
(2020) 03 MP CK 0246

In the Madhya Pradesh High Court

Case No : Second Appeal No. 2173 Of 2019

Smt. Mariyam Bai And Another

APPELLANT

Vs

Smt. Shakila Bano And Another

RESPONDENT

Date of Decision : 03-03-2020

Acts Referred:

Madhya Pradesh Accommodation Control Act, 1961 — Section 12(1)(a), 12(1)(e)
Code Of Civil Procedure, 1908 — Section 96, 100

Citation : (2020) 03 MP CK 0246

Hon'ble Judges : Sanjay Dwivedi, J

Bench : Single Bench

Advocate : Anurag Sahu, R. K. Tiwari

Final Decision : Dismissed

Judgement

1. Heard on the question of admission.

This is an appeal under Section 100 of the Code of Civil Procedure being aggrieved with the judgment and decree passed on 01.07.2019 in Regular Civil Appeal No.55/2018 by the Third Additional District Judge, Khandwa Purva Niwad, Khandwa, affirming the judgment and decree passed by the Sixth Civil Judge, Class-I, District Khandwa on 28.06.2018 in Civil Suit No.2600262-A/2016, whereby the decree under Section 12(1)(a) and 12(1)(e) of the M.P. Accommodation Control Act, 1961 (for brevity the 'Act, 1961'), has been granted.

2. As per the facts of the case, the respondents/plaintiffs sent a notice of demand of arrears of rent on 01.10.2016. The same was replied by the appellants/defendants on 03.11.2016. Then, suit was filed on 09.11.2016. Respondent No.1/plaintiff claimed herself to be the owner of the suit house as she purchased the same by virtue of sale-deed dated 18.08.2015 from Mohammad Yasin and Mohammad Ishak. The suit house was rented out to the appellants/defendants for residential purpose at the rate of Rs.800/- per month. The appellants/defendants were the tenants in the suit house even before the

purchase of that house by the respondents/plaintiffs and after selling the same, the erstwhile owner has informed the tenants/defendants regarding sale of the house and the respondents/plaintiffs have also orally informed them about the purchase of the suit house. The appellants/defendants have been asked to make payment of the rent to the respondents/plaintiffs. The appellants/defendants have stopped making payment of rent since September 2015. Despite making oral demand for payment of rent, the same was not paid and then a notice was sent for non-payment of 13 months' rent. Even thereafter, when nothing was done, the suit was filed for eviction of the appellants/defendants on the ground of 12(1)(a) and 12(1)(e) of the Act, 1961 and also for bona fide need of the suit house. Even after serving the notice, the vacant possession was not handed over to the respondents/plaintiffs, therefore, the suit was filed on two grounds.

3. In a reply to the notice sent by the respondents/plaintiffs, the appellants/defendants have denied that the respondents/plaintiffs are the land-lord and possessed the house in question. It is also denied by the appellants/defendants that the respondents/plaintiffs have purchased the suit house and Mohammad Yasin and Mohammad Ishak have also stated that the sale-deed on the basis of which, the respondents/plaintiffs are claiming right over the house, is bogus and sham and that does not give any right to the respondents/plaintiffs to file any suit or to claim vacant possession of the suit house. They have also denied the tenancy of the respondents/plaintiffs. They have also denied that any information was given about the sale of the suit house and also about the purchase of the same. They have denied any relationship of the land-lord and the tenant. The appellants/defendants had also filed a counter suit, in which, they have claimed to be the owner of the suit house and stated that Fida Hussain was the original owner of the suit house and they occupied the said house by oral Hibanama, therefore, they sought declaration of their title over the suit house and for permanent injunction against the respondents/plaintiffs asking that they be restrained to disturb the peaceful possession of the appellants/defendants.

4. The respondents/plaintiffs in the reply of counter claim have submitted the written statement and denied the ownership of the appellants/defendants over the suit house and also denied that any oral Hibanama was executed in favour of the appellants/defendants by Fida Hussain.

5. The trial Court framed as many as 12 issues and finally granted the decree of 12(1)(a) and 12(1)(e) of the Act, 1961. The issue No.2 relates to non-payment of arrears of rent and in respect of bona fide need, the issue Nos.3 and 4 were framed.

6. With regard to issue Nos.3 and 4 for bona fide need, the trial Court has given finding in paragraph-55 onwards and has observed that as per the statement of plaintiff, namely, Shakila Bano (PW-1), she purchased the suit house for residential purpose and at that time she was residing in the adjoining house, on rent. She has also stated that she required the house for her personal need to reside over there because she had no alternative accommodation of her own in

Khandwa town. However, in the cross-examination, the appellants/defendants have suggested about alternative accommodation of the respondents/plaintiffs, but they did not produce any evidence to show that the respondents/plaintiffs had any alternative vacant accommodation of their own. In absence of any cogent material produced by the appellants/defendants during the trial, the trial Court has given finding that the respondents/plaintiffs have successfully proved their case in respect of bona fide need. Accordingly, the decree on the ground of 12(1)(e) has been passed in their favour.

7. So far as the issue in respect of non-payment of arrears of rent is concerned, the trial Court has given finding in paragraph-58 onwards, in which, it is found that even after making demand of arrears of rent by sending a notice in writing, the appellants/defendants have not adduced any evidence to substantiate that they have paid the arrears of rent as per the demand. The trial Court has also found that the appellants/defendants have not paid the arrears of rent amounting to Rs.10,400/- and, therefore, the decree of 12(1)(a) was passed against them.

8. The judgment and decree passed by the trial Court was appealed under Section 96 of the Code of Civil Procedure. The appellate Court vide judgment and decree dated 01.07.2019 has also dismissed the appeal, affirming the finding given by the trial Court. In respect of decree of 12(1)(a) of the Act, 1961, the appellate Court has considered the case of the parties in paragraph-3 and has reiterated the fact that a notice was sent on 01.01.2016 terminating the tenancy w.e.f. 31.10.2016; no arrears of rent was deposited by the defendants; and therefore, the appellate Court has found that there was no illegality committed by the trial Court while granting the decree on the ground of 12(1)(a). The appellate Court again elaborately reappreciated the evidence, which were adduced by the parties to ascertain their title over the suit house, and finally the appellate Court has also found that the respondents/plaintiffs have purchased the suit house from the erstwhile owner and as such, it is observed that the respondents/plaintiffs required to suit house for bona fide need for the residential purpose.

9. The learned counsel for the appellants/defendants during the course of arguments has relied upon the decision reported in 1988 (33) MPLJ 585, parties being Hariram Soni vs. Smt. Sushila, in which, the High Court has observed that for granting decree of eviction by the Court without considering whether notice of demand of payment of rent was issued to the tenant by land-lord in prescribed manner or not, is not proper. The Court has also observed that for granting the decree on the ground of 12(1)(e), the bona fide requirement has to be determined by applying objective test. However, in the present case, that was not the issue before the Court whether the notice of arrears of rent was sent in prescribed manner or not. Admittedly, the notice was sent and that was replied by the appellants/defendants denying the ownership of the respondents/plaintiffs and, therefore, the law laid down by the High Court in the case of Hariram Soni

(supra), is not applicable.

10. So far as the decree of 12(1)(a) of the Act, 1961 is concerned, it is observed by the trial Court while appreciating the evidence of the respondents/plaintiffs that the appellants/defendants failed to substantiate that the need, for which, the house is sought to be vacated was not bona fide and the respondents/plaintiffs have some other alternative accommodation available. Only suggestions have been given in cross-examination and that was suitably replied by the respondents/plaintiffs denying those suggestions saying that no other alternative accommodation of their own is available which is vacant and suitable for their residential purpose. Therefore, the case relied by the appellants/defendants is not applicable and as such, I do not find any infirmity in the judgment and decree passed by the Courts below.

11. Considering the above, since the finding given by both the Courts below are concurrent finding of facts and during the course of arguments, the learned counsel for the appellants has failed to establish any perversity in the judgment and decree passed by both the Courts below and considering the law laid down by the Supreme Court consistently holding that the jurisdiction of this Court to interfere with the finding of fact under Section 100 of the Code of Civil Procedure is very limited until the finding is either perverse or based on no evidence, this Court cannot interfere with the concurrent finding of fact until and unless the same is perverse or contrary to material on record.

[See: Sugani (mst.) v. Rameshwar Das (2006) 11 SCC 587, Gurdev Kaur vs. Kaki (2007) 1 SCC 546, Prakash Kumar v. State of Gujrat (2004) 5 SCC 140, Thiagarajan v. Sri Venugopalaswamy B. Koil (2004) 5 SCC 762 and Narayanan Rajendran v. Lekshmy Sarojini (2009) 5 SCC 264].

12. It is equally well settled that this Court in exercise of power under Section 100 of the Code of Civil Procedure cannot reappraise evidence. [See: Thimmaiah v. Ningamma (2000) 7 SCC 409]. It is equally well settled where on appreciation of evidence, even if two views are possible, this Court in exercise of powers under Section 100 of the Code of Civil Procedure would not interfere. [See: Kondiba Dagadu Kadam v. Savitribai Sopan Guzar (1999) 3 SCC 722 and Veerayee Ammal v. Seenii Ammal (2002) 1 SCC 134]. It has also been held by the Supreme Court that interference with a question of fact is not permissible. [See: Basayya I. Mathad v. Rudrayya S. Mathad (2008) 3 SCC 120]. In S. Appadurai Nadar v. A. Chokalinga Nadar (2007) 12 SCC 774. It has been held by the Supreme Court that in exercise of power under Section 100 of the Code of Civil Procedure, the Courts should be slow in reversing the finding of fact. The finding of fact even if erroneous would not be disturbed in second appeal unless the finding is shown to be perverse and based on surmises and conjectures. [See: Kulwant Kaur v. Gurdial Singh Mann (2001) 4 SCC 262, Hafazat Hussain v. Abdul Majeed (2001) 7 SCC 189 and Bharath Matha v. R. Vijay Rengandathan (2010) 11 SCC 483].

13. In view of the above, I do not find any substance in the appeal as the same does not involve any substantial question of law. The appeal is, accordingly, dismissed.