

(2010) 07 MP CK 0067
In the Madhya Pradesh High Court
Case No : S.A. No. 331 of 1996

Mishrilal

APPELLANT

Vs

Sukhram

RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Citation : AIR 2011 MP 143

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Mody, J.—Being aggrieved by the judgment 20-7-1996 passed by VI Additional District Judge, Ujjain in Civil Appeal No. 76-A/95 whereby the judgment dated 11-3-95 passed by III Civil Judge, Class II, Ujjain in Civil Suit No. 113-A/1994 whereby the suit filed by the appellant for eviction was decreed, was set aside, the present appeal has been filed.

2. The appeal was admitted by this Court for final hearing vide order dated 6-3-1994 on the following substantial questions of law:--

1. Whether the first Appellate Court has reversed the judgment and decree passed by the trial Court on irrelevant considerations?

2. Whether the first Appellate Court has committed an error of law in interpretation of documents marked Ex. P/4 and Ex. D/2?

3. Short facts of the case are that the suit for eviction was filed by the appellant on 1-8-1986 alleging that the appellant is owner of a house bearing House No. 1/1026 situated at Nijatpura. Najarali Road, Ujjain, which is in occupation of respondent as tenant @ Rs. 30/- per month. It was alleged that the tenancy of the respondent is oral. It was alleged that the respondent has paid the rent up to 31-5-1978 and is in arrears of rent w.e.f. 1-6-78, which has not been paid in spite of notice of demand dated 12-5-1986, whereby tenancy was terminated on

30-6-1986. It was alleged that in spite of notice neither the rent was paid nor the suit accommodation was vacated. Hence it was prayed that decree of eviction be passed. The suit was contested by the respondent by filing written statement wherein plaint allegations were denied. It was denied that respondent has taken loan of Rs. 1,000/- from the appellant. It was agreed that till the loan amount is paid, respondent shall pay a sum of Rs. 30/- per month as interest. It was alleged that it was also agreed between them that upon receipt of loan amount appellant shall execute the sale deed in favour of respondent. It was alleged that there is no relationship between the parties as landlord and tenant. It was prayed that the suit be dismissed. After framing of issues and recording of evidence, learned trial Court decreed the suit in favour of appellant, against which an appeal was filed by the respondent which was allowed and the judgment passed by the learned trial Court was set aside, against which present appeal has been filed.

4. Learned counsel for the appellant argued at length and submits that the impugned judgment passed by the learned Appellate Court is illegal, incorrect and deserves to be set aside. It is submitted that in the facts and circumstances of the case, there was no justification on the part of learned Appellate Court in setting aside the judgment passed by the learned trial Court. It is submitted that since the respondent was in arrears of rent and rent was not paid in spite of notice of demand, therefore, appeal filed by the appellant be allowed and the judgment passed by the learned Appellate Court be set aside and decree of eviction be passed against the respondent.

5. From perusal of the record it is evident that to prove the case appellant has filed the documents Ex. P/1 to Ex. P/4. Ex. P/1 is the receipt dated 10-6-1978 whereby rent of Rs. 30/- was paid by the respondent, Ex. P/2 is the notice dated 12-5-1986. Ex. P/3 is acknowledgment and Ex. P/4 is the sale deed dated 30-5-1974 whereby the suit accommodation was sold by the respondent to the appellant for a sum of Rs. 1,000/-. Apart from this appellant has examined himself as P.W. 1. In rebuttal respondent has filed the agreement Ex. D/1 whereby appellant agreed to resell the suit accommodation upon payment of Rs. 1,000/- within a period of two years. Respondent has examined himself as D.W./1, Ambaram DW/2 and Bhanwarlal DW/3.

6. From perusal of the record is evident that after due appreciation of evidence on record learned Appellate Court found that relationship of landlord and tenant is not existing between the parties and the transaction which took place between the parties was a loan transaction of which interest was fixed @ Rs. 3% p.m.

7. In the matter of Gulabchand v. Babulal, 1998 (1) J.L.J. 1 Hon'ble Apex Court has held that in the case where three documents i.e. sale deed, rent note and agreement to repurchase executed on same day the transaction is mortgage and no relationship of landlord and tenant created. In the matter of Murarilal Jain v. Rukhsana, 2006 MPLJ 3 562 wherein on similar facts this Court has held that transaction was of a loan.

8. Keeping in view the aforesaid position of law and the factual aspect of the case, this Court is of the opinion that the learned Appellate Court committed no error in reversing the judgment passed by the learned trial Court. This Court is also of the view that the learned Appellate Court committed no error in interpreting the documents Ex. P/4 and Ex. D/1. Hence, the appeal filed by the appellant has no merits and is hereby dismissed.

9. No order as to costs.