised by the learned Counsel for the Respondent was that even if this view were to be accepted, still the quit notice, dated, 10-6-1959 (Ex. P. 5) would be invalid, in as much as, this being a lease for a manufacturing purpose, would be deemed to be a lease from year to year as per Section 106, Transfer of Property Act and. therefore, six months" notice expiring with the end of the year of the tenancy would be necessary in the present case. In this connection, attention is invited to the observations of a Division Bench of the Calcutta High Court in *Stuart and Co. Lt. v. C. Mackertich* AIR 1962 Cal. 198. In

that case there was an unregistered lease for a manufacturing purpose, The learned Judges of the Division Bench held that although the lease deed might be required to be registered and might not operate as a valid lease for want of registration, yet for the purpose of Section 106, Transfer of Property Act, it will be deemed to be a lease for manufacturing purposes and requiring six months' notice ending with the tenancy year. So far as that proposition is concerned, I am in respectful agreement with the view expressed by the learned Judges. However, the provisions of Section 106 of the Transfer of Property Act are to operate in the absence of a contract or usage to the contrary. In the present case, the contract to the contrary is clearly evident by the provision in the lease deed, dated, 8-12-1949 (Ex. P. 8), which clearly provides that the lessee would be liable to vacate on one month's notice, whereupon he would be required to remove the super-structure. This being a contract to the contrary, the quit notice giving one month's time to the lessee cannot at all be challenged as invalid.

13. As a result of the discussion aforesaid, it is clear that the decree of dismissal passed by the Courts below cannot be sustained in law. It is consequently set aside, and the Appellants' claim for eviction is instead de-read. This appeal, therefore, succeeds and is accordingly allowed with costs throughout. Counsel's fee according schedule or certificate, which-ever be less. However, the learned Counsel for the Respondent prays for some time for the removal of the super-structure. It is pointed out that the Respondent has constructed a big factory and has sequent about 10 to 15 thousand rupees for raising the superstructure. Therefore, demolition and removal of the super-structure along with the machinery is bound to take some time, and the same cannot be removed unless the Respondent is able to make some alternative arrangement. From this point of view, there can be no doubt that this would be a fit case where the Respondent might be granted some time to remove the machinery and the super-structure. Ordinarily, three or four months' time might suffice for the purpose, But as the said period would and during the rainy season, I am of opinion that the Respondent may be granted seven months' time for removing the super-structure, that means upto 31-10-1964.