

(2012) 06 MP CK 0011

In the Madhya Pradesh High Court

Case No : Second Appeal No. 682 of 2003

Mohammad Shafi-Ul-Haq

APPELLANT

Vs

Smt. Bilkees Bano and Others

RESPONDENT

Date of Decision : 22-06-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)(e),
12(1)(f), 2(e)

Citation : (2012) 3 JLJ 21

Hon'ble Judges : S.R. Waghmare, J

Bench : Single Bench

Advocate : P.K. Saxena with Anwar Khan, for the Appellant; R.N. Gupta, for the Respondent

Judgement

Smt. S.R. Waghmare, J.—This appeal has been filed u/s 100 of the CPC by the landlord-plaintiff being aggrieved by judgment dated 16.7.2003 passed by XIII Additional Sessions Judge, Indore in Regular Appeal No. 27-A/ 2003 arising out of Civil Suit No. 546-A/1995 which decreed the suit in favour of the plaintiff by judgment dated 18.2.2002 passed by III Civil Judge, Class II, Indore. Brief facts of the case are that the defendants were the tenants in house No. 1 Juna Risala, Indore belonging to plaintiff Mohd. Shafi-Ul-Haq jointly with his brother Majhar-Ul-Haq. It is an admitted fact that in the East of the house was a road, West of the house was a gali, in the North a house No. 1/1, Juna Risala, Indore and the South part was occupied by tenant Smt. Haneefa. The tenant accommodation consisted of one room on the ground floor, on the South side one platform, one thatch and an open courtyard and the rent was Rs. 6/- per month. The plaintiff contented that there was a partition between the brothers on 20.5.1993 and a part of the house given to the widow of Majhar-Ul-Haq along with his children. The disputed accommodation in the present appeal came to the share of the plaintiff and he was the owner ever since. The disputed premises were taken on rent by one Abdul Karim and after his death the defendants occupied the same

by stepping into his shoes as tenants. The defendants were irregular in payment of the rent. Whereas the plaintiff complained that he had bona fide need of the tenanted premises from the tenant Sairabi as well as others, since his wife was ailing for last 8-10 months and needed medical treatment at Indore. His elder son Mohd. Anwar, who took up the work of contractor and he also wanted to settle at Indore and his another son Israr was an educated unemployed man and wanted to settle at Indore and start business of motor rewinding etc. Hence, they wanted to settle at Indore along with 11 other members of his family and he wanted to reside in the disputed house and he had also filed a suit for eviction against the tenant Haneefa Bi since he needed three rooms, three platforms and another thatch. Counsel for the appellant has candidly admitted that an earlier suit for eviction has been filed jointly with the brother of the appellant in the year 1988 and dismissed in the year 1992. In the present appeal suit was filed by the appellant alone afresh on 26.7.1995; considering the fact that they were using only one room and platform availed in the house at Indore the trial Court decreed the suit and directed to grant of possession to the plaintiff within a period of two months from the date of judgment and mesne profits to be fixed Rs. 6/- per month to be paid as rent. Being aggrieved the tenant filed an appeal before the appellate Court which reversed the findings and dismissed the suit and hence the present second appeal filed by the landlord-plaintiff.

2. The substantial questions of law raised in the appeal are as follows:

(a) Whether the lower appellate Court while reversing the judgment and decree of the trial Court acted with perversity?

(b) Whether the findings recorded by the lower appellate Court that the suit is barred by res judicata is sustainable in law?

(c) Whether the plaintiff-appellant was able to establish the ground for eviction u/s 12(1)(e) of the M.P. Accommodation Control Act, 1961?

3. During the pendency of the appeal tenant defendant Sairabi expired and her legal representatives were brought on record.

4. The main thrust of the submissions of the learned senior counsel for the appellant Shri P.K. Saxena was that the reversal of the decree by the appellate Court was contrary to the facts and the evidence available on record as well as the provisions of law. It was wholly unjustified since the appellate Court had misconstrued the principles of res judicata as applicable to the present suit filed by the plaintiff Mohd. Shafi-UI-Haq. Whereas he contended that the earlier suit had been filed jointly by the brother Majhar-UI-Haq and the subsequent suit had been filed three years after the earlier suit has been dismissed in the year 1992. Placing reliance N.R. Narayan Swamy Vs. B. Francis Jagan, counsel submitted that bona fide requirement is a recurring cause and ground for eviction in subsequent proceedings is based upon the requirement on the date of the said suit though it relates to the same property. The apex Court had held that Order XXIII, rule 1(4)(b), therefore, not applicable and the Court had erred in allowing

the application of the respondent and holding that the subsequent suit was barred and counsel submitted that in the present appeal also if bona fide need is considered in relation to the requirement on the date of the suit regarding the same property; the principle of res judicata is not attracted. He submitted that widow of the appellant's brother and children had sold off the other premises available upon eviction since that portion fell to the share of the deceased brother and hence the trial Court had drawn adverse inference against the present plaintiff also which is contrary to the facts and evidence on record and the portion was not available to the present plaintiff as alleged.

5. Counsel further submitted that in para 4 of the plaint the plaintiff had clearly stated that 16 members in his family required the accommodation genuinely and the suit had not been filed for enhancement of rent as was being alleged. However, some portion of the house had already been given on rent and suit for eviction had already been filed. He states that oral testimony of the plaintiff Mohd. Shafi-Ul-Haq PW1 in para 16 of the impugned judgment had categorically stated that his wife required medical treatment at Indore and he had brought concerned documents for examination. Unfortunately these documents had not been exhibited and hence the trial Court held that bona fide need is not completely established. Besides the impugned judgment of the appellate Court is based on surmise and conjectures. The appellate Court had drawn inferences which were totally uncalled for. In para 9 of the impugned judgment the appellate Court has observed that there were two rooms lying vacant and since nobody had utilized these rooms at the time of this suit for eviction, the appellate Court had observed the need/requirement of the plaintiff is not genuine. Counsel urged that it is impossible that 16 members of the family of the plaintiff squeeze into the vacant two rooms and courtyard available. Placing reliance Uday Shankar Upadhyay and others v. Naveen Maheshwari [2010(3) J LJ 75:2010(II) MPJR (SC) 161], counsel submitted that once the requirement of the landlord is proved u/s 12(1)(f) of the M.P. Accommodation Control Act, 1961 he cannot be asked to start the business on the upper floor since the customers can reach there easily. The Court cannot dictate the landlord which floor he should use for his business.

6. To bolster his submissions counsel for the appellant relied on the following citations :

1. Dinesh Kumar v. Yusuf Ali [2010 (3) J LJ 1 =2010 (3) MPJR (SC) 193], whereby the apex Court had held u/s 12(1)(f) Accommodation Control Act, 1961 (M.P.) that the landlord is the best Judge of his need and the need should not be a pretext for increasing the rent. The landlord not starting the business after getting the same evicted and such old incidence cannot be sufficient to negate the present requirement.

2. Ramjidas and Another Vs. Rambabu and Others, (2) Vidhi Bhasvar 242= JT 2000(4) SC 251], Tenancy. Eviction of tenant on the ground of bona fide requirement for self use. Lower Courts holding that the requirement of owner

was not bona fide on the ground that earlier also the owner got the tenant vacated on grounds of bona fide self use but let out the accommodation. The High Court however, holding that the re-letting of the accommodation after getting it vacated for personal use in 1980 cannot defeat the bona fide need arising in 1987. Court accordingly reversing the finding of lower Court. Held on further appeal High Court was justified in considering the fresh need of the owner in the light of pleading and evidence and hence called for no interference.

3. Shri Badrilal Vs. Smt. Sita Bai and Others, , Eviction of non-residential accommodation. Bona fide need of landlord to start business for grandson. Phrase "his business" occurring in section 12(1)(f) and also includes need for continuing or starting business of any member of family covered by section 2(e) of Act on whom landlord is dependent.

4. P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, , Delhi Rent Control Act (59 of 1958) section 14(1)(e) -- Eviction. Bona fide requirement. Fact that landlady was in possession of another flat in another city. Not a ground to disentitle her to seek recovery of possession of tenanted premises.

5. Mrs. Meenal Eknath Kshirsagar Vs. M/s. Traders and Agencies and another, Bombay, Rents, Hotel and Lodging House Rates Control Act (57 of 1947, S.13(1)(g)) -- Eviction. Bona fide need. Landlady not having any premises other than suit premises in city. Her husband having tenanted premises but has parted its possession to his brother. Non-mention of those facts by landlady. She cannot be said to have approached Court with unclean hands. Eviction decree cannot be denied to her on that ground.

6. Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, Revisional jurisdiction. Re-appraisal of evidence can be entered into only for limited purpose to test whether order of Rent Controller is according to law or not.

7. Ranbir Talib alias Ranbir Satwant Singh v. M/s. Bhatia Gas [2012 AIR SCW 1669], Eviction. Ground, bona fide personal requirement. Finding recorded by Rent Controller on cogent evidence that requirement of landlord was bona fide. Reversal of finding by appellate authority held, was improper.

8. Danpati Addhahat Bhandar Vs. Ghansham Das Agrawal, , Suit for eviction filed in relation to the property which fell to the share of plaintiff. The other accommodation of the share of father was bequeathed by him in favour of mother. This accommodation cannot be said to be alternative accommodation. Upper floor being residential cannot be used as godown. Another shop was small and in occupation of son. The shop of Municipal Corporation is tenanted. It cannot be said to be alternative accommodation.

7. Hence, counsel prayed that the impugned judgment be set aside and that of the trial Court be upheld.

8. Per contra, Shri R.N. Gupta, learned counsel for the respondent-tenants has

firmly supported the impugned judgment of the appellate Court and submitted that the suit was barred by the principle of res judicata since the landlord and co-owner brother along with appellant had earlier filed suit for eviction for the same premises and bona fide need had been negated by the trial Court, then under the circumstance as a suit on the same grounds was prohibited. Moreover he emphasized that even in the present suit the bona fide need has not been established since there is no documentary evidence placed on record by the plaintiff-appellant. So also he vehemently opposed the fact that the tenanted premises were required by 16 members of the family and also that the wife of the appellant was sick and required treatment at Indore, there were no documents produced regarding the so-called illness and treatment at Indore. Similarly he stressed the fact that the sons were already established at Kannod Dewas and a false need was being perpetrated when there was none.

9. Moreover counsel for respondent submitted that the appellant had acquired alternate accommodation i.e. two vacant rooms in the house which were never utilized by the landlord and the appellate Court had rightly drawn an adverse inference against the plaintiff in this regard. Counsel submitted that the entire evidence was unreliable, concocted and false and hence the appellate Court had rightly negated the bona fide need and dismissed the suit. Counsel prayed that appeal was without merit and the same be dismissed.

10. Considering the above submissions the evidence on record and the impugned judgments, I find that the appeal needs to be allowed and the impugned judgment needs to be set aside for the following reasons

Restricting myself to the substantial question of law raised in this appeal, I find that all the three questions are inter-related and interdependent. The impugned judgment is fraught by perversity for the single reason that it had reversed the findings of the trial Court despite the fact that there was ample evidence on record to establish the bona fide need of the appellant landlord and the need of the brother has been construed to be the need of the appellant whereas the apex Court has in the matter of Dinesh Kumar v. Yusuf Ali (supra), held that merely because earlier tenant had been evicted and the landlord had not started his business in the suit premises but had given it on rent would be a remote incident to hold that the need was not genuine besides the landlord is the best Judge of his need. Further the apex Court has in the matter of N.R. Narayan Swamy (supra), and Ramjidas and another (supra), held that the bona fide need has to be considered on fresh grounds and a subsequent suit was not barred since bona fide requirement was a recurring cause of action and in the present case there is evidence on record Ex.P-1 which is a partition deed between the appellant and his brother's widow and children indicating that the vacant premises received were sold by them and hence the defence and allegation of the respondent tenant is thus totally demolished.

11. Similarly the other important question is also answered that the principle of res judicata is not applicable in the present case since the earlier suit was filed

by Majhar-Ul-Haq the brother of the present plaintiff appellant jointly and it is his need which was satisfied. The apex Court has also held that a subsequent suit is not barred then under the circumstances the appellate Court had erred in holding that the requirement of the landlord was not genuine.

12. Considering the fact that there were several members in the family and it has been so deposed by the appellant before the trial Court and the witness has been found reliable; merely because documentary evidence is not available could not be a reason to set aside the findings arrived at by the trial Court as per the third substantial question of law. The bona fide need has also been set up by the defendants since considering the impugned para 16 of the deposition of the plaintiff Mohd. Shafi-Ul-Haq, who had carried the papers of medical treatment of his wife in Court and that is why the trial Court believed him. The respondent-defendant has also failed to place any evidence on record regarding alternative accommodation available to the appellant-plaintiff. The partition of the brother has also been properly proved and as already observed above that the defendant cannot decide the adequacy of the accommodation available to satisfy the need of the landlord. Then under the circumstance, I find that the appeal needs to be allowed and it is hereby allowed.

13. Consequently the impugned judgment of the appellate Court passed by the XIII Additional Sessions Judge, Indore in Regular Appeal No. 27-A/2003 is hereby set aside and that of the trial Court is restored.

14. Now considering the question of handing over the vacant suit premises, I find that since the respondents-defendants were in possession for quite some time it would be appropriate to grant six months time to the respondents to vacate the tenanted premises and hand over the same to the appellant-plaintiff. It is therefore, directed that the respondents shall give an undertaking in writing to that effect that they shall vacate the tenanted premises within six months from the date of this judgment to the satisfaction of the trial Court within 15 days from today. Till then the appellant landlord also shall not interfere with the possession of the defendant. With the above observations and directions, the appeal is allowed to the extent herein above indicated. And the Registry is directed to draw up the decree in accordance with the provisions of law.