
(1966) 02 MP CK 0001
In the Madhya Pradesh High Court
Case No : S.A. No. 240 of 1963

Premnarain Phulchand

APPELLANT

Vs

Smt. Zenab Bai Munahi Ali Hussain and another

RESPONDENT

Date of Decision : 17-02-1966

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 3

Citation : (1968) J LJ 357 : (1968) MPLJ 257

Hon'ble Judges : R.J. Bhawe, J

Bench : Single Bench

Advocate : P.S. Khirwadkar, for the Appellant; A.S. Usmani for Respondent No. 1 and K.L. Issrani, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Bhawe, J.

This second appeal is by Defendant No. 2, a sub-tenant.

The Plaintiff's suit is for ejectment of Chhaganlal son of Nannolal alias Chhotelal (defendant No. 1) on the ground that he was in arrears of rent and remained in arrears in spite of notice of demand. It is also alleged that the house is required for residence of the Plaintiff's daughter's son. Defendant No. 2 is made a party as he is a sub-tenant. He was according to the Plaintiff, inducted as a sub-tenant without any permission of the Plaintiff. The Defendant No. 1 remained ex parte, but the suit is contested by Defendant No. 2. It is alleged that the Defendant No. 2 is not a sub-tenant but that the tenancy is a joint tenancy of both the Defendants. Inasmuch as no notice was served on the Defendant No. 2, there is no determination of the tenancy and the suit is not maintainable. It is also urged that no demand notice was served on the Defendant No. 1 as alleged; nor was any demand made from the Defendant No. 2. The need of residence is also denied.

Both the Courts below came to the conclusion that the Plaintiff was not entitled

to any relief on the ground that the house was needed for bona fide residence of the Plaintiff. That finding is not attacked before me by the Plaintiff. Both the Courts below also held that a notice of demand was served on the Defendant No. 1 and he remained in arrears in spite of the notice of demand. It was, therefore, held that the Plaintiff was entitled to a decree for ejectment against the Defendant No. 1. As to the plea of the Defendant No. 2 of cotenancy, the concurrent finding of both the Courts below is against him. It was held that the Defendant No. 2 was a sub-tenant inducted by the Defendant No. 1, though with the knowledge and permission of the Plaintiff. The lower appellate Court found as a fact that the copy of notice of demand and termination of the tenancy was not served on the Defendant No. 2, but came to the conclusion that there being no privity of contract between the sub-tenant and the landlord, he was not entitled to any notice. In this view of the matter, the decree of ejectment passed against both the Defendants by the trial Court was confirmed.

Shri K.L. Issrani, counsel for the Respondent No. 2 (defendant No. 1), stated before me that an ex parte decree was obtained by the Plaintiff against his client by practising fraud on the Court. No notice of the suit was served on the Defendant No. 1 and the summons was forged. The Defendant No. 1 has, therefore, filed an application before the trial Court for setting aside the ex parte decree and the matter is pending before that Court. Shri Issrani, therefore, prayed that the hearing of the appeal should be adjourned till the disposal of those proceedings. I do not see any reason to adjourn the hearing of the appeal because the Defendant No. 1 has not come up in appeal and can get no relief from this Court. He has to work out his rights by following the appropriate procedure including the one that he has resorted to. The initiation of such proceedings cannot, however, furnish any ground for postponing the decision of this appeal.

The present suit is governed by the provisions of the Madhya Pradesh Accommodation Control Act, 1955, which was repealed by the present Act of 1961. Shri P.S. Khirwadkar, Learned Counsel for the Appellant (defendant No. 2), urged before me that the lower Courts were in error in passing a decree of ejectment against the Defendant No. 2. Shri Khirwadkar urged that though under the Transfer of Property Act a sub-tenant's rights come to an end along with those of the tenant and he has no separate rights against the landlord, the Accommodation Control Act gives protection to the sub-tenant, independent of the tenant; and unless the requirements of Section 4 are satisfied as against the sub-tenant as well, no decree for his ejectment can be appropriately passed. Shri Khirwadkar referred to the decision of the Supreme Court in *Bhaiya Punjalal Bhagwanddin Vs. Dave Bhagwatprasad Prabhuprasad*, and urged before me that the protection which is afforded to the tenant or the sub-tenant under the Accommodation Control Act comes into operation only after the relationship of lessor and lessee comes to an end by an appropriate notice served on the tenant under the Transfer of Property Act. Shri Khirwadkar urged that the provisions of the Accommodation Control Act, as already stated, afford the protection to the

sub-tenant also independent of the tenant, and that the notion peculiar to the Transfer of Property Act that a sub-tenant has no independent status of his own or rights as against the lessor should not be allowed to project itself while considering the provisions of the Accommodation Control Act. Shri Khirwadkar says that in the definition of "tenant" in the Accommodation Control Act a sub-tenant is also included. This clearly means that the Act is designed to give protection to a sub-tenant as well. He says that wherever the expression "tenant" occurs in Section 4, read "sub-tenant"; read that way, it becomes obvious that a landlord cannot evict a sub-tenant unless it is shown that he is in arrears of rent and that he failed to make payment of the arrears within one month of the service upon him of a notice of demand. Shri Khirwadkar, therefore, urged that as no notice was served on the sub-tenant, the decree of ejectment passed against him was not in order.

The submissions made by Shri Khirwadkar, Learned Counsel for the Appellant, at first flush appear to be attractive; but a scrutiny of various provisions of the Accommodation Control Act leaves no doubt that they are not sound.

The definitions given in Section 3 of the Accommodation Control Act apply "unless there is anything repugnant in the subject or context". "Landlord" means a person to whom rent is payable by a tenant in respect of any accommodation. The Accommodation Control Act does not create the relationship of a landlord or a tenant or that of a tenant or a sub-tenant. That relationship is created between the parties by a contract. The Accommodation Control Act is designed to control the relationship so created. A sub-tenant has no privity of contract with the landlord and is not liable to pay rent to him. Conversely it is not possible for the landlord to say that the sub-tenant is in arrears of rent; nor can he demand the arrears from the subtenant. In these circumstances, it would be obvious that the expression "tenant" used in Clause (a) of Section 4 refers to the principal tenant and not the sub-tenant and the context requires that the expression should be read that way. The word "includes" is used where it is intended that while the term should retain its ordinary meaning, its scope should be widened by specific enumeration of certain matters which in the ordinary meaning it may not comprise. When the definition is so enlarged, but at the same time when the definition is to be read in the enlarged sense "unless there is anything repugnant in the subject or context", it is clear that the enlarged meaning is not always to be given to the expression if it is repugnant in the subject or context. A perusal of other grounds enumerated u/s 4, such as, Clauses (e) and (1) also indicates that for the expression "tenant", the expression "sub-tenant" cannot be substituted as that would result in rendering those clauses otiose. I have already pointed out that a sub-tenant is not under any obligation to pay rent to the landlord and the landlord is not entitled to demand any arrears from him. In the circumstances, even in Clause (a) of Section 4, the expression "tenant" cannot be substituted by the expression "sub-tenant". In my opinion, the purpose of giving inclusive definition of a "lease" and a "tenant" as to include a "sub-lease" or a "sub-tenant" is to give protection to the sub-tenant from the tenant. A

tenant is entitled to receive rent from the sub-tenant and he would become a landlord vis-a-vis the sub-tenant as defined under the Act, and for the purposes of Section 4, the principal tenant becomes a landlord of the sub-tenant and will be precluded from ejecting the sub-tenant unless the case comes under one of the grounds enumerated u/s 4. If the provisions are read in the manner indicated by me, all the provisions of the Act can be brought into operation without any difficulty.

In *Daryanumal v. Sohanlal* 1961 MPLJ 1447 it has been held that the liability to pay rent to the landlord is only that of the tenant and there is no privity of contract or estate between the landlord and the sub-tenant. The contract of sub-tenancy exists as long as the tenure of the tenant lasts. As the sub-tenant is not under legal obligation to pay rent to the original landlord, the landlord cannot compel the sub-tenant to deposit the arrears of rent u/s 5 of the Act. In *Dayashankar v. Jankisingh* and another Civil Misc Second Appeal No. 117 of 1957 decided on 14th October 1959 (Unrep.), Newaskar J. rejected the contention that the word "tenant" used in Section 4 (a) of the Madhya Bharat Sthan Niyamtran Vidhan should be interpreted in the light of the definition of "tenant" therein so as to include a sub-tenant and held that as the contract to pay rent by the tenant was personal, the word "tenant" used in that clause only referred to the tenant proper and not to the sub-tenant. For the reasons stated by me and on the authorities cited above, I am of the view that u/s 4 (a) of the M.P. Accommodation Control Act, 1955, a sub-tenant is not entitled to any notice of demand from the original lessor; he has no independent rights of his own as against the lessor; and if the tenant is liable to be ejected the sub-tenant must go along with him.

No other ground was urged before. The appeal thus fails and is dismissed with costs.

Appeal dismissed.