

(1971) 08 MP CK 0022
In the Madhya Pradesh High Court
Case No : S.A. No. 373 of 1967

Sardar Prem Singh Ram Singh

APPELLANT

Vs

Firm Gaya Prasad Sunderlal

RESPONDENT

Date of Decision : 31-08-1971

Acts Referred:

Madhya Pradesh General Clauses Act, 1957 — Section 3

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

Citation : (1972) MPLJ 745

Hon'ble Judges : Bishambhar Dayal, C.J

Bench : Single Bench

Advocate : B.L. Seth, for the Appellant; P.R. and P.P. Naolekar, for the Respondent

Final Decision : Dismissed

Judgement

Bishambhar Dayal, C.J.

This is a defendant's second appeal.

Plaintiff-respondent is the owner of a house in the town of Harpalpur. He filed a suit for ejectment of the appellant on 30th December 1963. This suit was decreed by the trial Court on 16th July 1965, The tenant filed an appeal against that decree and while the appeal was pending in the Court of the Additional District Judge, Chhatarpur, the Madhya Pradesh Accommodation Control Act, 1961 was made applicable to the town of Harpalpur by notification dated 4th August 1966 with effect from 15th August 1966. When the appeal came up for hearing, the appellant, among other arguments, contended that the decree passed by the trial Court must be set aside in view of the fact that the M. P. Accommodation Control Act had come into force in the town and no ejectment decree could be passed except upon one of the grounds mentioned in section 12 thereof. The lower appellate Court repelled the contention and held that there was nothing in the Act to make it retrospectively applicable to pending cases. It, therefore, confirmed the decree. Hence this second appeal has been filed in

which the only question argued by the learned counsel for the appellant is that on account of the enforcement of the Act the lower appellate Court was wrong in passing the decree for ejection.

The contentions of learned counsel for the appellant are based on the wordings of section 1 (2) and (3) of the Act which are as follows:-

(2) It extends to the whole of Madhya Pradesh.

(3) The Act shall, in the first instance, be in force in the areas specified in the Schedule. It shall come into force in other areas of the State on such date as the State Government may by notification appoint, and different dates may be appointed for different areas and for different provisions of the Act and thereupon the Schedule shall be deemed to have been amended accordingly.

The contention of the teamed counsel was that the Act was extended to the whole of Madhya Pradesh from the very beginning and, consequently, as soon as it was enforced in any particular area it became effective retrospectively from the first date of enforcement of the Act. The second contention of the learned counsel was that under sub-section (3), the Act had to come into force in the first instance in the areas specified in the Schedule and the last expression, namely, "and thereupon the Schedule shall be deemed to have been amended accordingly" has the effect of introducing the extended areas also into the Schedule with the effect that in those areas also the Act became effective in the first instance and consequently from the first date of its first enforcement.

In the Act itself there is no provision stating from what date the Act will come into force. By virtue of section 3 of the Madhya Pradesh General Clauses Act, the Accommodation Control Act came into force in the whole of Madhya Pradesh from the 30th December 1961 when the assent of the Governor was published in the Gazette. Thus, according to sub-section (2) of section 1, the Act came into operation in the whole of Madhya Pradesh from 30th December 1961. But it is one thing to bring the Act into operation and it is another to bring it into force in any particular area. In the section quoted above a clear distinction has been made between the coming into operation of the Act and the enforcement thereof. I am therefore unable to agree with the contention that the effect of bringing the Act into force in the town of Harpalpur with effect from 15th August 1966 was to make it retrospectively effective in that town from the first date from which it became operative in Madhya Pradesh. Such a question also arose in the Allahabad High Court in *Ram Chand Vs. Ram Swarup*, and the learned single Judge who decided that case held the same view.

With regard to the second contention the very words of section 1 (3) quoted above clearly contradict the contention. The earlier part of sub-section (3) states the enforcement of the Act in the first instance but in the latter part it provides for its being enforced from a date specified in the notification. Thus there being an express mention of the date from which it would be enforced in other areas to which it would be extended later, there is no question of any fiction of law being

created by inclusion of the area in the Schedule. The fiction of law is not to be extended beyond its clear scope. Here the inclusion of the extended area in the Schedule has the only effect of its being so included, but it cannot affect the date of enforcement which has to be specified in the notification.

There is another aspect of the matter which throws light on this question. The word "Tenant" has been defined in sub-section 2 (i) of the Act. The last part of this definition is "but shall not include any person against whom any order or decree for eviction has been made",. It is therefore made clear that a person against whom "any decree" for eviction has been passed is not a tenant and consequently cannot take advantage of this Act. In the present case the trial Court had passed a decree for ejectment against the appellant and he was therefore excluded from the term "tenant" under the Act. Section 51 of the Act also leads to the same conclusion. u/s 51 certain previous Acts controlling eviction of tenants from an accommodation were repealed and sub-section (2) thereof provides that suits instituted against tenants for eviction before coming into force of the present Act would continue to be governed by the old Acts and would be decided as if this Act had not been passed. The intention of the Legislature therefore clearly was that pending suits would be governed by the law under which they were filed and the present Act of 1961 was not to be applicable to such pending suits.

A very similar question arose before a Division Bench of this Court in Gokuldas Pagaria Vs. Parmanand Chaurasia, where this Act was extended to a cantonment area later on. In that area a suit for ejectment had already been filed and a similar contention was raised that the suit is to be decided in view of the provisions of the extended Act. The contention was repelled and it was held that the Act was not retrospective and did not apply to pending suits.

On a consideration of the whole matter I am satisfied that there is no force in this appeal and it is dismissed with costs.