
(1996) 03 MP CK 0097
In the Madhya Pradesh High Court
Case No : S.A. No. 121 of 1994 (I)

Prahlad Das and Another

APPELLANT

Vs

Madholal

RESPONDENT

Date of Decision : 21-03-1996

Acts Referred:

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

Citation : (1996) 2 MPJR 239

Hon'ble Judges : R.D. Shukla, J

Bench : Single Bench

Advocate : K.G. Mahjeswari, for the Appellant; S.S. Samvalsar, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Shukla, J.

The appeal is directed against the judgment and decree dated 30.3.94 of the IIIrd Addl. District Judge, Indore passed in civil F. A. No. 2-A/93 where by while dismissing the appeal against the judgment and decree dated 10.8.91 of the 8th Civil Judge Class II Indore passed in Civil Case No. 114/A/90 has been affirmed and the suit for eviction decreed.

Brief history of the case is that plaintiff -respondent filed a suit for eviction with respect to house no. 13/2, Murai Mohall a Street No. 8, Indore on the ground of bona fide requirement for his own resident with a further assertion that he has not other suitable accommodation in his possession for his residence.

It was asserted that originally the house belonged to one Padmabai W/o-Nandkishore Coyanka, Shankarlal was inducted as tenant (though both the defendant-appellants claim to be the real brothers and the member of Hindu Joint family and thereby claim to be the tenants jointly). Smt. Padmabai died and the property came into possession of her husband Nandkishore. As per wishes of Smt. Padmabai a Family Trust was created by Nandkishore on 23.4.71. His son

Govind and daughter Sarita, both minors - born out of the wedlock of Padmabai and Nandkishore, were made beneficiaries. The trustees were given right of transfer as well. One of the Trustees Shri Rameshchandra dies and, therefore, only three trustees managed the whole affair. Plaintiff - respondent purchased house on a price of Rs. 42,500/- vide Registered Deed dated 9.11.83 with Registration No., 1 /A/ 3634. The information about transfer of house was given to tenant-defendants by the Trust and by the purchaser plaintiff himself.

Plaintiff bona fide requires the house for his own residence as he has no other suitable accommodation in his possession.

Plaintiff sent a notice for eviction and for payment of rent but defendant denied the title of the plaintiff and failed to pay the rent. It was further asserted that defendant No. 1 Shankarlal has obtained possession of house No/. 2/5, Parsi Mohalla which is suitable for his residence and he actually is residing in that house, as sub-tenant.

Shankarlal has parted with the possession of the tenanted premises and thereby defendant No. 2 Prahladdas is in possession of the house.

It was further pleaded that the plaintiffs wife is old aged and suffering from physical ailment. The two rooms in 1st storey are neither sufficient nor suitable for their residence as the first storey does not contain any toilet and the plaintiffs wife is required to come down for using toilets.

Defendants denied the contention of the plaintiff and disputed the fact of valid transfer of title especially on the ground that the transfer is not in the interest of the minor and no permission of the court was taken. Thus, defendants denied the title and ownership of the plaintiff-landlord. It was also pleaded that the defendants themselves offered Rs. 60,000/- for the suit accommodation with a condition that the transfer in their favour would be elected after obtaining the permission from the District Judge.

The defendants are real brothers and from Hindu Joint Family. They are residing together since 1958 and one of the brothers (Shankarlal) has acquired other accommodation as their family has grown and partially shifted his residence and, therefore, there was neither parting with possession nor creation of tenancy by defendant Shankarlal in favour of Prahladdas.

On the pleadings of the parties learned trial court framed various Issues and found that the defendant No. 1 is the tenant of plaintiff. The plaintiff has acquired right title and owners to by transfer. The defendants have denied the title of the plaintiff and thereby has acted inconsistent with the purpose of tenancy which is likely to affect adversely and substantially the interest of landlord.

(i) The defendants No. 1 (tenant) has parted with the possession illegally ;

(ii) plaintiff has no other suitable accommodation in his possession and that plaintiff bona fide requires the accommodation for his own residence, (iii) As

defendants deposited the rent in the court the ground of Section 12 (1) (a) - non payment rent, was not accepted. As such the decree granted on grounds of Section 12 (1) (b) (c) and (e) of the M. P. Accommodation Control Act, 1961 (hereinafter referred to as "the Act"), (iv) The defendant filed appeal before the Addl. District Judge who vide impugned judgment dismissed the appeal and affirmed the decree. Hence this Second appeal.

The appeal has been admitted on the following substantial question of law;

(1) Whether on true interpretation of Ex. P/1 and Ex. P/2 read in the context of each other, makes out a valid transfer of title in the property or title to receive rent for the demised premises, is made out by the plaintiff?

(2) Whether on the evidence as it is on record, the finding whether the appellant was a sub-tenant, is based on no evidence altogether ?

Section 12 (1) (c) of the Act provides that the tenant can be evicted if the accommodation let for residential purposes is required bona fide by the landlord for occupation as residence for himself for for any member of his family, if he is the owner thereof.

Challenge to the ownership of the plaintiff has been made to rebut the requirement of Section 12 (1) (e) of the Act.

The contention of learned counsel for the appellants that the suit property was held for the benefit of two minors Govind and Sarita and, therefore, the property could not be sold to the plaintiff without the prior permission of principal court of original jurisdiction or the District Judge.

Secondly, that only two trustees have signed the document of transfer and the power of attorney has not been produced;

Thirdly, that all the Trustees did not agree for the transfer of the property.

Fourthly, as tenants have not attuned and have not accepted the tenancy of the plaintiff and, therefore, they are entitled to challenge the title of plaintiff.

Fifthly, the fact of sub-tenancy has been accepted without any evidence.

As against it learned counsel for respondent submitted that the fact of bona fide requirement has been accepted and if the plaintiff succeeds in proving the derivation- of title he is entitled to the decree. Secondly, Prahladdas himself has admitted ownership of the plaintiff. He himself wanted to purchase the property and having failed in his attempts, is illegally challenging the vesting of (sic) of the plaintiff. Beneficiaries have not challenged transfer and it has also been submitted that the document has been signed by all the surviving Trustees.

In order to examine the validity of the transfer this Court perused documents. Ex. P/1 and Ex. P/2. Ex/ P/1 is a sale-deed. It has been signed by Nandkishore Ramdas, and Radharaman there is no dispute that Nandkishore is the father of Govind and Sarita and there are only three surviving trustees. The forth trustee

Ramesh has already expired.

Thus, the sale-deed has been executed and signed by all the surviving trustees and there was no question of production of any power of attorney for execution of the document. Ex. P/2 is the declaration of trust. Nandkishore, Ramdas, Ramesh and Radharaman has been shown to be the Trustees.

This is not in dispute that Rameshchandra is dead. Thus, the action taken by three surviving trustees will be held valid if it is found other wise in accordance with law.

This is also not in dispute that two minors i. c. Govind and Sarita and their father Nandkishore are Hindus; The mother of two minors is dead.

Section 6 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as the Hindus Minority Act) provides that the natural guardians of a Hindu Minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property) are:-in case of by or an unmarried girl - the father, and after him the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother.

Thus, the father is the natural and sole guardian as the mother has already expired.

Section 8 of the Minority Act provides that the natural guardian of a Hindu Minor has power to do all acts which are necessary or reasonable and proper for the benefit of the minor and for the benefit of minor's estates. The transfer in contravention of Sub-section (1) and (2) of Section 8 of the Minority Act has been made void ab initio at the instance of the minor or any person representing their interest. Thus the transfer made by father (natural guardian) is not void ab initio. It is void ab initio at the instance of minor / minors.

Here in this case the tenant was paying rent of Rs. 27/- per month only. The property has been sold on a price of Rs. 42,50(1/-). If kept in a fixed-deposit the same is likely to fetch an interest of Rs. 425/- per month & 12% per annum. Thus, prime facie transfer appears to be for the benefit of the minors.

So long the transfer is not avoided or by the beneficiary / minor by way of suit the transfer would be held legal and valid a transferee acquiring possession on such transfer will be deemed owner thereof (for the purpose of Section 12 (I)(e) of the Act.)

Learned counsel for appellants has referred to a case reported in Santosh Kumar Jain Vs. Shambhulal Krishna Kumar Suhane, : and submitted that the tenant in this case is entitled to challenge the derivative of title of landlord.

21 There is no dispute on the point, that the tenant already in possession can challenge the landlord's claim of derivative of title by showing that the real owner is some one else but this is subject to the rule enunciated u/s 11 of the

Evidence Act and, therefore, if a person has attended as a tenant or has admitted himself to be the tenant at a later stage he cannot be allowed to challenge the title of the landlord.

In this case the defendant No. 1 Shankarlal has failed to appear in the witness box. Prahladdas has admitted in para 8 of his statement that House No. 13/2, Murai Mohalla (suit house) belongs to the plaintiff and his son Ramesh. In para 10 he further admits that house No. 13/1 and 13/2 belonged to plaintiff and his son Ramesh.

In para 4 of his statement Prahladdas has stated that he himself tried to purchase the property but the property was sold to plaintiff by Trustees. Thus, having failed in his attempt of getting the transfer of property in his favour now Prahladdas cannot be allowed to say that Nandkishor, the natural guardian and father of minors had no right to transfer the property.

It may further be observed here that while dealing with the cases of landlord and tenant it is the prima facie title and the ownership that is to be seen and the intricate questions of title can be left to be decided by competent court having jurisdiction over the matter.

Learned counsel thereafter referred to a case reported in AIR 1980 S. C. 17: M/s. Shanti Vijay & Co. & etc. v. Princess Fatima Fouzia and others; and submitted that no trustee can redelegate performance of acts relating to sale to co-trustees. There is no dispute on this question of law. Here there has been no delegation but all the three surviving trustees have signed the document. It is also true that even where absolute power is conferred on the Board of Trustees to effect sale of Trust property when such discretionary power is not exercised reasonably and in good faith., such power may be controlled by a court. The power conferred on the trustees is not absolute.

It is noteworthy that there is no challenge by the beneficiaries. The appellants are tenants. The sale in favour of the landlord appears to be prima facie good without any challenge from the beneficiaries even today and, therefore, the case under reference does not help the appellants in any way.

Learned counsel for appellants then referred to a case reported in 1993 (II) MPWN 95 Panni Lal v. Rajindar Singh: and submitted that the sale is void.

In that case the sale was by mother who was not the natural guardian as such the sale was void. This is not the case here. Here the sale is made by the father (Nandkishore).

In a latest decision of the Supreme Court as reported in Anar Devi (Smt) Vs. Nathu Ram, : it has been held :

""Whether the words in clause (b)" "if he is the owner thereof require the landlord who submits an application under that clause to plead in such application that he is the owner of the accommodation, the recovery of which he

seeks from his tenant and also establish by evidence aliunde that he is such owner, being the question that need our consideration.

Our answer to the question, therefore, is that the use of the words "if he is the owner thereof used in clause (b) of Section 23-A of the Act does not require of the landlord who makes an application thereunder for recovery of possession of accommodation from the tenant to plead therein that he is the owner of such accommodation and establish by evidence aliunde that he is such owner, for succeeding in such application even though these words may enable a tenant to contest such application on (sic) ground that the landlord is not the owner of the accommodation if he is not inhibited from doing so u/s 116 of the Evidence Act."

While dealing with the import of Section 116 of the Evidence Act, their Lordships in the case reported above, has held as follows :

""No tenant of immovable property or person claiming through such tenant, shall during the continuance of the tenancy be permitted to deny at the beginning of the tenancy the title of the land lord. The accepted position is that section 116 of the Evidence Act applies and estops even a person already in possession as tenant under one landlord from denying the title of his subsequent landlord when once he acknowledges him as his landlord by adornment or conduct. Therefore, a tenant of immovable property under landlord who becomes a tenant under another landlord by accepting him to be the owner who had derived title from the former landlord, cannot be permitted to deny the latter's title, even when he is sought to be evicted by the latter on a permitted ground."

In this case as observed earlier Prahladdas has admitted in his statement that he accepts plaintiff as the owner of the house. In such a situation now he cannot be allowed to deny the title of the plaintiff.

Even otherwise from the evidence on record as found by two courts below litis court is satisfied that plaintiff has been successful in proving his ownership for the purpose of eviction of tenant and for the purpose of Section 12 (1) (e) of the Act.

The next point that requires determination in the case is as to whether Shankarlal has parted with the possession illegally and created sub-tenancy. Despite specific allegation in the plaint and denial by Shankarlal in the W. S. Shankarlal has failed to appear in the witness-box. He has filed application under O.41 R.27 CPC (IA 3323/94) for admission of document (receipts showing the payment of rent). This court has perused the documents sought to be introduced in the evidence. Which are eight in number. All these documents go to show that Shankarlal has been paying rent to Padmabai Family Trust. The document now-here show that Prahladdas has been admitted as tenant by the land lord and, therefore, no useful purpose would be served even if this application is accepted.

In view of above this court rejects the application treating it to be that the

document sought to be introduced in the evidence neither affect the substratum of the case, nor are necessary for disposal of this case.

Since Shankarlal has failed to appear, an adverse inference would be drawn against him. In such a situation it is accepted that Shankarlal was the tenant and he has parted with the possession in favour of Prahladdas who is presently residing in the suit accommodation and, therefore, the finding of two courts below about the sub-tenancy cannot be said to be based on no evidence.

Learned counsel for appellants has tried to draw this court's attention to Sections 48, 36, 37 and 38 of the Indian Trusts Act but that is not necessary to be discussed in this case as here the transfer is by all the Trustees including the natural guardian (father) of the minors. It is also noteworthy that it is a family trust and a private trust created for the benefit of minor children of Nandkishore,

Since the point of objection as to derivation of title has already been discussed in earlier paras it is unnecessary to refer to a case reported in Dah Chand Vs. Dadamchand, .

In view of the discussion above, it is evident that the plaintiff-landlord has been successful in proving his case. As such, decree of eviction passed in favour of plaintiff-landlord is hereby affirmed and the appeal filed by defendant-tenants is disallowed and dismissed with costs.

Counsel fee Rs. 300/-.