
(1992) 07 MP CK 0015
In the Madhya Pradesh High Court
Case No : S.A. No. 123 of 1992

Sardar Mehnga Singh

APPELLANT

Vs

P.D. Das

RESPONDENT

Date of Decision : 06-07-1992

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 4(1), 4(3)
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1), 2

Citation : (1993) 1 MPJR 86 : (1993) 38 MPLJ 416 : (1993) MPLJ 416

Hon'ble Judges : K.M. Agarwal, J

Bench : Single Bench

Advocate : A.D. Deoras, for the Appellant; None, for the Respondent

Judgement

K.M. Agarwal, J.

This appeal was heard on admission on 2-7-1992, but for want of time, the order could not be passed on that day. It is now being delivered today.

The appellant was admittedly a tenant of the respondent in respect of the suit accommodation. He suffered a decree for ejectment on the ground u/s 12(1)(e) of the M. P. Accommodation Control Act, 1961 (in short the "Act"), from both the Courts below. In this second appeal, the learned counsel for the appellant drew my attention to paragraph 1 of the plaint and submitted that the respondent could not claim himself to be the owner of the suit accommodation, because the land was purchased in the name of the respondent's minor son Inosdas on 14-9-1984. The house was also constructed after obtaining sanction from the Municipal Corporation, Raipur in the name of his minor son Inosads. Under these circumstances, by virtue of Section 4(1) of the Benami Transactions (Prohibition) Act, 1988 (in short "Benami Transactions Act"), the suit for ejectment by the respondent as owner of the suit accommodation was not maintainable. Reliance was placed in Mithilesh Kumar and Another Vs. Prem Behari Khare, It was further submitted that as there is no estoppel against law, the admission of the appellant in his written statement that the respondent was the owner and landlord of the

suit accommodation is of no consequence. It was also argued that the finding of the Courts below about existence of bona fide need of the respondent for the suit accommodation was perverse and that even otherwise a decree for ejectment u/s 12(1)(e) of the Act could not be passed as the respondent was not the owner of the suit accommodation for the reasons aforesaid.

I find no substance in any of the aforesaid contentions raised on behalf of the appellant. It is not in dispute that the appellant had taken the suit accommodation on rent from the respondent. He was also paying rent to him. Accordingly by virtue of Section 116 of the Evidence Act he is estopped from challenging the title of the respondent over the suit accommodation. Further "landlord" as defined in Section 2(b) of the Act mean "a person, who, for the time being, is receiving or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the accommodation were let to a tenant and includes every person not being a tenant who from time to time derives title under a landlord". As the respondent was receiving rent from the appellant he was landlord of the suit accommodation and entitled to maintain a suit for ejectment in respect of that suit accommodation.

Section 12(1)(e) of the Act reads as follows : --

"that the accommodation let for residential purposes is required bona fide by the landlord for occupation as a residence for himself or for any member of his family, if he is the owner thereof, or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned;"

This provision would show that a suit for eviction on the ground of bona fide need can be obtained by the landlord for occupation as residence for himself or for any member of his family, if he is the owner thereof. Further if he is not the owner thereof for any person for whose benefit the accommodation is held. Even accepting the argument, if we take it that the accommodation was held by the respondent for the benefit of his minor son, the need advanced by the respondent was also that of the son as member of his family. It may also be said that the respondent was a member of the family of his minor son and in that capacity also he was entitled to obtain possession of the suit accommodation.

I also find that in the present case the alleged transaction may be said to be coming within the exception given under Sub-section (3) of Section 4 of the Benami Transactions Act. Accordingly for all these reasons, I find no substance in the contention that the suit for ejectment by the respondent on the ground u/s 12(1)(e) of the Act was not maintainable, because he was not the owner of the suit accommodation for the reasons advanced by the learned counsel for the

appellant.

The decision of the Supreme Court in *Mithilesh Kumari v. Prem Behari Khare* (supra) relied on by the learned counsel for the appellant does not require any discussion at length in the light of the aforesaid facts and further in the light of the fact that the case was not between landlord and tenant.

Both the Courts below have returned a concurrent finding based on evidence on record, that the need of the respondent for the suit accommodation is genuine. This is a finding of fact and as I find no perversity in the finding, it calls for no interference in this second appeal.

For the foregoing reasons, I find no substance in this second appeal. Accordingly it is hereby summarily dismissed.

The learned counsel for the appellant also prayed for some time for vacating the suit accommodation. The prayer is allowed. The appellant is given time till 30-11-1992 for vacating the suit accommodation subject to following conditions :

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That the appellant shall give a written undertaking in the trial Court within one month from today to the effect that on or before 1-12-1992 he shall deliver peaceful and vacant possession of the accommodation to the respondent without raising any objection himself or through any stranger as to the right of the respondent to obtain peaceful and vacant possession of the suit accommodation.

He shall deposit all arrears of rent till 30-6-1992 within one month from today along with the costs of both the Courts below, if any.

He shall further continue to deposit future rent of the suit accommodation for the extended period of his occupation on or before 15th of each succeeding tenancy month.

C. C. may be given on payment of usual charges.