
(2005) 10 CHH CK 0007
In the Chhattisgarh High Court
Case No : Second Appeal No. 535 of 1990

Vijay Kumar Agrawal and others

APPELLANT

Vs

Ramchander Agrawal

RESPONDENT

Date of Decision : 18-10-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 20 Rule 5, 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 2, 2(b)

Citation : (2005) 10 CHH CK 0007

Hon'ble Judges : Vijay Kumar Shrivastava, J

Bench : Division Bench

Advocate : Rakesh Dubey, for the Appellant;

Final Decision : Allowed

Judgement

Vijay Kumar Shrivastava, J.—This second appeal u/s 100 of the CPC has been directed against the judgment and decree dated 25-8-1990 passed by 1st Additional Judge to the Court of District Judge, Raigarh in Civil Appeal No. 64-A/89 arising out of the judgment and decree dated 30-11-1989 passed by Civil Judge Class-I, Raigarh in Civil Suit No, 41-A/86, whereby the appeal filed by the plaintiffs/appellants has been dismissed. The plaintiffs/appellants filed a suit in the Court of Civil Judge Class-I, Raigarh against the defendant for eviction bearing Civil Suit No, 41-A/86 on the ground that they are the landlords of the suit premises and the suit premises is bonafide required by them for their own need and they have no alternative accommodation in the city of Raigarh. It was also pleaded by the plaintiffs/appellants that they are the landlords and owners in title of the suit house bearing House No. 190/2 and 190/3 situated in Ward No. 17, Hatri Bazar Raigarh and the said premises was let out to the respondent/defendant on a monthly rent of Rs. 120/- by the plaintiffs/appellants. The suit house was let out for residential purpose and the tenancy created therefor was monthly tenancy.

2. The defendant/respondent although admitted that he is tenant of the suit

accommodation but contested the suit on the ground that although the plaintiffs/appellants are owners in title of the suit house yet there is no relationship of landlord and tenant between the plaintiffs/appellants and the defendant/respondent and the plaintiffs/appellants do not require the suit house for their residence." In fact, the defendant/respondent took the suit house on rent from Ramnivas Agrawal, the father of the plaintiffs/appellants, who from time to time raised the rent. Ultimately, Ramnivas Agrawal asked him to raise the rent exorbitantly for which the defendant/respondent did not agree. As a result, the suit for eviction has been filed.

3. Both the parties in support of their case adduced evidence in the trial Court and the trial Court i.e. Civil Judge Class-II, Raigarh, after evaluating, the evidence, held that the plaintiff/appellants are the owners of the suit house and the defendant/respondent in occupation of the suit house is continuing his occupation as tenant of the suit accommodation but despite that no relationship of landlord and tenant exists between the plaintiffs/appellants and the defendant/respondent. Learned trial Court coming to the said conclusion did not consider the other issues regarding bonafide requirement and availability of other suitable accommodation and vide judgment and decree dated 30-11-1989 dismissed the suit.

4. First appellate Court i.e. 1st Additional Judge to the Court of District Judge, Raigarh, after hearing both the parties affirmed the judgment and decree passed by the trial Court and dismissed the appeal.

5. This second appeal has been admitted for hearing on following substantial questions of law:--

(1) Whether the courts below having held that the appellants are owners in title, are justified in holding that the appellants are not landlords within the meaning of Sec. 2 clause (b) of M.P. Accommodation Control Act ?

(2) Whether the courts below erred in law in not holding and recording a finding that the appellant needed the suit premises bona fide and are entitled to obtain vacant possession of the suit premises as they have no other alternative suitable and vacant accommodation in their possession in the city?

6. Both the parties are heard. Records of Courts below perused.

7. Section 2 clause (b) of the Accommodation Control Act, 1961 reads as below:--

Sec. 2(b): "landlord" means a person, who, for the time being, is receiving, or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the accommodation were let to a tenant and includes every person not being a tenant who from time to time derives title under a landlord.

8. From bare reading of the definition of landlord, it is clear that the definition is

exhaustive and gives its own meaning to the term. The definition includes not only the owner of accommodation but other person also who either receives rent or entitled to receive rent in respect of such accommodation from the tenant and accordingly the person who for the time being in respect of an accommodation is either receiving or is entitled to receive rent on his own account or is entitled to receive rent on account of or on behalf of or for the benefit of any other person or is entitled to receive rent as a trustee, guardian or receiver for any other person and so receives the rent or be entitled to receive the rent if the accommodation is let out to a tenant all the person within all these categories are called landlord. The definition also includes a person other than a tenant who from time to time derives title under a landlord.

9. In the instant case, both the Courts below have held that the plaintiffs/appellants are the title holder of the suit accommodation and the said suit accommodation has been let out to the defendant/respondent. The finding of the Courts below are that the father of the plaintiffs/appellants Ramnivas Agrawal let out the suit accommodation to the defendant/respondent long back 15 to 16 years and was receiving the rent from the defendant/respondent. The plaintiffs/appellants did not plead that the suit accommodation was let out to the defendant/respondent by Ramnivas Agrawal because they were minor and the defendant/respondent never gave any consent or any information to the plaintiffs/appellants that he accepts the plaintiffs/appellants as landlords.

10. Admittedly, the suit was filed by the plaintiffs/appellants when they attained majority. The suit was filed in the year 1984 when the age of the plaintiff Vijay Kumar Agrawal was 24 years, Vinod Kumar Agrawal 21 years and Pramod Kumar Agrawal 19 years. The defendant/respondent long back 16 years occupied the suit accommodation after taking the same on rent from the father of the plaintiffs/appellants who is Ramnivas Agrawal. Therefore, from the pleadings of both the parties, it was clear that when the house was let out to the defendant/respondent at that time not only the plaintiffs/appellants were minor but even infant, therefore, till they were minor the natural guardian Ramnivas Agrawal, being guardian of the plaintiffs/appellants, had right to manage the suit accommodation and accordingly when Ramnivas Agrawal let out the house to the defendant/respondent, it should be treated that he let out the accommodation on behalf of owners who were minors and, therefore, on these conditions when the suit was filed after attaining majority by the plaintiffs/appellants, it was not incumbent on the plaintiffs/appellants to specifically plead that when the suit accommodation was let out to the defendant/respondent at that time they were minor and their father let out the suit accommodation being natural guardian. From these pleadings and the finding of the Courts below, after appreciation of evidence, it was established that the owners of the suit accommodation are the plaintiffs/appellants and when the plaintiffs/appellants were minor, their father Ramnivas Agrawal let out the suit accommodation to the defendant/respondent who continued in occupation of the suit accommodation as tenant. After attaining majority, the plaintiffs/appellants asserting themselves owners and landlords

filed the suit for eviction. From all these circumstances, it was clear that Ramnivas Agrawal, the father of the plaintiffs/appellants, during the minority of the plaintiff's/appellants was receiving the rent from the defendant/respondent and after attaining majority, the plaintiffs/appellants themselves were entitled to receive the rent from the defendant/respondent. Therefore, according to the definition as described above, it is clear that the plaintiffs/appellants were entitled to receive rent on their own account being owners and title holder of the suit land and being let out to the defendant/respondent by their natural guardian on rent on their behalf and learned Courts below ignoring the aforesaid material facts and legal proposition erred in holding that the relationship of landlord and tenant does not exist between the plaintiffs/appellants and the defendant/respondent and accordingly the question No. 1 is answered.

11. The plaintiffs/appellants filed a suit for eviction on the ground that the suit accommodation is required bona fide by them for their residence. The defendant/respondent denied the same averring that the plaintiffs/appellants do not require the suit accommodation for their residence. Issues have been framed by the trial Court. Both the parties also adduced evidence in support of their claims, but both trial Court and first appellate Court did not decide the dispute whether the suit accommodation is required bona fide by the plaintiffs/appellants for their residence and no other suitable accommodation is available to them in the city of Raigarh.

12. Order XIV Rule 2 of the CPC reads as below:--

O. XIV R, 2: Court to pronounce judgment on all issues.--(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to--

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

13. Order XX Rule 5 of the CPC reads as below:--

O. XX R. 5: Court to state its decision on each issue.--In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit.

14. From bare reading of both the provisions, it is apparent that both the Courts below were required to decide all the issues on merit. So far as the relationship

of landlord and tenant is concerned, that was not an issue solely dependent on law, that too challenging the jurisdiction of the Court. Therefore, both the Courts below, being Court of facts, are required to decide all the issues which arise between the parties so that the appellate Court may consider and decide the same if needed and the law require decision on all the issues only to save the parties from further harassment, therefore, the Courts below erred in law in not deciding the issues regarding bona fide requirement of the suit premises by the plaintiffs/appellants and non-availability of other alternative suitable and vacant accommodation in their possession in the city. Accordingly, the question No. 2 is answered.

15. In the result, the appeal succeeds and is allowed. The judgment and decree passed by both the Courts below are set aside and the case is remanded to the trial Court with a direction to decide the suit in the light of findings arrived at by this Court in this second appeal. Taking into consideration the facts and circumstances of the case, the parties are directed to bear their own cost.