
(2008) 02 CHH CK 0049
In the Chhattisgarh High Court

Mansoor Ali alias Munshi

APPELLANT

Vs

Leelavanti alias Leelabai and Anil Gandhi

RESPONDENT

Date of Decision : 06-02-2008

Acts Referred:

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

Citation : (2008) 2 MPHT 15

Hon'ble Judges : Dilip Raosaheb Deshmukh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dilip Raosaheb Deshmukh, J.—In this appeal by the landlord, the following substantial question of law arises for determination:

Whether in view of the admitted position that it was a composite tenancy, the Court below committed an error of law in splitting up the tenancy and granting a decree to the landlord u/s 12(1)(e) of the M.P. Accommodation Control Act, 1961 and while negating his case u/s 12(1)(f) of the said Act?

2. In this appeal, it is not disputed that the appellant/landlord had filed Civil Suit No.7-A/1996 before the Civil Judge Class-I, Dhamtari for eviction of the respondents/tenants from the suit accommodation, ground floor of which was let out for non-residential purpose and the first floor for residential purpose. The trial Court decreed the suit for eviction on both counts, i.e., u/s 12(1)(e) and (f) of the M.P. Accommodation Control Act, 1961 (henceforth 'the Act'). Being aggrieved, the respondents/tenants preferred Civil Appeal No.112- A/2002 before the Additional District Judge, Dhamtari. The learned lower appellate Court allowed the appeal in part, affirmed the decree for eviction u/s 12(1)(e) of the Act while reversing the decree for eviction u/s 12(1)(f) of the Act on the following grounds:

a) that the plaintiff Mansoor Ali was a 'Feriwala' and had never done business

permanently at any place,

b) that the plaintiff had not disclosed the nature of business his sons wanted to start,

C) That there was no evidence to show that the plaintiff had the necessary funds for starting a new business, and

d) that the trial Court had completely overlooked the evidence adduced by the defendant that the plaintiff intended to sell the shop.

It is also not in dispute that the suit accommodation is double storied, the ground floor of which was let out for non-residential purpose while the first floor was used for residential purpose by the respondents/defendants. It is also not in dispute that in pursuance to the concurrent decree for eviction u/s 12(1)(e) of the Act, the respondents/tenants have handed over vacant possession of the first floor, i.e., the residential portion of the suit accommodation to the appellant/landlord.

3. Shri H.B. Agrawal, learned Senior Advocate for the appellant read paragraphs 26 to 30 of the judgment of the lower appellate Court in extenso and argued that the finding of fact recorded by the lower appellate Court, whereby the decree for eviction u/s 12(1)(f) of the Act was reversed, is perverse. Reliance was placed on Firm Panjumul Daulatram Vs. Sakhi Gopal, (from Madhya Pradesh) and Jagjit Kumar v. Jagdishchandra 1982 JKJ 319.

4. On the other hand, Shri Kunal Das, learned Counsel for the respondents argued in support of the impugned judgment.

5. Having heard rival contentions, I have perused the record. This appeal having been admitted on a pure question of law, I would confine myself to the question of law involved. Section 12(1)(e) and (f) of the Act provide grounds to the landlord while seeking eviction of a tenant.

6. Section 2(a) of the Act defines "accommodation" as under:

2. Definitions. - In this Act, unless the context otherwise requires, -

(a) "accommodation" means any building or part of a building, whether residential or non-residential and includes, -

(i) any land which is not being used for agricultural purposes;

(ii) garden, grounds, garages and out-houses, if any, appurtenant to such building or part of the building;

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

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

7. Chapter III of the Act deals with control of eviction of tenants. Section 12 of the Act provides the ground on which a suit could be filed against the tenant for his eviction on any one or more of the grounds mentioned therein. Clauses (e) and (f) of sub-section (1) of Section 12 of the Act are as under:

12. Restriction on eviction of tenants. - (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:

(a) xxxxx xxxxx xxxxx (b) xxxxx xxxxx xxxxx (c) xxxxx xxxxx xxxxx (d) xxxxx xxxxx xxxxx

(e) that the accommodation let for residential purposes is required bonafide by the landlord for occupation as a residence for himself or for any member of his family, if he is the owner thereof, or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned;

(f) that the accommodation let for non-residential purposes is required bonafide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned;

8. The only point that arises for consideration is whether the lower appellate Court while affirming the decree for eviction passed by the trial Court u/s 12(1) (e) of the Act ought to have automatically granted the decree for eviction u/s 12(1)(f) of the Act also, in view of the fact that the tenancy was a composite tenancy and could not be split. In *Smt. Sarla Devi Gupta v. Smt. Tara Devi Dubey*, a judgment rendered by me in Second Appeal No.420 of 2006 on 03-07-2007, placing reliance on a decision rendered by a Division Bench of High Court of Madhya Pradesh in *Jagjit Kumar v. Jagdishchandra* (supra), it was observed as under:

It is true that an accommodation could be let out for residential as well as for non- residential purpose as in the case of a doubled storied building where the ground floor may be let out for a shop whereas the first floor may be let out for residence. In such a case, for eviction of the tenant u/s 12(1)(e) and (f) of the Act, the plaintiff would be required to plead and prove that the accommodation is required bona fide not only for her residence in first floor but also for non-residential purpose in the ground floor. In a different situation like the present one, where the house is merely a "Khapra Posh (Tiled Accommodation)" and predominantly let out for non-residential purpose, i.e., for running a hotel, in such a case, if only a small portion of the accommodation is being used by the tenant for residence also, the accommodation being predominantly non-

residential in nature, the plaintiff would be required to aver and prove bona fide requirement for a non- residential purpose. On such pleading and proof, in the facts and circumstances of each case, the plaintiff may be entitled to a decree for eviction of the tenant from the entire premises even though a small portion of the same house was being utilized for residence also. Vice versa in a case where the accommodation is let out predominantly for the purpose of residence and only a small portion is being utilized for non-residential purpose like a Pan-Shop or a Tea-Shop or a small provision store, then upon pleading and proof of bona fide requirement for residential purpose, the plaintiff, in the facts and circumstances of such case, may be entitled to a decree for eviction of the tenant from the accommodation although a small portion was being used for non-residential purpose. This is precisely the law as has been held in Jagjit Kumar v. Jagdishchandra (supra) by a Division Bench of the High Court of Madhya Pradesh. The facts pleaded, evidence led relating to size of the accommodation primarily let out for a particular purpose and the size of the portion used for a purpose other than the purpose for which the accommodation was let out would have to be considered.

9. In Firm Panjmal Daulatram v. Sakhi Gopal (from Madhya Pradesh) (supra) it was observed by the Apex Court as under:

4. ...The residential portion is a part of the building and is an accommodation by definition. The non-residential portion is also a part of the building and is an accommodation by definition. The lease has been given for residential as well as non-residential purposes. The landlord is entitled to eviction of the residential portion if he makes out a bona fide residential requirement. Likewise he is entitled to eviction of the non- residential portion which is an accommodation if he makes out a non- residential requirement....

5. ...There is no question of splitting up of the contract in the present case, as is abundantly plain from what we have stated. The contract was integral but had dual purposes. The landlord has put forward dual requirements which neatly fit into Section 12(1)(e) and (f)....

10. In the present case, the accommodation was a double storied accommodation. The plaint and even the testimony of the plaintiff do not project that the residential portion on the first floor vacated by the respondents/tenants does not have a separate entry. The ground floor was being used for non-residential purpose and the first floor for residential purpose. Therefore, in the facts and circumstances of the case and the nature of accommodation let out for residential as well as non- residential purpose, the appellant/landlord was required to establish and prove the ground for eviction u/s 12(1)(e) and (f) of the Act independently of each other and merely because the appellant/landlord had succeeded in establishing the ground for eviction u/s 12(1)(e) of the Act, a decree for eviction of the tenant u/s 12(1)(f) of the Act could not be passed automatically on the ground that it was a composite tenancy. I answer the question of law accordingly.

11. The need of the plaintiff for starting business in the ground floor as projected by the plaint, para 6 is belied by the admission of the plaintiff in para 17 that since last six years he had stopped doing business even by `feri" at weekly markets due to ill health. His testimony thus projects the need of his son for starting business. Ramjan, the eldest son of the plaintiff, for whose non-residential need the suit premises on the ground floor were sought to be evicted, did not enter the witness box. Having perused the record and the reasons given by the lower appellate Court refusing to grant decree for eviction u/s 12(1)(f) of the Act with utmost circumspection, I am of the considered view that the finding recorded by the lower appellate Court that the appellant/landlord had failed to establish the ground for eviction u/s 12(1)(f) of the Act, is purely a finding of fact, which is based on proper appreciation of evidence by the lower appellate Court and an objective assessment of the evidence led by the parties regarding the ground for eviction u/s 12(1)(f) of the Act.

12. In the result, the appeal, being without merit, is dismissed.