
(2013) 11 MP CK 0119
In the Madhya Pradesh High Court
Case No : Second Appeal No. 1086 of 2000

Sureshchandra

APPELLANT

Vs

Hariom

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : (2013) 11 MP CK 0119

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Avinash Zargar, for the Appellant; Ishteyaq Husain, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Trivedi, J.—Heard on the question of admission. This is a second appeal by the appellant/defendant against the judgment and decree dated 26.08.2000 passed in Civil Appeal No. 17-A/2000 by the II Additional Judge to the Court of District Judge, East Nimar, Khandwa, arising out of judgment and decree dated 28.04.2000 passed in Civil Suit No. 128-A/1999 by the I Civil Judge, Class-II, Khandwa.

2. The respondent/plaintiff filed a suit for eviction of the appellant on the ground of arrears of rent, which was not paid, as also on the ground of bonafide need of the suit accommodation under the provisions of Section 12(1)(a), 12(1)(e) and 12(1)(f) of the M.P. Accommodation Control Act, 1961. It was contended in the suit that the appellant/defendant was in arrears of rent and since on demand rent was not paid within time, therefore, he was liable to be evicted. It was further contended in the plaint that the suit accommodation was required for the bonafide need of the children of the respondent/plaintiff, who were studying at the relevant time at Khandwa. It was further contended that the accommodation would be required for the purposes of starting a cycle shop. The claim made by the respondent/plaintiff was contested by the appellant/defendant on the ground that there were no arrears of rent, entire rent was deposited and that the suit

accommodation was not needed by the respondent/plaintiff bonafidely. The Trial Court after framing the issues and recording the evidence, reached to the conclusion that though the relationship of landlord and tenant was established between the parties but the respondent/plaintiff was not entitled to grant of decree of eviction against the appellant/defendant. On an appeal filed by the respondent/plaintiff, learned lower Appellate Court decreed the suit by reversing the judgment and decree of the Trial Court and granted a decree of eviction against the appellant, therefore, this second appeal is required to be filed.

3. This Court has entertained the appeal, granted an interim protection to the appellant and sent for the record vide order dated 04.10.2000. The appellant has remained in possession of the suit accommodation in terms of the interim protection granted by this Court.

4. On 28.10.2013 while the matter was listed for admission, parties were directed to remain present before this Court for the purposes of finding out whether there was any chance of amicable settlement or not. Though the parties are present in the Court but it is informed by learned Counsel for the parties that they are not willing to compromise on the issue on any term. Learned Counsel for the respondent extended an offer that if the premises is vacated and possession is delivered, the respondent/plaintiff will forgo the entire rent of the period. Even this offer is not accepted by the appellant, therefore, the matter is heard on admission.

5. Taking this Court to the findings recorded by the first Appellate Court, it is pointed out that when an application under Order 41 Rule 27 of the CPC was filed by the respondent/plaintiff to produce certain documents on record, no opportunity of hearing was granted to the appellant to rebut such documents even when the same were taken on record. It is pointed out from paragraph 11 of the impugned judgment that while considering the documents, learned first Appellate court has allowed the application made under Order 41 Rule 27 of the CPC by the respondent/plaintiff but did not allow the appellant to submit any document in rebuttal or did not allow the appellant even to cross-examine any such witness. It is contended that this has caused serious prejudice to the appellant.

6. First of all such contentions are examined. The documents which were sought to be produced before the first Appellate Court were the bills with respect to the claim of arrears of rent of the demise premises, some of the mark-sheets of the daughter of the respondent/plaintiff and some sort of proof that the appellant/defendant was having yet another house at Khandwa and, therefore, these facts were required to be taken into consideration as additional evidence. It was seen by the learned lower Appellate Court that at the time of cross-examination of the witnesses, certain documents relating to the education of the children of the respondent/plaintiff were already available on record. The plea with respect to the availability of yet another accommodation to the appellant/defendant was required to be rebutted. At least for the said purpose an affidavit could have

been filed and that would have essentially made the Court to get the said documents proved or the cross-examination on the said documents done, had it been disputed by filing affidavit. Nothing has been indicated in the order-sheets or even in the judgment impugned that such an opportunity, though was demanded, was not granted. Therefore, it cannot be said that any prejudice is caused to the appellant on account of taking additional documents on record. Merely by taking additional documents on record, in the considered opinion of this Court, no error of law is committed by the Court below in given circumstances and, therefore, it cannot be treated to be a substantial error of law on account of which the impugned judgment and decree is to be interfered with.

7. The other aspect is with respect to the bonafide need. True it is that bonafide need was raised on two counts, residential as also commercial and for the residential need even if the studies of children of the respondent/plaintiff is completed now, it cannot be said that the need of the respondent/plaintiff has completely come to an end. It is still a need as the same was also raised on the ground of establishing a business in the suit premises. There is nothing to indicate that such an aspect was rightly appreciated by the learned Trial Court as it has been discussed in various paragraphs of the impugned judgment. The findings reached by the first Appellate Court cannot be said to be perverse in any manner. Even if the decree granted u/s 12(1)(a) of M.P. Accommodation Control Act became inexecutable because of the deposit of the rent, it cannot be said that respondent/plaintiff would not be entitled to grant of decree of eviction on the ground of bonafide need. That being so, there is no apparent error of law committed in consideration of the appeal of the respondent/plaintiff by the lower Appellate Court and reversing the findings of the Trial Court. No substantial question of law arises for consideration in this appeal. The appeal fails and is hereby dismissed.