

(2015) 04 CHH CK 0018
In the Chhattisgarh High Court
Case No : Second Appeal No. 364 of 2005

Rajesh Kumar and Others

APPELLANT

Vs

President (Mutwalli), Dharmik Sanstha Maszid Garib Nawaz

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5, Order 8 Rule 5(1), 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1), 3,
3(2)
Transfer of Property Act, 1882 — Section 106

Citation : (2015) 3 CGLJ 222

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Y.C. Sharma and Anita Suryavansi, for the Appellant; Rajendra Kumar Patel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J—The substantial question of law formulated and to be answered in the second appeal preferred by defendants are as under:--

"(i) Whether both the Courts below were justified in arriving to the finding that the plaintiff is the registered Waqf and as such he is exempted from provisions of the Accommodation Control Act as per Section 3(2) of the C.G. Accommodation Control Act in view of the fact that certificate of registration has not been filed by the plaintiff ?

(ii) Whether both the Courts below were justified in decreeing the suit in the absence of proof of valid notice under Section 106 of the Transfer of Property Act solely on the ground of the reply given by the defendants to such notice ?"

Imperative facts required to be noticed for adjudication of the above stated substantial questions of law are as under:--

"(2.1) Plaintiff claiming to be the registered Waqf under the provisions of Waqf

Act, 1954 and being registered with the Waqf Board, Bhopal and being registration No. 5, dated 9.8.1963 filed a suit for eviction and arrears of rent against the defendants (defendant No. 1 - Lalchand Nebhwani died during pendency of the suit and his legal representative were brought on record) stating inter alia that they were tenants at the monthly rent of Rs. 330/- and as such the suit accommodation is required for the religious purpose/bonafide need, registered notice 22.12.1995 was served to the appellants/defendants as the defendants have not vacated the suit accommodation leading to filing of the suit for the reliefs claimed as aforementioned.

(2.2) Appellants/defendants filed their written statement controverting the allegations made in the suit stating inter alia that only suit land was let out to them and also denied for want of knowledge the fact that the plaintiff -Institution is the registered Waqf."

2. The Trial Court, by its judgment & decree dated 9.5.2001, decreed the suit finding inter alia that defendants are the tenants of the plaintiff; and the plaintiffs being the registered Waqf is exempted from the provisions of the Chhattisgarh Accommodation Control Act, 1961 (henceforth "Act, 1961") as per Section 3(2) of the Act, 1961 plaintiff is not required to establish the ground under Section 12(1) of the Act of 1961.

3. The defendants preferred first appeal there against. The first appellate court, after re-appreciating the oral and documentary evidence brought on record while dismissing the appeal, affirmed the judgment and decree passed by the trial court, leading to filing of this Second Appeal under Section 100 of the Code of Civil Procedure.

4. Questioning the legality and validity of impugned judgment and decree, the instant second appeal under Section 100 has been preferred by appellants/defendants. The substantial question of law formulated has been set out in the opening paragraph of this judgment.

5. Mr. Y.C. Sharma, learned counsel for the appellants/defendants would submit that both the courts below have concurrently and grievously erred in holding that the plaintiff is registered Waqf and is exempted from the provisions of Accommodation Control Act as per Section 3(2) of the said Act in view of the fact that certificate of registration has not been filed by the plaintiff to prove the fact of Waqf being registered. He would further submit that the plaintiff was also required to prove the valid termination of tenancy in accordance with Section 106 of the Transfer of Property Act and, as such, the plaintiff has failed to plead and prove the valid termination of tenancy under Section 106 of the Transfer of Property Act and, therefore, impugned judgment & decree deserves to be set aside.

6. On the other hand, Shri Rajendra Kumar Patel, learned counsel appearing for the plaintiff/respondent would submit that both the courts below have rightly held that plaintiff is the registered Waqf. He would further submit that

defendants themselves have admitted the fact of receipt of notice 22.12.1995 (Ex. P-1) and the said civil suit was filed on 17.5.1996; as such, defendants' tenancy has rightly been terminated under Section 106 of the Transfer of Property Act, appeal does not involve any substantial question of law and it deserves to be dismissed.

7. I have heard learned counsel appearing for the parties and perused the records of both the courts below with utmost circumspection.

8. The plaintiff, in the opening paragraph of his plaint, has clearly averred that the plaintiff-institution is a Religious Institution and registered under the Waqf Board, Bhopal bearing registration No. 5 dated 9.8.1963. Defendants, in their written statement, have simply denied the above fact for want of knowledge. Not only this, plaintiff has filed & duly proved Kirayanama Ex. P-1 (C), which bears signature of plaintiff as well as defendants and execution of said document is not in dispute and which clearly recites that plaintiff-Institution is the registered Waqf being registration number along with date of its registration.

9. Plaintiff and his witnesses have clearly stated that the suit accommodation to be the registered Waqf, which has not been disputed by the defendants; and they have not even make* any endeavour to have cross examination of the plaintiff and his witnesses on this point, not only this, reply to notice Ex. D-1 dated 17.01.1996, defendants have simply denied the fact that plaintiff/ Institution is the religious institution and registered under the Waqf Board, Bhopal.

10. At this stage, it would be appropriate to notice Order 8, Rule 5(1) of the Code of Civil Procedure, which states as under:--

"5. Specific denial.--[1] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission."

11. The Supreme Court in the decision reported in Jahuri Sah v. Dwarika Prasad Dhunjhunwala and others AIR 1997 SC 109, has considered the principles underlying in Order 8 Rule 5 of CPC and held as under :

"10. [...] Bearing in mind that O. VIII, R. 5, C.P.C. provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant shall be taken to be admitted to say that a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial of the existence of that fact, not even an implied denial. [....]"

12. Thus, keeping in view the provisions contained in Order 8 Rule 5(1) of the

CPC and the principles laid down by the Supreme Court in the above referred judgment *Jahuri Sah* AIR 1997 SC 109 (supra); it would appear that defendants' evasive denial of registration of plaintiff-Institution (Waqf) for want of knowledge cannot be said to be denial at all and it has to be taken to be admitted, and also - keeping in view the evidence brought on record, it is held that plaintiff-Institution is religious institution and registered under the Waqf Board, Bhopal under the Waqf Act, 1954.

13. It would be appropriate, at this stage, to notice Section 3(2) of the Act of 1961, which runs thus:--

"3. Act not to apply to certain accommodation.-

xxx xxx xxx

(2) The Government may, by notification, exempt from all or any of the provisions of this Act any accommodation which is owned by any educational, religious or charitable institution or by any nursing or maternity home, the whole of the income derived from which is utilized for that institution or nursing home or maternity home."

14. The State Government, in exercise of powers under Section 3(2) of the Act of 1961, issued the notification dated 7-9-1989 and thereby exempted the properties of the trusts registered under the provisions of the Act of 1951 for educational religious or charitable purpose from the provisions of the Act of 1961. The notification dated 7-9-1989 stated as under:

"Notification No. F-24-(4)-83-XXXII-I dated 7-9-1989, published in M.P. Rajpatra of the same dated on p.2144.

In exercise of the powers conferred by sub-section (2) of Section 3 of the Madhya Pradesh Accommodation Control Act, 1961 (41 of 1961), the state Government hereby exempts all the accommodation owned by.

(i) the waqf, registered under the Waqf Act, 1954 (29 of 1954), or

(ii) The public trust registered under the Madhya Pradesh Public Trusts Act, 1951 (30 of 1951) for an educational, religious or charitable purpose,

From all the provisions of the Madhya Pradesh Accommodation Control Act, 1961 (41 of 1961)."

15. A careful reading of the notification issued on 7th September, 1989 issued under the provisions of Section 3(2) of the Act of 1961 clearly exempts the Waqf registered under Waqf Act, 1954 from the provisions of Act, 1961 and, therefore, the plaintiff was not required to establish the ground for eviction under Section 12(1) of the Act, 1961, thus, the finding recorded by the trial Court, as affirmed by the First Appellate Court holding that plaintiff/Institution is registered Waqf with the Waqf Board, Bhopal and exempted from the provisions of Section 3(2) of the Act, 1961 is a finding based on oral and documentary evidence on record,

which is neither perverse nor contrary to the record and the said findings and the decree granted by both the courts below is hereby affirmed.

16. This brings me to next substantial questions of law whether defendants' tenancy has been terminated in accordance with law ?

17. Defendants have filed their reply to the notice Ex. D-1, stating that notice for eviction dated 22.12.1995 was received by them on 26.12.1995 and, thereafter, the suit was instituted on 17.05.1996, and as such, 15 days' notice was given to the appellants/defendants under Section 106 of the Transfer of Property Act to vacate the suit premises. Merely because the notice dated 22.12.1995 issued by plaintiff has not been filed, the findings of the trial Court as affirmed by the first appellate court cannot be said to be perverse especially when such fact is pleaded and admitted by the defendants that notice for termination of tenancy was served to the appellants/defendants and, as such. both the substantial questions of law are answered against the appellants/defendants and in favour of the respondent/plaintiff.

18. Consequently, the second appeal fails and is hereby dismissed and decree granted by the trial Court, duly affirmed by the first appellate Court would stand re-affirmed.

19. A decree be drawn up accordingly. No order as to costs.

*"made" should be.