

(1960) 09 MP CK 0033
In the Madhya Pradesh High Court
Case No : C.S.A. No. 36 of 1957

Ratanlal Gulzarilal Vaishya

APPELLANT

Vs

Damodardas Giridharilal Vaishya

RESPONDENT

Date of Decision : 28-09-1960

Acts Referred:

Madhya Bharat Accommodation Control Act, 1955 — Section 4(f)

Citation : (1961) MPLJ 7

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : M.L. Gupta, for the Appellant; G.P. Patankar, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.

This reference by Shiv Dayal J. has been made in a second appeal arising out of a suit for ejectment and arrears of rent. The question referred to for our decision is:

Where the defendant denies the title of the plaintiff in his written statement, can a decree for eviction be passed u/s 4(f) of the Madhya Pradesh Accommodation Control Act, 1955, although the suit was not based on that ground.

The question does not present any difficulty on the clear language of section 4(f) of the Act. That provision runs 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 land-lord and the latter has not waived his right;

* * * *

The words "no suit shall be filed" and the expression in clause (f) "has renounced...or denied the title of the landlord" clearly indicate that the renunciation or the denial must be one before the filing of the suit. Therefore, a denial in the written statement by the tenant of the landlord's title cannot give to the landlord a ground for ejectment. The point is concluded by the decision of the Privy Council in *Maharaja, Jeypore v. Rukmani* AIR 1919 P.C. 1 where with reference to section 111(g) of the Transfer of Property Act it has been observed that denial in a suit will not work a forfeiture of which advantage can be taken in that suit, because the forfeiture must have accrued before the suit was instituted. Clause (f) of section 4 does nothing more than embody the principle laid down in section 111(g) of the Transfer of Property Act. *Shri Motilal Gupta* appearing for the landlord conceded that this was no doubt the right construction of section 4(f) standing by itself. He, however, argued that as in the present case the landlord's suit was pending when the Madhya Bharat Accommodation Control Act, 1955, was enacted, as also when that law was extended to the whole of Madhya Pradesh on 1st January 1959, section 17 of the Act would come into play and under that provision no decree for eviction could be passed except on one or more of the grounds mentioned in section 4. The argument was that the expression "no decree for eviction shall be passed" occurring in section 17 indicated that the ground mentioned in section 4 should exist any time before the passing of the decree, and that in a pending suit it was not necessary that the ground should have existed even before the institution of the suit. We are unable to accept this contention. Reading sections 4 and 17 together, the plain meaning of the expression "no decree for eviction shall be passed except on one or more of the grounds mentioned in section 4 of the Act" is that in a pending suit also a tenant is liable to ejectment on the same grounds as in a suit instituted after the commencement of the Act. Therefore, if in a suit instituted after the coming into force of the Act, a landlord cannot eject the tenant on the ground of denial of title unless the denial is before the institution of the suit, it follows that in a pending suit the denial must have taken place before the institution of the suit. This conclusion follows from all what has been said in the case of *Jarbai v. Phirojsha* 1960 MPLJ 595.

This view had been expressed in *Chhotelal v. Chhotelal* 1955 MBLJ 107 . It seems from the order of reference that the learned single Judge was inclined to adopt the reasoning in the Madhya Bharat case but he felt some difficulty in doing so because of a decision of Tare J. in *Motilal and another v. Mst. Champabai* S.A. No. 522/1958, dated 9-3-1960 (*State of Madhya Pradesh Vs. Ranjit Kumar Chatarjee and Others*,) that the renunciation of his character by a tenant or the denial of the landlord's title in a written statement can afford the landlord a cause for ejectment. We do not find ourselves in agreement with this view which is opposed to the clear language of section 4(f) and the Privy Council decision in *Maharaja, Jeypore v. Rukmani* AIR 1919 P.C. 1. In coming to the conclusion that he did, Tare J. applied the general principle laid down by the Supreme Court in *Srinivas Ram Kumar Vs. Mahabir Prasad and Others*, that the

plaintiff was no doubt not entitled to a relief for which there was no foundation in the pleadings and which the other side was not called upon or had no opportunity to meet, but when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim made by the plaintiff, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. This general principle has no applicability to the matter here which has to be decided solely with reference to the language of section 4(f) and section 17 of the Act.

Our answer to the question is that the landlord cannot avail himself of the denial of his title by the defendant in his written statement for obtaining a decree for eviction u/s 4 of the Act. It would, of course, be open to the plaintiff-landlord to amend the plaint so as to allege that there was in fact a denial of the title before the suit was instituted. In fact, it is plain enough from the decision in Jarbai's case 1960 MPLJ 595 that the plaintiff is entitled to amend his plaint so as to allege a ground for ejectment u/s 4 and that the suit cannot be dismissed merely because no such ground was alleged when the suit was instituted. In fact, the plaintiff could not have alleged such a ground when the Act itself was not in force at the time of the filing of the suit.