

(1975) 02 MP CK 0013
In the Madhya Pradesh High Court
Case No : L.P. Appeal No. 2 of 1972

Shahzadali Latafatoli

APPELLANT

Vs

Abbasbhai Gulam Ali and others

RESPONDENT

Date of Decision : 12-02-1975

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12, 12(1)(a), 12(1)(e), 12(1)(f), 12(4)

Citation : (1975) JLI 801

Hon'ble Judges : P.K. Tare, C.J;G.G.Sohani, J

Bench : Division Bench

Advocate : B.I. Mehta, for the Appellant; R.G. Nigam, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tare, C.J.—This is a Letters Patent Appeal filed by the defendant-tenant after obtaining leave from the learned single Judge, which is directed against the decree of a Single Bench of this Court, dated 3-4-1974, in Second Appeal No. 306 of 1971, reversing the decree, dated 29-10-1971, passed by the Additional District Judge, Mandsaur, in Civil Appeal No. 86-A of 1970, which, in its turn, reversed the decree of the Civil Judge Class II, Mandsaur, in Civil Suit No. 14 of 1970, dated 25-11-1970.

2. The facts leading to the present controversy are as follows: The respondents-landlords executed an usufructuary mortgage in favour of Ismailbhai on 23-7-1951 and in pursuance of the mortgage, they also delivered possession to the mortgagee in lieu of interest. The mortgagee Ismailbhai inducted the present appellant as a tenant on 9-11-1955. The mortgagors redeemed the mortgage and obtained possession on 5-4-1969. Thereafter on 6-5-1969, the present appellant attorned to the respondents. On 20-5-1969 the respondents served a quit notice on the appellant for vacating the premises on the ground that they needed the premises for their own occupation and they filed the present suit on 8-8-1969. During the course of the suit an objection was raised on behalf of the

tenant that the present suit was barred by virtue of the provision in section 12(4) of the Madhya Pradesh Accommodation Control Act, 1961. That objection was rejected by the trial Judge and the landlords' suit for eviction was decreed. On an appeal by the tenant, the learned Additional District Judge reversed the decree of the trial Court and held that section 12(4) of the Act was a bar to the tenability of the suit within a period of one year as prescribed by the section. On a Second Appeal being filed, the learned single Judge reversed the decree of the first appellate Court and restored that of the trial Court holding that Section 12(4) of the Act would not be a bar to the tenability of the present suit and that the mortgagors, after having redeemed the mortgage, could evict the tenant within one year of the redemption of the mortgage. Therefore, this case involves the question of interpretation of section 12(4) of the Act.

3. The learned single Judge, referring to various authorities, came to the conclusion that the "phrase where a landlord has acquired any accommodation by transfer" implies a transferee landlord, who has no title to the accommodation and who for the first time so obtains the accommodation by transfer. The learned Judge held that the phrase will not be applicable where a landlord has obtained back possession after redemption of the mortgage. It was, therefore, held that the respondents could file a suit for eviction of the tenant within one year of the date of redemption.

4. Before dealing with the cases on the point, we may note the provisions of section 12(1)(e) and Section 12(1)(f) of the Act, which ought to be read along with the provisions of sub-section (4) of section 12 of the Act. Section 12(1)(e) and section 12(1)(f) of the Act are as follows:-

S. 12. Restriction on eviction of tenants.--

(1) Notwithstanding anything to the contrary contained in any other law or contract, 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)

_____ (c)

_____ (d)

_____ (e) 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;

(f) that the accommodation left for non-residential purposes is required bona fide

by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters 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 non-residential accommodation of his own in his occupation in the city or town concerned.

Sub-section (4) of section 12 of the Act, is as follows:

(4) Where a landlord has acquired any accommodation by transfer, no suit for the eviction of tenant shall be maintainable under sub-section (1) on the ground specified in clause (e) or clause (f) thereof, unless a period of one year has elapsed from the date of the acquisition.

5. Prima facie it may appear that sub-section (4) of section 12 of the Act might include all categories of landlords and the phrase is open to interpretation. But, if the same is read along with the provisions of sub-section (1) (e) and sub-section (1) (f) of section 12 of the Act, it will be clear that an owner landlord alone can evict a tenant under the provisions of sub-section (1) (e) and sub-section (1) (f) of section 12 of the Act. A non-owner landlord cannot claim to evict a tenant under the said provisions. We have, therefore, to examine the case of a mortgagor landlord. In a case of mortgage, the mortgagor does not lose his title or ownership. What he loses is, in case of usufructuary mortgage, actual possession and the right of management of the property during the subsistence of the mortgage; otherwise the title and the ownership vest in the mortgagor subject to the conditions of the mortgage and he remains full title and ownership, including possession and right of management upon redemption being effected. For this reason it may be quite rational to think that section 12(4) of the Act envisages transfer of accommodation, which is acquired by a landlord for the first time, who had no interest in the property whatsoever. Therefore, the bar will be applicable to a transferee landlord and not to an owner landlord, who has parted with possession and right of management in favour of a mortgagee.

6. This interpretation sought to be put by us would find support from the observations of Amiya Kumar Mookerjee, J. in *Sailendra Nath Ghosal and Others Vs. S. Ena Dutt and Others*, wherein the learned Judge was required to consider an analogous provision contained in section 13-A of the West Bengal Premises Tenancy Act, 1956. Delivering the judgment on behalf of the Division Bench, Amiya Kumar Mookerjee, J. observed as follows:

The sole object of the amended provision of the Act, is to give some protection to the tenant against eviction. A copy of the statement of the Minister-in-charge at the time of piloting the bill in the Legislature, was placed before us. It is submitted, that, it is the intention of the Legislature, as it appears from the statement of the Minister, to protect the tenants from a particular class of persons who have sufficient means to purchase properties and immediately thereafter institute ejectment suit to drive out the tenants from their living places. Old landlords cannot enhance rents with respect to the old tenants

beyond the limit of fair rent, fixed under the statute. At the present time, when the price of every commodity has gone up, naturally "owner-landlords" are dissatisfied with the low return they get out of the tenanted premises. As between these two classes of landlords, namely, "owner" and "transferee", it is difficult for the owner-landlords to make out a case for eviction either on the grounds of their own use and occupation or building or re-building. The "owner-landlords" are naturally reluctant to spend money for building and rebuilding on properties which do not yield a covetable income. So, "owner-landlords" tend to sell the tenanted properties to get rid of the old tenants and the transferee landlords, just after the transfer, try to find out means to drive out the tenants, taking resort to those two grounds, viz., (f) and (ff)-"landlords" reasonable requirement for own use and occupation and building and re-building. Having regard to the background and surrounding circumstance, the legislature has reasonably classified landlords into two classes, namely, owner and transferee, and put reasonable restriction upon the latter.

7. It is, therefore, clear that section 12 of the M.P. Accommodation Control Act, 1961, also envisages this distinction between owner-landlord and transferee landlord. u/s 12(1)(a) and section 12(1)(f), it is only the owner-landlord that can seek eviction of a tenant on the grounds mentioned therein. The bar is provided by sub-section (4) against the transferee-landlord, who for the first time acquires such accommodation by transfer and consequently, a mortgagor, who is an owner landlord and who has not lost ownership or title by virtue of the mortgage will not be covered by the provision of section 12(4) of the Act. We are clearly of the opinion that section 12(4) of the Act will be applicable to a landlord, who, for the first time, has acquired the accommodation by transfer and the same will not be applicable to a mortgagor, whose interest is not extinguished, whatever it be, during the subsistence of the mortgage and whose full interest is again restored after redemption of the mortgage.

8. A question not exactly of this type, but of a case of partition came up for consideration before their Lordships of the Supreme Court in V.N. Sarin Vs. Ajit Kumar Poplai, , wherein their Lordships were required to consider section 14(6) of the Delhi Rent Control Act, 1958. Referring to the Privy Council case of Giria Bai v. Sadashiv Dhundirai A I R 1916 P C 104, their Lordships held that a partition could not give a coparcener a title or create a title in him. It would only enable him to obtain what was his own in a definite and specific form for purposes of disposition independent of the wishes of his former co-sharers. Therefore, the effect of a partition would be that the coparcener already having prior title, would be effecting separation of his title from the title of other co-sharers. Referring to Section 14(6) of the Delhi Rent Control Act, 1958, their Lordships made the following observations:

In dealing with the present appeal, we propose to confine our decision to the narrow question which arises before us and that relates to the construction of section 14(6). What section 14(6) provides is that the purchaser should acquire

the premises by transfer and that necessarily assumes that the title to the property which the purchaser acquires by transfer did not vest in him prior to such transfer. Having regard to the object intended to be achieved by this provision, we are not inclined to hold that a person who acquired property by partition can fall within the scope of its provision even though the property which he acquired by partition did in a sense belong to him before such transfer. Where a property belongs to an undivided Hindu family and on partition it falls to the share of one of the coparceners of the family there is no doubt a change of the landlord of the said premises, but the said change is not of the same character as the change which is effected by transfer of premises to which section 14(6) refers. In regard to cases falling u/s 14(6) a person who had no title to the premises and in that sense, was a stranger, becomes a landlord by virtue of the transfer. In regard to a partition, the position is entirely different. When the appellant was inducted into the premises, the premises belonged to the undivided Hindu family consisting of respondent No. 1, his father and his brother. After partition, instead of the undivided Hindu family, respondent No. 1 alone become landlord of the premises. We are satisfied that it would be unreasonable to hold that allotment of one parcel of property belonging to an undivided Hindu family to an individual coparcener as a result of partition is an acquisition of the said property by transfer by the said coparcener within the meaning of section 14(6). In our opinion, the High Court was right in coming to the conclusion that section 14(6) did not create a bar against the institution of the application by respondent No. 1 for evicting the appellant.

9. It is, therefore, clear that section 14(6) of the Delhi Rent Control Act, 1958, which is analogous to section 12(4) of the M.P. Accommodation Control Act, 1961 did not envisage a person or a landlord, who had prior title and who might get exclusive possession by virtue of a family partition. In our opinion, the same analogy will be applicable to the present case, where the mortgagor has prior title and ownership and what he transfers by way of security for the loan is temporary possession and management and which he is able to regain on redemption. It is also clear that the mortgagee cannot evict a tenant by virtue of section 12(1)(e) or section 12(1)(f) of the M.P. Accommodation Control Act 1961. Suppose, if the mortgagee, Ismailbhai had filed a suit against the present appellant for eviction u/s 12(1)(e) of the Act, such a suit was bound to fail as the mortgagee was not the owner-landlord.

10. Looked at from this point of view also, there can be no doubt that the mortgagor landlord, who has not lost his ownership or title would not be covered by the provision of section 12(4) of the Act. But only a transferee landlord, who has acquired such accommodation for the first time without any prior title, would be covered by the said provision.

11. As a result of the discussion aforesaid, the view taken by the learned single Judge was correct and the respondent's suit for eviction of the appellant within one year of the date of redemption was maintainable in law and the bar of

section 12(4) of the Act was not applicable to it. In view of the matter the decree of the learned single Judge does not call for any interference. The appeal, therefore, fails and is accordingly dismissed with costs. Counsel's fee in this Court shall be according to the Schedule or certificate, whichever be less.