
(1978) 11 MP CK 0025
In the Madhya Pradesh High Court
Case No : C.R. No. 164 of 1977

Ramdas Chimanlal Panch Ratna

APPELLANT

Vs

Kusumbai and others

RESPONDENT

Date of Decision : 29-11-1978

Acts Referred:

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

Citation : (1979) MPLJ 116

Hon'ble Judges : R.K. Vijayvargiya, J

Bench : Single Bench

Advocate : S.R. Verma, for the Appellant; B.N. Baranuja, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Vijayvargiya, J.

This revision by the plaintiff is directed against the order dated 6-1-1977 passed by the III Civil Judge, Class II, Indore in Civil Suit No. 55-A/76.

The plaintiff-applicant filed the present suit for ejectment and arrears of rent against the original defendant Radheshyam. The ejectment was sought on the ground that the plaintiff required the suit non-residential accommodation for starting radio repairing shop for his son Sureshchandra. The defendant denied the plaintiff's requirement. During the pendency of the suit the defendant died and the non-applicants were brought on record as his legal representatives. Thereafter on 15-11-76 the plaintiff submitted an application under Order 6, rule 17 of the CPC for amendment of his plaint. By the proposed amendment the plaintiff wanted to plead that the non-applicant No. 1 has illegally sublet the suit premises with effect from 1-11-76 and has parted with possession thereof in favour of Jay Tailors. The plaintiff, therefore, wanted to claim ejectment on the ground of unlawful sub-letting also. The application for amendment was opposed by the non applicants. The trial Court has disallowed the amendment on the ground that the unlawful sub-letting as a ground of ejectment was not in

existence on the date of the filing of the suit and, therefore, it cannot be made a ground for ejectment under law. The plaintiff has challenged this order in this revision.

It was contended on behalf of the applicant that the shop was sub-let after the suit was filed and therefore, the amendment was based on a subsequent event and should have been allowed. Reliance was placed on the decisions in *Lakhmichand Kasliwal v. Gopaldas Nikhara* 1978 MPLJ 520, *Pasupuleti Venkateswarlu v. The Motor and General Traders* AIR 1977 SC 1409, *Jitendra Nath Das Vs. Dr. Kalyan Kr. Banerjee and Another*, , *Ayesha Khatoon Vs. Durga Sahaya*, and *Pronati Mitra Vs. Sachindra Nath Chatterjee*,

The non-applicants contended that as the ground of unlawful subletting was not in existence at the time of filing of the suit it cannot be a ground for ejectment because u/s 12(1) of the M.P. Accommodation Control Act no suit against a tenant for his eviction from any accommodation can be filed except on one or more of the grounds specified in that section. It was, therefore, contended that if the ground of unlawful sub-letting was not in existence at the time of filing of the suit it cannot be allowed to be taken as a ground of eviction by way of amendment if the said ground came into existence after the filing of the suit. Reliance was placed upon a Division Bench decision of this Court in *Ratanlal Gulzarilal v. Damodarilal Girdharilal* 1961 MPLJ 7.

Having heard Learned Counsel for the parties, I am of the opinion that the order passed by the Court below is correct and requires no interference in this revision. Section 12(1) of the M.P. Accommodation Control Act, 1961 provides that no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only namely--

(a) *** **

(b) that the tenant has whether before or after the commencement of this Act, unlawfully sublet, assigned or otherwise parted with the possession of the whole or any part of the accommodation for consideration or otherwise.

It is clear from the language of this section that the ground of unlawful subletting must exist before the filing of the suit and if the ground does not exist at the time of the filing of the suit, the suit cannot be filed on that ground. The question came for consideration before a Division Bench of this Court in *Ratanlal Gulzarilal v. Damodarilal Girdharilal* (supra) on a reference by a single Judge of this Court. In that case in a suit for ejectment and arrears of rent the defendant in his written statement denied the title of the plaintiff. The language of section 4 of the said Act was as follows:

No suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds,--

*** **

(f) that the tenant has renounced his character as such or denied the title of the landlord and the latter has not waived his right.

Construing this provision this Court held that the landlord cannot avail himself of the denial of his title by the tenant in his written statement for obtaining a decree for eviction u/s 4 of the M.P. Accommodation Control Act, 1958 because the ground of eviction must exist at the time of the filing of the suit.

This question was also considered by this Court in *Chhatarlal v. Madhuradas and others* Second Appeal No. 638 of 1964 decided on 27-4-1966. In that case the suit was for eviction based on the ground that the landlord required the suit non-residential accommodation for starting his business. The plaintiff subsequently amended the plaint alleging that after the filing of the suit the premises in question had become unsafe for human habitation and claimed a decree on that ground. The trial Court negatived the ground of personal requirement of the landlord but passed a decree for eviction on the ground that the premises had become unsafe for human habitation. In second appeal the tenant contended that the amendment was wrongly allowed by the trial Court because the ground that the premises had become unsafe for human habitation was not in existence when the suit was filed and therefore the eviction could not be based on that ground which came in existence after the filing of the suit. *Newaskar, J.*, upheld the contention of the defendant and held that the amendment was wrongly allowed. Although this was a case under M.P. Accommodation Control Act, 1958 but it makes no difference because the language of section 4 of the Act of 1955 and section 12 of the 1961 Act are identical.

The question again came for consideration before this Court in *Haroon v. Rao Nihalkaran and others* Second Appeal No. 291 of 1971 decided on 20-8-1976. In that case the ejectment was claimed by the landlord plaintiff on the ground that the defendant No. 1 had unlawfully sublet a portion of the suit accommodation to defendants Nos. 2 and 3. The trial Court held that it was not proved that the defendants Nos. 2 and 3 were sub-tenants of defendant No. 1. The suit was, therefore, dismissed. In appeal by the plaintiff an application for amendment of the plaint was made. The amendment sought was that during the pendency of the appeal the defendant had assigned his right in the suit accommodation in favour of one Ali Hussain. The appellate Court allowed this amendment and framed an issue and remitted the case to the trial Court for giving finding thereon. The lower appellate Court after considering the findings of the trial Court passed a decree for eviction on the ground of the assignment of the accommodation by the defendant in favour of Ali Hussain during the pendency of the appeal. Relying upon the aforesaid Division Bench Decision in *Ratanlal Gulzarilal v. Damodarilal Girdharilal* (supra), *Sohani, J* held that the lower appellate Court committed an error of law in permitting the plaintiff to seek ejectment on a cause of action admittedly arising during the pendency of the appeal. The decree for ejectment passed by the lower appellate Court on that ground was, therefore, set aside.

In the present case the facts are indistinguishable from the facts of the three decisions of this Court referred to above. In the present suit the eviction of the defendant as stated above is claimed on the ground that the suit accommodation is required by the plaintiff for starting radio repairing shop for his son. The amendment sought by the plaintiff is that after the death of the defendant during the pendency of the suit the legal representatives of the defendant has unlawfully sublet the accommodation to Jay Tailors. This ground of unlawful subletting admittedly was not in existence at the time of the filing of the suit and is alleged to have come into existence after the filing of the suit. As held by this Court in the cases referred to above the plaintiff cannot claim eviction on a ground which was not in existence when the suit was filed and which admittedly came into existence during the pendency of the suit. Such an amendment therefore, cannot be allowed.

Learned Counsel for the applicant relied upon a decision of this Court in *Lakhmichand Kasliwal v. Gopaldas Nikhara* (supra) decided by Mishra, J. in that case the plaintiff claimed ejectment on the ground of unlawful subletting. During the pendency of the suit he moved an application for amendment on the ground that the original sub-tenant had vacated the suit accommodation and other sub-tenants were inducted by the defendant during the pendency of the suit. This amendment was refused by the trial Court but was allowed by this Court in revision. It appears that the above Division Bench case of this Court in *Ratanlal Gulzarilal v. Damodarilal Girdharilal* (supra) and two other single Bench decisions cases referred to above were not brought to the notice of this Court at the hearing of the said revision. The decision in *Lakhmichand Kasliwal v. Gopaldas Nikhara* (supra) runs counter to the decision of a Division Bench of this Court in *Ratanlal Gulzarilal v. Damodarilal Girdharilal* and the two other unreported cases referred to above. As there is a Division Bench case of this Court directly covering the point which is not shown to have overruled by a larger Bench of this Court or by the Supreme Court I am bound by that decision and it is not necessary to make a reference whether *Lakhmichand Kasliwal v. Gopaldas Nikhara* was correctly decided or not. The decision of the Supreme Court in *Pasupuleti Venkateswar v. The Motor and General Traders* upon which reliance was placed in *Lakhmichand Kasliwal v. Gopaldas Nikhara* is not helpful in deciding the question at issue. In that case the landlord claimed eviction of the tenant by instituting proceedings under the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960. The application of the landlord was dismissed by the Rent Controller. The appeal preferred by him also failed. In revision the High Court remanded the case to the appellate authority who in its turn remanded the whole case to the Rent Controller. This remand order was challenged by the landlord in the High Court on the ground that the entire case ought not to have been remanded. When this revision was pending in the High Court the landlord came into possession of another shop. This subsequent event was taken notice by the High Court and the entire proceedings were ordered to be dropped on the ground that the need of the landlord was satisfied. On these facts their Lordships

of the Supreme Court held that subsequent event disabling the landlord from seeking eviction have to be taken notice of. This decision of the Supreme Court, therefore, is not an authority for the proposition that if a ground for eviction comes into existence after the filing of the suit the same can be allowed to be taken by way of amendment or that such a subsequent event can be taken notice of by the Court in a suit for eviction u/s 12 of the M.P. Accommodation Control Act or under similar provisions which provide that no suit for eviction of a tenant shall be filed except on the grounds specified which on the language of the section must exist on the date of the filing of the suit. In view of the aforesaid decision of the Division Bench of this Court which is binding on me and with which I respectfully agree it is not necessary to consider the decisions of the Calcutta High Court relied upon by the applicant.

As a result of the discussion aforesaid I am of the opinion that the trial Court has rightly disallowed the amendment sought by the applicant and this revision is without any substance. It is, therefore, dismissed. There shall be no order as to costs of this revision.