

(2007) 10 MP CK 0033
In the Madhya Pradesh High Court
Case No : Second Appeal No. 535 of 2007

M.P. Motors and Another

APPELLANT

Vs

Dr. Gurvinder Singh and Others

RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)(a), 12(1)(c), 12(1)(f)

Citation : (2008) 2 MPLJ 36

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : Ashok Lalwani, for the Appellant; G.C. Bhatia with Vivek Rusia and Y.H. Khare, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

Facts involved in the appeal are that the suit property bearing House No. 13-A (Cantonment No. 17-A) situated at Kingsway, Ashoka Road Cantonment, Jabalpur was earlier allotted to one Shahabuddin vide Order No. 179 dated 12-9-1836 issued by the then Governor General. Shahbuddin migrated to Pakistan in the year 1947. After his migration, the property was declared as evacuee property and it vested in the Government of India. It was auctioned under Rule 90 of Displaced Persons (Compensation and Rehabilitation) Rules, 1955. One Lakhvinder Singh purchased it in an auction dated 29-1-1957 for a consideration of Rs. 40,000/- as freehold property and sale certificate was accordingly issued in his favour on 13th May, 1962. After death of Lakhvinder Singh, it devolved upon his daughter, namely, Smt. Amrit Ahluwalia by virtue of natural inheritance. Defendants/appellants executed a registered lease deed in favour of Smt. Ahluwalia and, thus, obtained the suit property from her on rent for non-residential purpose. Lease deed was renewed by the defendants on 1-9-2000. Plaintiffs purchased it from Smt. Amrit Ahulwalia vide registered sale

deed dated 27-9-2003. The plaintiffs after purchasing the suit property from Smt. Ahluwalia issued a notice to the defendants for payment of rent as well as for eviction. Defendants did not vacate the tenanted portion and, instead, encroached over extra portion of the plaintiffs, shown within blue lines in the plaint map. Plaintiffs needed the suit property bona fide for business of plaintiff No. 3. Thus, eviction has been sought on the grounds of arrears of rent, bona fide need and non-vacation of encroached portion despite notice. Since the defendants disputed the title of the plaintiffs, eviction has also been sought on this ground. Thus, the decree for eviction has been prayed for on grounds under sections 12(1)(a), (c), (f) and (o) of M.P. Accommodation Control Act, 1961.

Defendants/appellants vide their written statement disputed the claim of the plaintiffs. They inter alia contended that father of Smt. Ahluwalia had received the suit property under old-grants scheme and Smt. Ahluwalia was not competent to sell it to the plaintiffs without obtaining permission from the Government of India. Accordingly, the registered sale deed dated 27-9-2003 is incompetent and ineffective. Defendants continued to be tenants of Smt. Ahluwalia and suit of the plaintiffs is liable to dismissal.

Learned trial Judge after recording the evidence decreed the suit in favour of the plaintiffs on ground u/s 12(1)(a), (f) and (o) of the aforesaid Act. However, Claim for eviction u/s 12(1)(c) was negated.

Aggrieved by the aforesaid, defendants submitted appeal u/s 96 of CPC whereas the plaintiffs submitted cross objections under Order 41, Rule 22 of CPC with respect to ground u/s 12(1)(c).

Learned 12th Additional District Judge, Fast Track Court, Jabalpur vide impugned judgment and decree dated 31-1-2007 dismissed the appeal as well as cross objections and thus, confirmed the decree of the trial Court.

Aggrieved by the aforesaid, present appeal has been preferred by the defendants/appellants which is admitted on the following substantial questions of law:

(i) Whether provisions of M.P. Accommodation Control Act are applicable to the suit premises?

(ii) Whether suit of the plaintiff for eviction u/s 12(1)(a) of the

M.P. Accommodation Control Act is barred by section 12(4)?

(iii) Whether decree for eviction from the premises situated within cantonment area is sustainable in law when the Central Government/Cantonment board retains absolute ownership over it?

Shri Ashok Lalwani, learned counsel for the appellants contended that Shahabuddin was merely a licensee having obtained the suit premises under Old-grant Scheme. Referring to section 2 of Government of India Grants Act, 1895, he submitted that the suit property could not have been transferred by Smt. Ahluwalia to the plaintiffs. Old grants are in the nature of licences and the suit

property could not have been converted in free hold property. Governor General's Order No. 179 dated 12-9-1836, is contained in Annexure P/9. Clause 6 thereof lays down that the ground, being in every case the property of Government cannot be sold by the grantee, but houses or other property thereon situated may be transferred by one Military or Medical Officer to another without restriction except in the case of reliefs, when, it required, the terms of sale or transfer are to be adjusted by a Committee of Arbitration. According to Shri Lalwani, learned counsel, plaintiffs being not military or Medical Officer could not have legally purchased the suit property.

Per contra, learned counsel for respondents Shri Bhatia contended that the suit property belonged to Shahbuddin on whose migration it was declared as evacuee property. By virtue of section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 it vested absolutely in the Central Government free of all encumbrances. A compensation pool was constituted for the purpose of payment of compensation and rehabilitation grants to displaced persons u/s 14 of the said Act. The suit property was auctioned in exercise of powers u/s 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and it vested in the purchaser by virtue of issuance of sale certificate prescribed in Appendix XXII under the Displaced Persons (Compensation and Rehabilitation) Act, 1955 in favour of the purchaser. The sale certificate having been issued describing the suit property as free hold property, Lakhvinder Singh became its owner free of encumbrances. It is further contended by Shri Bhatia that the provisions of the Administration of Evacuee Property Act, 1950 and the rules made thereunder have an overriding effect by virtue of section 4 thereof. Therefore, challenge by tenant to the title of Lakhvinder Singh as auction purchaser is not permitted and consequent devolution of the suit property after Lakhvinder Singh on his daughter and sale by her to the present plaintiffs by registered sale deed, too, cannot be questioned by tenant.

It cannot be ignored that the present appeal has arisen from a suit for eviction instituted under the provisions of M.P. Accommodation Control Act. This being so, defendants cannot be permitted to convert the suit for eviction under Local Rent Act into a suit for title by enlarging the scope of the eviction suit beyond the provisions of the M.P. Accommodation Control Act, 1961. In paragraph 10 of the written statement, the defendants have admitted to have obtained the suit premises on agreed rent of Rs. 4000/- per month from Smt. Ahluwalia by executing a lease agreement dated 1-9-2000. Defendant No. 2 in paragraph 1 of his chief-examination submitted in the form of affidavit, has clearly admitted that the defendant occupied the suit premises as a tenant by executing lease agreement in favour of Smt. Ahluwalia. It is further admitted in his chief examination that the defendants used to pay rent to Smt. Ahluwalia in a regular manner. Smt. Ahluwalia has been clearly admitted as owner of the house in question in paragraph 1 of his statement. In this view of the matter, the defendants are estopped from disputing title of Smt. Ahluwalia by virtue of section 116 of Indian Evidence Act. Hon'ble Supreme Court in the case of

Anardevi vs. Nathuram, 1994 J LJ 486 has clearly held that no tenant of immovable property, or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property.

Shri Lalwani, learned counsel for the appellants submitted that the defendants did not acknowledge the plaintiffs as their landlords and have not paid rent to them. Thus, they have not attorned in favour of plaintiffs and suit for eviction at the instance of the plaintiffs is not maintainable. The submission is misconceived on two counts, firstly, section 109 of Transfer of Property Act, 1882 clearly lays down that if the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights. Hon'ble Supreme Court in the case of Mahendra Raghunathdas Gupta Vs. Vishwanath Bhikaji Mogul and others, has clearly held in paragraph 6 that it is well settled that a transferee of the landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The section does not require that the transfer of the right of the landlord can take effect only if the tenant attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlord's rights.

The relationship of landlord and tenant between Smt. Ahluwalia and defendants has expressly and specifically been admitted in the written statement as well as in the statement recorded on oath. Smt. Ahluwalia has transferred the suit property to the present plaintiffs vide registered sale deed dated 18th of March, 2004 (Ex.P/1-C). Neither Smt. Ahluwalia nor the Government of India has objected in any manner to the purchase of the suit property by plaintiffs/respondents. Thus, when the landlord of a tenant sells the tenanted premises to another person by registered sale deed, such predecessor becomes landlord of the tenant. In view of the aforesaid settled position of law, I do not feel it necessary to enter into the question of title of predecessor of present plaintiffs.

Accordingly, relationship of landlord and tenant between the plaintiffs and defendants is found to be duly established and the Courts below have not committed any error in holding so. The suit was instituted on 29-9-2004 whereas the suit property was purchased by the plaintiffs on 27-9-2003. Thus, the suit having been instituted after expiry of one year from the date of purchase is not barred u/s 12(4) of the Act. Accordingly substantial question of law No. 2 is decided against the appellants.

As regards question No. 1, it is observed that the defendants/appellants did not raise objection in the written statement that the provisions of M.P. Accommodation Control Act are not applicable to the suit premises. Had it been raised in the pleadings, an issue would have been raised on it. Presently, the terms and conditions, under which the suit property was earlier held by Shahabuddin, are not on record. Had it been raised properly in the written statement, parties would have produced and placed the relevant material on

record. Thus, it would be a mixed question of facts and law and the defendants/appellants cannot be permitted to raise it for the first time before this Court in second appeal.

As regards substantial question of law No. 3, it may be kept in mind that the suit giving rise to the present appeal is not a title suit but is for eviction based on the relationship of landlord and tenant. Admittedly, the terms and conditions, under which the suit property was earlier held by Shahabuddin, are not on record. The property stood vested in the Central Government by virtue of section 12 of Displaced Persons (Compensation and Rehabilitation) Act, 1954 and further the suit property was sold to Lakhvinder Singh as free hold property in exercise of powers under the provisions of section 20 of the said Act. Neither the Union of India nor the Cantonment Board has raised any objection about the ownership of the plaintiffs. Grounds for eviction u/s 12(1)(a), (f) and (o) of the M.P. Accommodation Control Act are already held to have been proved against the defendants/appellants by the Courts below in concurrent manner. Except on account of ground u/s 12(4), no substantial question of law was raised and formulated on the remaining grounds. Thus, the existence of ground for eviction under the said Act is well proved and the decree granted under the provisions of M.P. Accommodation Control Act is found quite sustainable. Accordingly, the substantial question of law No. 3 is also decided in favour of plaintiffs against the defendants/appellants.

In the result, appeal is hereby dismissed, however, without order as to costs.