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Motilal (Dead) And Ors Vs Lakhanlal (Dead) And Ors

First Appeal No. 488 Of 2000

Court: Chhattisgarh High Court

Date of Decision: Feb. 20, 2019

Acts Referred:
Code Of Civil Procedure 1908 â€" Section 96, Order 41 Rule 23#Madhya Pradesh Accommodation Control Act, 1961 â€" Section 2(a), 2(a)(i), 12(i)(f), 12(1)(n)

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Ravish Agrawal, Vaibhav Shukla, B.P. Sharma, M.L. Sakat

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 12-5-2000 passed by the District

Judge, Bilaspur, MP (Now CG) in Civil Suit No. 10-A/99 wherein the said court decreed the suit filed by the original respondent/plaintiff (present

respondents No. A to F are legal representatives of deceased Lakahnlal) against the original appellant Motilal (present appellants are legal

representatives of deceased Motilal) for eviction, injunction, compensation and vacant possession of the land bearing Survey No. 640 area 0.94

decimal situated at Juna Bilaspur, Kewat No. 202, Patwari Halka No. 110, Tahsil and District Bilaspur.

2) Admittedly, original respondent/plaintiff Lakhanlal and original appellant/defendant Motilal were real brothers and property in question is owned by

Lakhanlal. As per version of original appellant/plaintiff, suit land was leased out on monthly rent of Rs.100/- with permission to raise the structure in it

in connection with his business for a period of 20 years expiring on 14-3-1985 to the original appellant by the original respondent. Before the expiry of

the said lease another agreement was alleged to have been executed on 23-12-1971 whereby the appellant is said to have agreed to remove the house

which he had constructed on the expiry of the lease period and the entire material of the house will have to be removed. After expiry of lease period,

the original respondent served a notice on original appellant on 21-6-1993 requiring him to place the respondent in possession of the suit premises after

removal of the structure which was suitably replied by the original appellant. The original respondent, therefore, filed the instant suit under Madhya

Pradesh Accommodation Control Act, 1961 (for short, ""the Act, 1961"") for eviction of the original appellant on the ground of bona fide need on expiry

of the lease deed by efflux of time. It was contended by the original appellant before the trial Court that lease deed was in perpetuity and that being so

the original respondent was not entitled to claim eviction and suit premises were not required for bona fide need of the original respondent. Execution

of agreement dated 23-12-1971 is also denied as fabricated. After hearing the parties, the trial Court passed a decree in favour of the original

respondent on the ground that the lease was not in perpetuity and it expired on 14-3-1985. The original respondent is also entitled for compensation @

Rs1000/- per month for three years preceding to the date of filing of the suit and again decreed compensation @ Rs.15000/- per month if land is not

vacated within three months of the decree.

3) Learned counsel for the appellants would submit as under:

i) Suit land granted on lease to the appellant was non-agricultural open land on which the appellants were permitted to construct commercial ventures

and as per Section 2(a) of the Act, 1961 falls under category of accommodation. Section 2(a)(i) of the Act, 1961 may be read as under:

2(a) ""accommodation"" means any building or part of a building whether residential or non-residential and includes (I) any land which is not being used

for agricultural purposes.

ii) As per Section 12(1)(n) the accommodation includes an open land and deals with restriction of eviction of tenants from an open land. Section 12(1)

(n) of the Act, 1961 may be read as under:

12(i)(n) in the case of accommodation which is open land, that the landlord requires it for constructing house on it. , therefore, finding of the trial

Court that open land is not an accommodation is completely erroneous and is liable to be set aside.

iii) The respondents have failed to prove the requirement of bona fide need for business purpose as per Section 12(i)(f) of the Act, 1961 and as per

document filed by the appellants i..e, D5 to D10, the respondents are having alternative accommodation within Bilaspur jurisdiction, therefore, they are

not entitled for eviction of the appellants.

iv) As there is no finding regarding bona fide requirement of the land by the trial court, the case should be remanded back to the trial Court for giving

such finding.

v) Section 12(i)(e), (h) and (n) of the Act, 1961 is not applicable in the present case because these provisions relate to land for residential purposes,

therefore, finding of the trial Court is liable to be set aside.

He placed reliance on the decisions of Hon'ble Supreme Court and Hon'ble High Court of Madhya Pradesh in the matter ofM /s. Rahabhar

Production Pvt. Ltd vs. Rajendra K. Tandon, reported in AIR 1998 SC 1639 at para 18,, Shri Uttamchand and another vs. Shri Purushottamdasji Patel,

reported in 2000(2) MPHT 247, S.J. Ebenezer vs. Velayudhan and others, reported AIR 1998 SC 746 at para 11, and Gajanan Saw Mill vs. Gopal

Agrawal and others, reported 2001 (1) MPLJ 630.

4) Learned counsel for the respondents would submit as under:

i) There is pleading regarding bona fide requirement of the land for construction by the original respondent in his plaint and both parties led evidence on

that count, therefore, as per Order 41 Rule 2 of CPC, the court is not confined to the ground of objection set forth in the memo of appeal and may

decide the appeal for complete justice between the parties.

ii) In the present case, issues are framed regarding nature of lease and bona fide requirement of the respondent and both parties led evidence on each

count, therefore, it is not a case where remand order can be passed. Remand order will cause hardship to the respondents because the case will again

be lingered for one decade or more.

iii) The original respondent pleaded before the trial Court that the suit land is required for construction of a hotel for his two major sons and that ground

comes within the purview of Section 12(i)(n) read with Section 12(i)(f) of the Act, 1961. High Court of Madhya Pradesh in catena of cases

interpreted the word ""requires"" in the sense of ""wants"" or ""desires"" and further says that it is for the landlord to say that he wants the land for

construction. It is for the the tenant to say that the landlord has no real desire to construct, but same is not established by the appellant/tenant before

the trial Court. It is clear from the evidence that not only the original respondent himself stated that his sons crossing the age of 35 years and still

unemployed on the date of filing of the suit but the evidence which has been brought on record to the effect that the plaintiff and his two sons are

forced to sit in a small watch shop situated at Gole Bazar, Bilaspur, therefore, requirement of the original respondent/plaintiff is established before the

trial Court.

iv) As the period of lease is fixed and the appellant is under obligation to vacate the premise after his lease comes to an end by efflux of time, the

period of lease has already expired and defendant is liable to be evicted after removal of the structure.

He placed reliance on the decisions of Hon'ble Supreme Court in the matter of Shiv Swaroop Gupta vs. Mahesh Chand Gupta (1999) 6 SCC 22,2

Atma vs. Mukhtiyaar (2003) 2 SCC 3 and Pratap Rai vs. Uttam Chand (2004) 8 SCC 490.

5) I have heard learned counsel for the appellant and perused the record in which judgment and decree has been passed.

6) The original respondent namely Lakhanlal examined himself as PW/1, Radheshyam Saraf as PW/2 and exhibited documents Ex. P/1 to P/4. As

against this, the original appellant namely Motilal examined himself as DW/1, Hanuman Prasad Shukla as DW/2 and Ganga Prasad as DW/3 and

exhibited documents D/1 to D/23. Execution of lease agreement between the parties is admitted. In the lease deed (Ex.D/1) it is clearly mentioned

that period of lease is 20 years starting from 15-3-1965 ending to 14-3-1985 and monthly rent of said lease is Rs.100/-. Though it is alleged by the

appellant that rent was received even after March 1985, therefore, it is not a lease for twenty years but it is a lease of perpetuity, but no receipt was

filed before the trial court regarding payment of rent after March 1985. No oral or documentary evidence is adduced that the original respondent has

received rent after March 1985 for the land in question. Oral evidence on this count is only statement against statement by both sides which is not

conclusive. In absence of any receipt after period of lease, the trial Court opined that the lease was not for perpetuity but it is upto the period of 14-3-

1985. After re-assessing the evidence, this court has no reason to substitute contrary finding.

7. The original respondent led evidence regarding execution of document Ex.P/4 by the appellant in which it is mentioned that after expiry of lease

period the appellant shall remove super structure on his own cost and will deliver vacant possession of the land to the original respondent. In the lease

deed Ex.D/1 it is mentioned that the original appellant was permitted for construction and after termination of lease, vacant land was to be handed

over to the original respondent, therefore, it cannot be said that the original appellant was not under obligation to vacate the land after expiry of lease

period.

8) Looking to the documentary evidence, it is established that the respondent is entitled for vacant possession after expiry of lease period. From the

pleading in the plaint (para 7), it is clear that the suit was filed on the basis of bona fide requirement for construction of hotel for two major sons of

original respondent and in the said suit it is clearly mentioned that no other suitable accommodation is available in the locality of Bilaspur, except the

suit land. This fact was specifically denied by the original appellant in his written statement and he pleaded that alternative accommodation is available

to the original respondent and both parties led evidence on this count before the trial Court which is clear from the statement of Lakhanlal (para 4, 17,

18, 19, 21, 22, 23 and 24). and again in the evidence of Radheshyam (PW/2) (para 1, 4, 5, 6, 8, 9 and 10). The original appellant led evidence regarding

bona fide requirement of original respondent in his statement before the trial Court (para 4, 5, 18 & 19).

9) From the evidence of Lakhanlal (PW/1) and Radheshyam (PW/2), it is established that the land in question is suitable for construction of hotel for

his two unemployed major sons and there is no suitable accommodation available in the locality of Bilaspur. Bald statement of the original appellant

Motilal (DW/1) not rebutted the evidence led by the original respondent Lakhanlal regarding bona fide requirement because same is not substantiated

by any document to come to the conclusion that any other land available to original respondent is suitable for constructing the hotel. It can be easily

inferred that big area of land is required for construction of the hotel and owner of the land himself is the best person to assess his necessity unless

rebutted by the cogent evidence. Rationing of the land is not the duty of the court and therefore, in absence of rebuttal of bona fide requirement of the

land in question for constructing the hotel for major sons of the original respondent, his requirement is established by evidence. Though the trial Court

has not assessed the evidence on this score, but the fact remains that when there is a pleading by both sides on account of bona fide requirement and

issue has been framed by the trial Court, it can be very well decided in first appeal because first appeal is continuation of the suit in which evidence of

fact can be very well marshalled.

10) Looking to the evidence adduced by both sides, answer regarding bona fide requirement of the land in question for construction of a hotel for his

two major sons is established and therefore, eviction on the ground of Section 12(i)(f) or 12(i)(n) of the Act, 1961 is available to the original landlord

and issue on this point is answered in affirmative.

11) Learned counsel for the appellant would submit that the case should be remanded back to the trial Court for deciding the issue on bona fide

requirement.

12) Provision for remand of case by the appellate court is embodied in Order 41 Rule 23 of the Code of Civil Procedure which may be read as under:

Order XLI Rule 23 of Code of Civil Procedure 1908 ""'Remand of case by Appellate Court"" - Where the Court from whose decree an appeal is

preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate court may, if it thinks fit, by order

remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to

the Court from whose decree the appeal is preferred. ,which directions to re-admit the suit under its original number in the register of civil suits, and

proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial

after remand.

13) In the present case, trial Court has not decreed the land on the preliminary point, but it decided the case on merit. Issue regarding bona fide

requirement is also framed as issue No.3 and evidence on this count is led by both sides upon their respective pleadings and looking to the pleading

issue and evidence, this court came to conclusion that issue be answered in affirmative in favour of the original respondent, therefore, there is no issue

left to be tried by the trial Court and it is not a case to be remanded to try any issue, therefore, argument on this count must fail. Case laws cited on

behalf of the appellants are clearly distinguishable in the facts of their case and did not help their case. Argument advanced on behalf of the appellant

is not sustainable.

14) As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly,

decree is passed in favour of respondents and against the appellant as under:

(i) The appeal is dismissed with cost.

(ii) Appellants to bear the cost of respondents through out.

(iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.

(iv) A decree be drawn up accordingly.