
(1971) 04 MP CK 0018

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 2 of 1970

Shantaram Laxmanrao Kekre

APPELLANT

Vs

Shyam Sundar and Another

RESPONDENT

Date of Decision : 01-04-1971

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)
Transfer of Property Act, 1882 — Section 106, 109, 116

Citation : AIR 1972 MP 17 : (1972) ILR (MP) 909 : (1971) MPLJ 727

Hon'ble Judges : K.K. Dube, J;A.P. Sen, J

Bench : Division Bench

Advocate : A.R. Naoker, for the Appellant; H.B. Mangal, for the Respondent

Judgement

Sen, J.

This is an appeal under Clause 10 of the Letters Patent by the tenant against a judgment of Golwalkar, J. holding that there can be no splitting of tenancy u/s 12 (1) (e) of the Madhya Pradesh Accommodation Control Act, 1961.

The facts leading to the appeal are not in dispute and may be shortly stated. The respondents plaintiffs. Shyamsundar and Ved Bhushan, are father and son. They held the property as members of a joint Hindu family, the demised premises of which forms a part comprising of four rooms on the ground-floor, demarcated in red lines in the plaint map. The same was demised to the appellant-defendant, Shantaram, by the plaintiff No. 1, Shyamsundar, acting as the lessor. During the subsistence of the lease, there was a partition between Shyamsundar and Ved Bhushan. As a result of the partition, two of the rooms in occupation of the defendant-tenant, marked in green lines, have fallen to the share of Shyamsundar, while the other two rooms have been allotted to the share of Ved Bhushan. Since Shyamsundar was in need of the portion allotted to his share, both the plaintiffs served a notice determining the lease u/s 106 of the Transfer of Property Act and thereafter, brought the present suit u/s 12 (1) (e) of the Act. They alleged that Shyamsundar was in bona fide requirement of the two rooms

in occupation of the defendant which have fallen to his share at the partition, for his residential use. However, in the relief clause, they sought eviction of the defendant from the entire demised premises.

On these facts, the question for consideration is whether the decree for eviction should be confined to the portion belonging to Shyamsundar. The Court of first instance held that the plaintiffs having pleaded the need of Shyamsundar alone, and as only two rooms out of the tenanted premises are owned by him, the defendant can be evicted from those two rooms only and accordingly, it decreed their claim to that extent. On appeal, the learned Additional District Judge, taking the view that ejection of the defendant from only two rooms would amount to a partial termination of the tenancy, which is not permissible in law, granted a decree for ejection of the defendant, from the whole of the demised premises. The learned Single Judge has affirmed that view, holding that the decision of this Court in *Sakharampant v. K. L. Lodhi* AIR 1953 Nag 265 was a complete answer to the problem.

The decision in AIR 1953 Nag 265 (supra) was rendered under the C. P. and Berar Letting of Houses and Rent Control Order, 1949. The question that arises is whether the rule enunciated therein can be extended to a decree for eviction to be passed u/s 12 (1) (e) of the Madhya Pradesh Accommodation Control Act, 1961. We have, therefore, to examine the scheme underlying these two enactments. The C. P. & Berar Letting of Houses and Rent Control Order, 1949, was promulgated by the then provincial Government under powers given to it by Section 2 of the C. P. & Berar Regulation of Letting of Accommodation Act, 1946. The purpose and object of the Act was stated in its preamble as being to make provision "for regulating the letting and sub-letting of accommodation and other ancillary matters hereinafter specified." One of the powers given to the State Government u/s 2 (b) of that Act was to provide "for preventing the eviction of tenants or sub-tenants from such accommodation in specified circumstances." Clause 13 (3) (vi) of the Order read as follows:--

"13(3). If after hearing the parties, the Controller is satisfied

X X X X (vi) that the landlord needs the house or a portion thereof for the purpose of his bona fide requirement, provided he is not occupying any other house of his own in the city or town concerned.....he shall grant the landlord permission to give notice to determine the lease as required by Sub-clause (i)."

Ordinarily, the relations between the landlord and his tenant are regulated by the contract between the parties and by the provisions of the Transfer of Property Act. The C. P. & Berar Regulation of Letting of Accommodation Act, 1946, however, provided, inter alia, by Section 6 that any order made or deemed to be made by the Provincial Government u/s 2 for preventing the eviction of tenants etc. shall prevail over the existing law. The section did not involve repeal of the old law. The C. P. and Berar Letting of Houses and Rent Control Order, 1949 made thereunder, and particularly Clause 13 (3), put a restriction on the

landlord's rights u/s 106 of the Transfer of Property Act. The effect of the legislation, therefore was that the landlord was prevented from terminating the contract of tenancy except, with the permission of the Rent Controller. Under the scheme of the C. P. & Berar Letting of Houses and Rent Control Order, 1949, the control against the eviction of a tenant was therefore, at a stage prior to the service of a notice u/s 106 of the Transfer of Property Act.

The language of Clause 13 (3) (vi) of the C. P. & Berar Letting of Houses and Rent Control Order, 1949. makes it clear that if the Controller was satisfied about the bona fide need of the landlord, he was required to grant him the requisite permission to give notice to determine the lease. The sanction of the Rent Controller was, therefore, a condition precedent to the determination of the lease. That being so, no suit for eviction could lie as without such permission, the landlord was prevented from determining the relationship of landlord and tenant. So long as the tenancy continued to exist under the contract, there was no necessity of providing any further protection to the tenant against eviction. The control, therefore, was at the stage of service of notice u/s 106 of the Transfer of Property Act. No sooner that barrier was removed, by showing any of the grounds under Clause 13 (3), the landlord was free to serve a quit notice and bring a suit for eviction. Thereafter, the suit had to be decided upon the rights and liabilities under the Transfer of Property Act.

The C. P. & Berar Regulation of Letting of Accommodation Act, 1946 and the C. P. & Berar Letting of Houses and Rent Control, Order, 1949 stood repealed by the M. P. Extension of Laws Act, 1958 which extended the Madhya Bharat Accommodation Act, 1955, throughout the State of Madhya Pradesh with slight modifications. That enactment was however, itself replaced by the Madhya Pradesh Accommodation Control Act, 1961 w. e. f. 31st December 1961. Under both these enactments, the control was and is at a different stage. u/s 4 of the 1955 Act and Section 12 (1) of the 1961 Act, there was and is a restraint placed on the filing of a suit for eviction except on certain grounds. Sub-section (1) of Section 12 along with Clause (e) thereof, with which we are concerned, reads as follows:--

""12(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:

X X X X (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;"

Unlike the C. P. & Berar Letting of Houses and Rent Control Order, 1949, there

was and is now no prohibition against the serving of a notice u/s 106 of the Transfer of Property Act. So also, unlike the Rent Control Acts in some other States, there is no restraint placed on the Court's power to pass a decree. The present Act, however, puts a bar on the filing of a suit for eviction except on one or more of the grounds mentioned u/s 12 (1). The landlord has therefore, to specifically plead and also prove the ground or grounds specified in the section.

In AIR 1953 Nag 265 (supra) the Court had to deal with Clause 13 (3) of the C. P. & Berar Letting of Houses and Rent Control Order, 1949, i. e. the stage of a notice u/s 106 of the Transfer of Property Act and, therefore, the principle that there can be splitting up of tenancy became directly applicable. In dealing with the question, whether the requisite permission under Clause 13 (3) should extend to the whole of the demised premises or to a portion thereof, commensurate with the need of the landlord, the Division Bench following the dictum of their Lordships of the Privy Council in Harihar Banerji v. Ramshashi Roy AIR 1918 PC 102 stated as follows:--

"We are clear that under the law, as it stands, it is open to a landlord to terminate the tenancy of the entire house and not of a portion thereof. When the landlord's needs are genuine, even as to a portion of the house, the Rent Controller, is bound to grant him permission to terminate the tenancy of the tenant of the entire house."

It is true that under the present Act, there is no impediment to the service of a notice u/s 106 of the Transfer of Property Act by the landlord, but we do not see why the same principle should not still apply to such cases.

On the determination of a lease, it is the duty of the lessee to deliver up possession of the demised premises to the lessor. However, in cases of tenancies relating to dwelling houses to which the Rent Restriction Acts are applied, the tenant may enjoy a statutory immunity from eviction even after the lease has expired. The landlord cannot eject him except in specified grounds mentioned in the Act themselves. So, in Ganga Dutt Murarka Vs. Kartik Chandra Das and Others, , their Lordships of the Supreme Court stated as follows:--

"The statute protects his possession so long as the conditions which justify a lessor in obtaining an order of eviction against him do not exist. Once the prohibition against the exercise of jurisdiction by the court is removed, the right to obtain possession by the lessor under the ordinary law springs into action and the exercise of the lessor's right to evict the tenant will not, unless the statute provides otherwise, be conditioned.""

(underlinings are ours).

The effect of Clause (e) of Section 12 (1) is merely to remove the bar created by the opening words of Section 12 (1) on the rights which a landlord has under the general law. to bring a suit for eviction of a tenant by giving a notice terminating his tenancy. The person whose tenancy stands determined but who continues to

remain in possession of the tenanted premises without the assent of the landlord after the determination of his lease, is a tenant for the purposes of the Act and entitled to the benefit of Section 12 (Shyamlal Lachman Vs. Umacharan Ramdulare Tiwari,). But once the bar against the filing of the suit is removed i.e. one or more of the grounds mentioned in Section 12 (1) are established, the protection ceases and such a person is a tenant at sufferance. In our opinion, he is nothing more than a rank trespasser.

There is, therefore, no reason why the decree for eviction should not extend to the whole of the demised premises. There can be no doubt that the words "if he is the owner thereof" in Section 12 (1) (e) do lend support to the contention that in the case of co-owners, each of the landlord must separately plead his own residential need. These words only show that for purposes of Clause (e). one of the landlords suing for eviction cannot rely upon the need of another landlord. However, where all the co-owners join in a suit for eviction, there is no logic or reason why a decree should not follow, upon the proof of the need of any one of them u/s 12 (1) (e). Any other construction of Section 12 (1) (e) of the Act would lead to a rather anomalous situation. If that decree for eviction were to be restricted to the portion owned by the landlord whose need is established, it would mean a splitting up of the tenancy and also allow a rank trespasser to continue in possession over the remaining portion of the demised premises, in respect of which no need is established u/s 12 (1) (e). The way we would interpret Section 12 (1) (e) is that once any of the landlords succeeds in proving his bona fide requirement, the protection of the tenant against eviction disappears. In that event, the ban against the filing of a suit is removed and the suit as a whole must be decreed under the Transfer of Property Act.

In *Pravirchandra Hathibhai & Co. v. Shankar* 1966 LLJ 553 Naik, J. held that where out of a number of persons constituting the body of the landlords one landlord bona fide requires the building for his own use and occupation, that should be considered to amount to a requirement on the part of all the landlords. In dealing with the question, he stated as follows:--

"Of course, the law has made no specific provision for joint landlords when one of such landlords needs the tenanted premises for his own use; but I do not read into the Act any intention on the part of the Legislature to deprive him of this benefit. The object of the law is to prevent the landlords from increasing rents taking advantage of the shortage of accommodation those days, as also to give security of tenure to the tenants under certain circumstances. But where the landlords genuinely required the premises for their own use, or where the tenants were making the tenancies onerous for the landlords by not keeping to the terms of their contracts, or where other such like circumstances existed which were specifically mentioned in the Act, no protection was afforded to the tenants.

The protection of the tenants was thus not absolute but conditioned by the genuine requirements of the landlords. And, in this analysis the genuine

requirement of even one of the joint landlords must prevail over the need of the tenants. Otherwise, it would lead to a somewhat absurd and very unreasonable result that where even nine of the ten landlords genuinely required the tenanted premises for their use or occupation, the premises would not be available to them because all the landlords did not need them. It may also well be that the joint landlords may be brothers, some of whom live outside the town concerned because of business or service requirements and may thus not require the tenanted premises for their personal occupation. If the interpretation contended for by the learned counsel for the appellants were to be adopted, some of these brothers who live in the town concerned and genuinely require the tenanted premises for their use or occupation will not be able to get them vacated because all the brothers, at one and the same time did not so require them. In my opinion, there appears no justification to so construe the provisions of the Act as to deny to some of the joint landlords the use and occupation of the premises of which they are joint owners when the fact of their genuine requirement is fully established."

The decisions relied upon by the learned counsel for the appellant are clearly distinguishable. They are all cases of lessors' assignee suing for eviction. On an assignment of the reversion, the assignee succeeds to the rights and liabilities of the lessors in respect of covenants which run with the land. The assignee of the lessor has, therefore, against the lessee all the rights that the lessor had. The reversion may be severed by an assignment of the reversion in part or by an assignment of the part of the reversion. In either case, the covenant which runs with the land runs with the severed parts and the assignee in respect of the part has the benefit of the lessee's covenants and equally bears the burden of lessor's covenants. Though Section 109 of the Transfer of Property Act applies to a partition among the lessors, (sic) by application of Section 109 as embodying a rule of justice and equity, it is well settled that a partition among the lessors inter se does not affect the integrity of the lease (See, *Badri Narain Jha and Others Vs. Rameshwar Dayal Singh and Others*,). In that case, Their Lordships of the Supreme Court stated as follows:--

"the allegation of partition inter se among the several owners of a Lakhraj holding subject to Mokarrari interest cannot in any way affect the integrity of the lease, in the absence of an allegation of a fresh contract between the split up owners of the holding and the different owners in the Mokarrari interest."

The three decisions relied upon *Keshavdas v. Kanhaiyalal* (Second Appeal No. 141 of 1962, decided on 18-8-1962) (Madh Pra); *Dhannalal v. Jineshwar Prasad Diwan* (Second Appeal No. 461 of 1967, decided on 28-2-1968) (Madh Pra) and *Chandra Sekhar v. Myamatram*, (Second Appeal No. 322 of 1967 decided on 6-8-1970) (Madh Pra) were all cases where the lessor transferred a part of the property leased and the learned Judges dealing with them, held under the general law, independent of Section 109 of the Transfer of Property Act. an assignment of the part of the lease effected a severance of the lease and entitled

the transferee to eject the tenant from the property covered by the assignment. So also, in *Shambhoo Dayal Vs. Chandra Kali Devi and Others*, the suit was by landlord's transferees owning distinct portions in the property leased.

On a consideration of the principles applicable, we are of the view that in a suit by the landlords for ejectment of their tenants on grounds of bona fide requirement of any one of them u/s 12 (1) (e) of the M. P. Accommodation Control Act, 1961, it is not necessary for them to prove that each and every portion of the premises leased to the defendant was required for occupation by all of them. Even if any one of the landlords establishes his bona fide requirement u/s 12 (1) (e), the decree for eviction must follow for eviction of the tenant from the entire premises demised.

In *Kanwar Behari Vs. Smt. Vindhya Devi*, a Division Bench of the Punjab High Court held in construing Section 14(1)(e) of the Delhi Rent Control Act, 1958 the material part whereof was substantially in the same terms as Section 12 (1) (e) of the present Act, that it was not open to the Court to further sub-divide the premises and order eviction with respect to a part thereof. That decision has been approved by their Lordships of the Supreme Court in *S. Sanyal Vs. Gian Chand*, in the following words:--

"In our view that judgment of the Punjab High Court was right on the fundamental ground that in the absence of a specific provision incorporated in the statute the Court has no Power to break up the unity of the contract of letting and attribute incidents and obligations to a part of the subject-matter of the contract which are not applicable to the rest."

So also a Division Bench of the Andhra Pradesh High Court in *Section S. Mohanlal Vs. R. Kondaiah*, has taken a similar view that if the plaintiffs succeeded in proving that any portion of the leased premises is required by them, they would be entitled to a decree for ejectment of the lessee from the entire premises leased to him. (See also *Ramdayal v. Ramnarayan*, AIR 1953 Rai 125). The judgment of the learned Single Judge must, therefore, be affirmed.

In the result, the appeal fails and is dismissed with costs. Hearing fee Rs. 100/-, if certified. (Subsequent Order, D/- 2-4-1971 modifying the judgment of lower Appellate Court by consent is not material for this report).