

(2013) 11 MP CK 0049
In the Madhya Pradesh High Court
Case No : Second Appeal No. 530 of 2012

Raju Kushwaha

APPELLANT

Vs

Smt. Namita Gupta and Another

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2014) 3 MPLJ 152

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : J. Laxmi Aiyer, for the Appellant; K.L. Gupta, Learned Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

K.K. Trivedi, J.—This second appeal by the appellant/defendant u/s 100 of the CPC is against the judgment and decree dated 3.2.2012, passed in Appeal No. 164-A/2011 passed by III Additional District Judge, Bhopal, in the appeal filed by the appellant/defendant and respondents, arising out of the judgment and decree dated 21.10.2010 passed in regular Civil Suit No. 224-A/2006 of the Court of XII Civil Judge Class-I, Bhopal. The respondents/plaintiffs filed a suit under the provisions of M.P. Accommodation Control Act valuing the suit for Rs. 18,000/- on the basis of 12 months' rent of the suit accommodation for possession and payment of arrears of rent. It was contended by the respondents/plaintiffs that they have purchased the suit accommodation by a registered sale deed dated 18.11.1997 from one Surendra Kumar Jain, who has purchased the said property from one Babulal Kachhi vide a registered sale deed dated 25.8.1984. The appellant/defendant was residing in the said accommodation and was allowed to continue as such. However, since the amount of rent was not paid by the appellant/defendant, a notice of demand and for eviction was issued, but the amount of rent was not paid. The respondents/plaintiffs wish to reconstruct a shop and do not want to keep any watchman in the said premises, therefore, an eviction decree be passed against the appellant/defendant. On receipt of the

notice of the suit, the appellant/defendant preferred a counter claim stating that the respondents/plaintiffs have not perfected their title over the property in suit as the sale deed said to be executed in favour of said Surendra Kumar Jain on 25.8.1984 by Babulal Kachhi was not a genuine document. Since the right of the predecessor in title of the respondents/plaintiffs to obtain the property was challenged, it was said that the subsequent sale deed executed in favour of the respondents/plaintiffs by Surendra Kumar Jain was also a sham document.

2. The issues were framed by the trial Court and evidence was recorded. Though it was necessary on the part of the appellant/defendant to prove that his father has never transferred the property in suit to Surendra Kumar Jain by the registered sale deed dated 25.8.1984, but this particular fact could not be proved, therefore, it was held that said Surendra Kumar Jain has purchased the property by the aforesaid registered sale deed from Babulal Kachhi. Similarly, it was also held by the trial Court after appreciation of the evidence that Surendra Kumar Jain had transferred the property in suit in favour of the respondents/plaintiffs vide registered sale deed dated 18.11.1997. However, keeping in view the statements made in the Court by the respondents/plaintiffs themselves, the trial Court reached to the conclusion that the respondents/plaintiffs have failed to prove that the appellant/defendant was their tenant and, thus, no decree of eviction of the appellant/defendant could be passed. In holding so, the learned trial Court dismissed the suit of the respondents/plaintiffs as also the counter claim made by the appellant/defendant.

3. Feeling aggrieved by the judgment and decree passed by the trial Court, the respondents/plaintiffs and the appellant both challenged the same by separate appeals which were decided by the common judgment and decree dated 3.2.2012, whereby the judgment and decree passed by the trial Court in rejecting the claim of respondents/plaintiffs in respect of eviction of appellant has been set aside and the claim of respondents/plaintiffs is decreed, whereas the judgment and decree of the trial Court in respect of dismissal of the counter claim of the appellant/defendant has been affirmed. Hence, this appeal is required to be filed.

4. It is, vehemently, contended by learned counsel for the appellant that the lower appellate Court has erred in law and fact in granting of decree of eviction against the appellant/defendant inasmuch as when it was proved that there was no relationship of landlord and tenant between the parties to the appeal, the decree as provided u/s 12(1) of the M.P. Accommodation Control Act could not have been granted. In case, the respondents/plaintiffs were claiming possession of the suit premises, they were required to file a suit for the said purposes separately by paying the ad valorem Court fees, on the value of property in suit for possession, therefore, the judgment and decree to this extent passed by the lower appellate Court is bad in law. It is further contended that the lower appellate Court has wrongly dismissed the appeal of the appellant upholding the judgment and decree of the trial Court in respect of rejection of the counter

claim of the appellant.

5. Learned counsel appearing for the respondents contended that once it was proved that the property was rightly purchased by the respondents/plaintiffs, a decree of eviction could have been granted in favour of the respondents/plaintiffs and since this was not done by the trial Court, the lower appellate Court was right in decreeing the suit of the respondents/plaintiffs. The counter claim made by the appellant/defendant could not be proved in the trial Court and, therefore, such findings of the trial Court are rightly concurred by the lower appellate Court.

6. After hearing learned counsel for the parties at length and perusing the record, one thing is clear that the learned Presiding Judge of the learned lower appellate Court has not applied the mind properly. When it was specifically proved that the respondents/plaintiffs could not establish the relationship of landlord and tenant between them and the appellant, the provisions of Section 12 of the M.P. Accommodation Control Act would not be attracted at all. The suit as filed in fact was not maintainable before the trial Court as when it was admitted that the appellant/defendant was only a watchman, authorised to remain in possession of the demise premises by the respondents/plaintiffs, a tenancy suit was not maintainable. At the threshold, the trial Court should have returned the plaint with a direction to file a suit for possession of the suit premises after payment of the ad valorem Court fees on the basis of the market value of the property in question. Both the Courts below have not looked into these aspects. However, the judgment and decree passed by the lower appellate Court granting a decree of eviction in favour of the respondents/plaintiffs cannot be sustained. The other aspect is that the appellant/defendant has utterly failed to prove his claim as set forth in the counter claim. Both the Court below have examined the statements of witnesses, the documentary evidence available on record and have given the concurrent findings in that respect. Even otherwise, if the appellant/defendant was of the opinion that the sale deed executed by his father in favour of Surendra Kumar Jain was a shame document, at least a suit in that respect should have been filed against said Kumar Jain, who was not a party in the proceedings initiated by the respondents/plaintiffs in the Court below. In such circumstances, the counter claim to that extent was also not maintainable, but this aspect was also not considered by the Courts below. In view of this, the appeal is allowed in part. The judgment and decree granted by the lower appellate Court for eviction of the appellant/defendant is hereby set aside. The suit filed by the respondents/plaintiffs itself is dismissed. However, both the parties to bear their own costs.