

(1997) 07 MP CK 0012
In the Madhya Pradesh High Court
Case No : S.A. No. 224 of 1996 (J)

Sukhlal

APPELLANT

Vs

Murti Shri. Krishnachand Anandbihariji and Others

RESPONDENT

Date of Decision : 09-07-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)(a),
12(1)(b)

Citation : (1999) 2 MPJR 90

Hon'ble Judges : S.C. Pandey, J

Bench : Single Bench

Advocate : Ashok Jain, for the Appellant; J.P. Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pandey, J.

This appeal, u/s 100 of the Code of Civil Procedure, is directed against the judgment and decree dated 12.2.1996 passed by Xth Additional Judge to the Court of District Judge, Jabalpur (MP.) in Civil Appeal No. 9-A/94, arising out of the judgment and decree dated 21.4.1994 passed by 1st Civil Judge, Class-I, Jabalpur (MP.) in Civil Suit No. 52-A/94.

The respondents described themselves in the cause title of memo of appeal as trustees of the Murti Shri Kirshnachand Anandbihariji at House No. 1/393, Kotwali Ward, Miloniganj, Jabalpur a private trust. They claimed that they are the landlords of the accommodation bearing Municipal Corporation No. 279 situate of South Miloniganj, Jabalpur (MP.). They claimed to be the owners and landlords of the aforesaid accommodation. It was stated by them in the plaint that the appellant was the tenant of a part of the aforesaid accommodation on a monthly rent of Rs. 25/- (Rupees Twenty Five) per month. This part was particularly described in the plaint map in red colour and marked by letters ABCDEFGHIJKLM in the plaint map. It was claimed that the tenancy was oral. The respondents

alleged in the plaint that the appellant had not paid the arrears of rent from 1.11.1986 to 31.5.1988 amounting to Rs. 475/- (Rupees Four Hundred Seventy Five) despite the notice of demand dated 14.7.1988 and, therefore, he was liable to be evicted u/s 12(1)(a) of the MP. Accommodation Control Act, 1961 (henceforth "the Act"). The second ground raised by the respondents was that the appellant had parted that possession of the suit house in favour of a vegetable seller by permitting him to sell the vegetables in the front varandah of the suit house. It was further claimed that the appellant's son Kishanlal was handed over possession of the remaining portion of the house. Kishanlal was not the member of family of the appellant as he has separated from the family. Thus, on the aforesaid two counts eviction u/s 12(1)(b) of "the Act" was sought. The third ground for eviction was based on Section 12(1)(c) of "the Act". It was claimed that the suit house was let out for non-residential purpose but Kishanlal was using it for his residence, therefore, ground u/s 12(1)(c) of "the Act" was made out. The fourth ground for eviction was based on Section 12(1)(i) of "the Act". It was stated that the appellant had acquired vacant possession of his own house and he was doing the business in that house and, therefore, also he was liable to be evicted. The fifth ground for eviction was based on Section 12(1)(h) of "the Act". Although, the plea therein appears to be a rolled plea. It is an admixture of ground u/s 12(1)(g) and 12(1)(h) of "the Act" but the pleadings of the respondents show that they require the suit house for demolishing the structure and re-building it and claimed that the same cannot be Carried out without the house being vacated by the appellant. Yet another ground was raised u/s 12(1)(m) of "the Act" on the allegation that the appellant had constructed a Tapra in the varandah of the ground floor which was let out to the vegetable seller. It was also claimed that a latrine was also constructed by the appellant shown in the plaint map in green colour. The act of constructing a Tapra and latrine was done without the permission of the respondent. It was claimed that the alterations made by the appellant resulted in the detriment of the respondents and reduced the value of the suit house substantially. For this reason, the appellant was liable to be evicted u/s 12(1)(m) of "the Act".

The appellant in his written statement claimed that the suit property belonged to Murti Shri Krishnachand Anandbihari ji and the respondents were not the owners and landlords of the accommodation. It was not disputed by the appellant that the suit house was let out to him for business purpose for fifty years back. He stated in his written statement that he was carrying on the business of his joint Hindu Family as a Karta of the family assisted by Kishanlal. The appellant claimed the rent at the rate of Rs. 25/- (Rupees Twenty Five) per month which was being paid to the respondents regularly but the respondent No. 1 refused to accept the rent despite the fact that the same was tendered by means of money-order. He claimed that he has already deposited the entire arrears of rent in the "C.C.D. of the Court and, therefore, there was no question of eviction u/s 12(1)(a) of "the Act". The respondents further pleaded that he did not part with the possession of the house to the alleged vegetable seller. The front varandah was

not given to vegetable seller as alleged in the plaint. It was also claimed that Kishanlal was the member of joint Hindu family and he was helping the appellant as a member of the joint Hindu family. Therefore, the question of granting decree u/s 12(1)(b) of "the Act" did not arise. The appellant further pleaded that it was wrong to suggest that the suit house was being used for residential purpose. It was being used for the business of kirana goods with the support of his alleged son Kishanlal. The appellant further denied the fact that he was carrying on the business in his own house and, therefore, claimed that there was no ground made out u/s 12(1)(i) of "the Act". The appellant further denied that the suit house was required by the respondents for the purpose of reconstruction and, therefore, no ground u/s 12(1)(h) of "the Act" was made out. It was further claimed that there was no Tapra constructed by the appellant for letting out to the vegetable seller. It was also denied that no latrine was constructed by the appellant near the front varandah of the ground floor shown in the green colour in the map attached with the plaint. It was further denied that the interest of the respondents was in any way affected and it was claimed that the value of the property was not substantially diminished in any way by any act of the appellant.

On these pleadings, the parties went to trial. The trial Court held that there was a relationship of landlord and tenant between the respondents and the appellant. It was also held by the trial Court that the respondent Nos. 1 to 5 were the owners of the suit house as it was admitted by the appellant in his evidence. It was also found by the trial Court that it was not proved that the appellant was in arrears of rent from 1.11.1986. It was further found by the trial Court that it was not proved by the respondents that the accommodation in question was given by the appellant to his son Kishanlal who had separated. Thus, the trial Court held that so far as parting with possession by the appellant to Kishanlal was concerned, the respondents could not prove their case. It was held by the trial Court that the appellant did not possess separate building of his own for the purpose of running his business. The trial Court however, found that the son of the appellant Kishanlal was using the suit accommodation for residential purpose. It was also held that the suit house required substantial repairs and for this purpose the respondents were entitled to a decree u/s 12(1)(h) of "the Act" as they had pleaded that they wanted to reconstruct the house. The trial Court also found that far as the ground of the respondents were that a portion of the house was let out by the appellant after constructing a Tapra to one Pancham Lal Patel was proved by the respondents, therefore, a decree u/s 12(1)(b) of "the Act" on the ground of parting with possession to Pancham Lal Patel was made out. The trial Court also granted decree u/s 12(1)(m) of "the Act" on the ground that the appellant had constructed a Tapra and latrine in the suit accommodation and for those reasons, the appellant was liable to be evicted u/s 12(1)(m) of "the Act". Accordingly, the suit of the respondents was decreed.

In appeal, the lower appellate Court maintained the decree of the trial Court on the ground that the suit accommodation was being used for residential purpose and not for business purpose, and therefore, the lower appellate Court held that

ground u/s 12(1)(c) of "the Act" was made out. The lower appellate Court also confirmed the decree of the trial Court under Sections 12(1)(g) and 12(1)(h) of "the Act". Although, it should have been u/s 12(1)(h) of "the Act". The lower appellate Court also held that the ground under Sections 12(1)(b) and 12(1)(m) have not been made out and, therefore, the decree of the trial Court under Sections 12(1)(c), 12(1)(g) and 12(1)(h) of "the Act".

The appeal was admitted on the following substantial question of law by this Court on 22.3.1996-

(1) Whether the Court below was justified in passing a decree u/s 12(1)(c) of M.P. Accommodation Control Act, 1961 on the ground that the separated son was using part of the suit house for residential purposes?

(2) Whether the lower appellate Court was right in passing a decree u/ss. 12(1)(g) and (h) of MP. Accommodation Control Act, 1961 without complying with the provisions of Section 18 of the Act.

The respondents, however, have also filed a cross-objection under Order 41, Rule 22 of the Code of Civil Procedure. They have claimed that the lower appellate Court should have granted a decree under Sections 12(1)(b) and 12(1)(m) of "the Act" also.

This case is being heard and disposed of finally with the consent of learned counsel for both the parties and the cross-objection filed by the respondents shall also be dealt with after framing the following further substantial questions of law -

(1) Whether the alleged constructions made by the appellant on the suit premises resulted in diminishing the value of the suit premises and, therefore, the respondents are entitled to a decree u/s 12(1)(m) of "the Act"?

(2) Whether under the facts and circumstances of the case, ground u/s 12(1)(b) of "the Act" is also made out ?

The learned counsel for the appellant argued that no ground u/s 12(1)(c) of "the Act" was made out. The learned counsel for the appellant argued further if the appellant had used the non-residential premises also for residential purpose did not amount to inconsistent user within the meaning of Section 12(1)(c) of "the Act". The learned counsel for the appellant stated that the Court below has wrongly held that the purpose of tenancy was changed by the appellant. The learned counsel for the appellant asserted that the suit house was being used for non-residential purpose mainly and incidentally the appellant's son resided in the suit accommodation. The learned counsel for the appellant fervently argued that, unless and until it is proved that the intention of the appellant was to give-up the running of business and the suit premises and using the same for residential and residential purpose alone, it cannot be said that the appellant was using the suit house for a purpose inconsistent that the purpose for which the suit house was let out. The learned counsel for the appellant draw the attention

of this Court to a decision of the Supreme Court in the case of Sant Ram Vs. Rajinder Lal and Others, and argued that the Supreme Court has held that integrity of the tenancy was maintained by the appellant and therefore, any incidental inconsistent user which is intimately connected with the business of the appellant cannot be said to be furnishing a ground u/s 12(1)(c) of "the Act". The learned counsel for the appellant further argued that so far as the ground u/s 12(1)(h) or even Section 12(1)(g) is concerned, the respondents cannot evict him from the suit premises unless they follow the provisions of Section 18 of "the Act".

In reply, the learned counsel for the respondents however, argued that the suit premises were admittedly let out for non-residential purpose and the finding of both the Courts below is to the effect that portion of the premises was used by the son of the appellant, Kishanlal for residential purpose. This, he could not do and, therefore, a decree u/s 12(1)(c) of "the Act" was rightly passed. The learned counsel for the respondents further argued that the Courts below should have granted a decree u/s 12(1)(b) of "the Act" as the appellant parted with the possession of portion of the demise. He had constructed a Tapra on the premises for the purpose of letting it out and had actually let it out and, therefore, the trial Court's decree u/s 12(1)(c) of "the Act" should not have been reversed. The learned counsel for the respondents further argued the very fact that the appellant constructed a Tapra on the suit premises for the purpose of letting it out showed that he was liable to be evicted u/s 12(1)(c) of "the Act". Even, if it be held that the appellant was not liable to be evicted on the ground that he had not used the suit premises in any inconsistent manner by using as residential purpose, the construction of a Hut was for letting it out amounted definitely to an inconsistent user of the suit premises and, therefore, the decree of the trial Court should be sustained u/s 12(1)(c) of "the Act". The learned counsel for the respondents further argued that the respondents have proved the ground u/s 12(1)(m) of "the Act" construction of a Tapra and a latrine in the suit premises amounted to an user detrimental to the interest of the respondents and such user has diminished the value of the property and, therefore, a decree u/s 12(1)(m) of "the Act" should also be passed. The learned counsel for the respondents further argued that any of the main ground under Sections 12(1)(b), 12(1)(c) and 12(1)(m) of "the Act" are held to be proved the question of complying with section 18 of "the Act" did not arise. For all these reasons, the learned counsel for the respondents prayed that this appeal was liable to be dismissed.

Before embarking main point involved in the suit, this Court finds that there is a lot of confusion in the minds of the lawyers and the litigants regarding the Sections 12(1)(g) and 12(1)(h) of "the Act". If we read the aforesaid sub-sections of Section 12(1) of "the Act", it would be clear that the legislature has chosen to give two distinct grounds for eviction of the tenant. Both these grounds are subject to Section 18 of "the Act". The ground u/s 12(1)(g) of "the Act" is specifically made for carrying out repairs when the suit accommodation became unsafe or unfit for human habitation and the landlord required it bona

fide for repairs. The object of the statute is for re-pairing a dilapidated house. This ground is available to the landlord when he cannot carry out the repairs unless the tenant vacates it. Now repairing the dilapidated house altogether different from reconstructing or re-building it. If a building has to be demolished owing to the fact that it is so that it cannot be repaired, the landlord cannot claim eviction u/s 12(1)(g) of "the Act". When there is no question of repairing the house, Section 12(1)(g) of "the Act" does not come into operation. Only When the landlord bona fide requires form repairing it, he can claim eviction u/s 12(1)(g) of "the Act". It must also be noticed that Section 18 of "the Act" restricts the right of landlord in case of Section 12(1)(g) of "the Act" by giving the option to the tenant for re-entry after the house is repaired. In fact, the legislature itself restricts the right of eviction only for the repairs. The purpose of eviction by operation of Section 18 of "the Act" is restricted for relating it. However, if the landlord does not require the house for repairing it but for completely demolishing and rebuilding it or reconstructing a portion of the building, different considerations arise, here the bona fide requirement of the landlord is for altogether different ground. Reconstruction cannot be confused with repair. Here the express plea of the landlord is that he wants the suit house for building a new. The old part is not to be repaired but a new building is required to be constructed. When the landlord comes with a plea that he wants to construct a new building on the ground that the house occupied by the tenant is dilapidated and says further that he wants to reconstruct a new building, he definitely pleading eviction u/s 12(1)(h) of "the Act" therefore, the question of applying the Section 12(1)(g) of "the Act" does not arise. In this case too, the Courts below have not considered the scope of Sections 12(1)(g) and 12(1)(h) of "the Act" properly. The respondents had come to the Court with plea that they wanted to reconstruct the suit house, the reason for reconstructing given by them was that it was unsafe for human habitation. In fact, this was a reason for claiming reconstruction and not a ground for eviction. It cannot be disputed that the landlord can claim a ground for eviction u/s 12(1)(h) of "the Act" for the reason that the house cannot be repaired. He can take any other plea for reconstruction of a tenanted building. However, the reason given for reconstruction should not have been itself made a ground of eviction. The Courts below should have read the pleading of the respondents in proper perspective.

Although, nothing turns on in this case on the question whether a ground of eviction under Sections 12(1)(g) or 12(1)(h) of "the Act" because Section 18 of "the Act" would be equally applicable in either case, it is for the sake clarifying the position, this Court has taken-up this exercise.

The first question that arises for consideration of the lower appellate Court was right in granting a decree u/s 12(1)(c) of "the Act". Section 12(1)(c) of "the Act" reads as under -

Sec. 12(1)(c) -"that the tenant or any person residing with him has created a nuisance or has done any act which is inconsistent with the purpose for which he

was admitted to the tenancy of the accommodation, or which is likely to effect, adversely and substantially the interest of the landlord therein -

Provided that the use by a tenant of a portion of the accommodation as his office shall not be deemed to be an act inconsistent with the purpose for which he was admitted to the tenancy.

This section is in the three parts. Firstly, (i) creation of nuisance by the tenant or by any person residing with him, or (ii) doing any act which is inconsistent with the purpose for which the tenant was admitted to tenancy of the accommodation, or (iii) any act which is likely to affect adversely and substantially the interest of the landlord. It is obvious that the respondents do not claim eviction on the ground No. (i) or ground No. (iii) mentioned above. The question is, therefore, whether the user made by the appellant can be held to be inconsistent on the ground the business premises were being used for residential purpose. The lower appellate court has granted a decree u/s 12(1)(c) of "the Act" on the ground that the suit house was being used by Kishanlal for residential purpose alongwith business purpose. The lower appellate Court has not examined the evidence led by the parties and has decided the case merely because the appellant admitted that the suit house was let out for non-residential purpose. The evidence on record is not very clear and cogent to the effect when the suit house was let out by the respondents. The respondents did not plead specifically when the tenancy commenced. The respondents have not filed any lease-deed or rent note to show the date of commencement of the tenancy. The PW-1, Tikamji Pasari stated in paragraph No. 15 of his statement that he was unable to say when the suit house was let out. He was unable to say on what conditions the suit house was let out. The witness stated that he was trying to find out and if he get the copy of the agreement, he shall file it. The witness, however, know about the pleadings of tenancy of other tenants like Durgaprasad, Sharadlal and others. So far as Durgaprasad is concerned, he stated that he was the tenant from last forty years. The witness also has admitted in paragraph No. 20 that in the suit premises Kishanlal was sitting in the shop for last 20 years. This shop is a kirana shop. The PW-3, Vishnu Prasad also says that in the suit shop the son of Sukhlal was sitting and a room was being used for residential purpose. The PW-5, Shankarlal supports the case of the appellant entirely but his evidence is not very reliable because he is related to the appellant. As against this, Sukhlal/the appellant has examined himself. He has stated in his evidence that the suit house was let out by Hiralal Pasari in the year 1926. He was at that time the Sarvarakar of the temple.

It is, therefore, clear from the evidence on record of the parties that the tenancy is very old. The documents filed by the respondents themselves show that in the year 1983-84, the suit house continued to be let out at the rate of Rs. 15/- (Rupees fifteen) per month. This document Ex.P-2 is the copy of the assessment of the Municipal tax for the year 1983-84 to 1987-88. The document Ex.P-4 is the copy of the same register of the assessment for the year 1988-89 to

1992-93. In that the accommodation in question is to be assessed at the rate of Rs. 150/- (Rupees One Hundred Fifty) for the residence as well as shop. Therefore, it appears that since the year 1988 at least the suit house was being used for composite purpose. However, the assessment of the Municipal Corporation's register is not conclusive of another matter. The respondents have not pleaded and proved by cogent evidence on record when the appellant's son began to use the premises for residential as well as non-residential purpose. In absence of any specific statement on the part of the respondents as to use of the shop for residential purpose and in what manner the appellant's son was using the residential purpose, the evidence of DW-1 has to be accepted that he was residing in the house from the very beginning of the tenancy. The respondents should have shown by very clear and cogent evidence on record that initially the appellant was not using one room of the accommodation for residential purpose from the inception of the tenancy. Under such circumstances, the only inference that can be drawn from the evidence on record is that the appellant and his son were using the suit accommodation for composite purpose from the very beginning. The lower appellate Court, therefore, wrongly held on the basis of mere admission of the appellant that the respondents were entitled to a decree of eviction u/s 12(1)(c) of "the Act" on the ground of the inconsistent user. The Court below should have considered the decision of the Supreme Court in the case of D.C. Oswal Vs. V.K. Subbiah and others Civil Appeal No. 4447/91, decided on 12.11.1991, for finding of its ratio. It is clearly laid down in that case that the tenant was not liable to be evicted on the ground of composite user of his premises let out for the business purpose. If the change of use was made without any objection on the part of the landlord then a decree could not be passed for eviction as the landlord willingly accepted the change of use. That apart, there is evidence on record to the effect that the appellant is mainly using the shop for business purpose and is residing there in the night. There is no evidence led to the effect that in such circumstances can be held to be inconsistent user in the case of Sant Ram (supra). A cobbler was using a shop let out for the business purpose for staying in the night and also for cooking. It was held by the Supreme Court that it cannot be held that the purpose exclusively commercial cannot be said to be incomplete that with any residential use even of a portion. In this particular case, similar is the position. The suit premises were being used for the purpose of small kirana shop for a very long time and a portion of it is being used for a residential purpose. Therefore, this Court comes to the conclusion that so far as the inconsistent user is concerned, the respondents are not entitled to a decree as per Section 12(1)(c) of "the Act" as held by the Court below. The inconsistent user here is being referred only to the use of a portion of the shop for residential purpose by the tenant.

The next point that arises for consideration is if the appellant can claim eviction u/s 12(1)(c) of "the Act" itself on the ground that the appellant had constructed a latrine and also a Tapra. It was contended by the learned counsel for the respondents that construction of a Tapra would definitely be inconsistent user so

also a construction of a latrine. So far as Tapra is concerned, it is merely a temporary structure. The case of the respondents is that this Tapra was constructed for the purpose of letting out has not been upheld by the Court below after going through the evidence of Pancham Lal Patel who appeared in the witness box as DW-2. No case for inconsistent user of the Tapra can be made out. The evidence of the DW-2 Pancham Lal Patel is that the appellant keeps his goods in the Tapra. The temporary arrangement made by the appellant in order to keep his goods in the Tapra for the purpose of his business cannot be said to be inconsistent user within the meaning of Section 12(1)(c) of "the Act"; nor can this Court persuade itself to come to the conclusion that the construction of a latrine itself is an inconsistent user. More-so that the respondents did not lead any evidence from what time the Tapra and the latrine were constructed and whether they objected such construction on the part of the appellant. Thus, in sum, this Court comes to the conclusion that ground u/s 12(1)(c) of "the Act" is not made out.

So far as the ground u/s 12(1)(h) of "the Act" is concerned, the learned counsel for the appellant did not assail the merits of the conclusion of the lower appellate Court very seriously. The evidence of the appellant himself that the house was in existence since the year 1926. The appellant also admitted that the house was old and the part portion of the house which was being as a godown had already fallen. There is also evidence of K.K. Namdeo, the PW-2, who has supported the case of the respondents that the house is very old and is liable to fall down. The portion of that house has already in shambles. This evidence has been accepted by the Court below, therefore, the respondents are entitled to a decree u/s 12(1)(h) of "the Act", subject to the provisions of Section 18 of "the Act".

So far as the grounds raised by the learned counsel for the respondents in cross-objection are concerned, this Court is of the view that the Court below has rightly come to the conclusion that the construction of a Tapra and the latrine would not diminish the value of the suit accommodation and, therefore, no ground u/s 12(1)(m) of "the Act" was made out.

So far as the ground u/s 12(1)(b) of "the Act" is concerned, it is held as agreeing with the Courts below that the appellant did not part with possession. The evidence of DW-2 Pancham Lai Patel shows that he was not using the suit premises for selling vegetables. This evidence of the witness has been accepted by the Court below and the finding of fact cannot be disputed in this second appeal. The other ground u/s 12(1)(b) of "the Act" was-that the appellant had handed over possession to his son Kishanlal who was doing the business in the shop. There is evidence on record to the effect that Kishanlal was sitting in the shop for over 20-25 years alongwith his father. There is no evidence on record that there was a partition between the members of the joint Hindu family. Even otherwise, the definition of member of the family is wider under the Act". The son is definitely a member of the family and in case the father permits his son to look after his business, it cannot be said that he had parted with possession of

the premises. There is no evidence on record that the appellant had totally assigned his business of kirana and accommodation to his son and has given-up his business.

The result of the aforesaid discussion is that the respondents are entitled to a decree u/s 12(1)(h) of "the Act". This Court, therefore, set aside the decree under Sections 12(1)(c) and 12(1)(g) of "the Act" and decrees the claim of the respondents only u/s 12(1)(h) of "the Act". The judgment and decree of the Court below is upheld u/s 12(1)(h) of "the Act". However, the case is remitted to the trial Court for giving an opportunity to the appellant to exercise his option u/s 18 of "the Act". Accordingly, it is necessary for the sake of clarity to substitute a new decree after setting aside the decree of the Court below. The eviction of the appellant u/s 12(1)(c) and 12(1)(g) of "the Act" is set aside but his eviction u/s 12(1)(h) of "the Act" is maintained. However, the case is remitted to the trial Court for limited purpose of giving opportunity to exercise his option u/s 18 of "the Act" within two months from today. The parties are directed to appear before the trial Court on 26th August, 1997. Subject to the directions made hereinabove the appeal fails and is dismissed. No costs.