
(2011) 01 MP CK 0016

Madhya Pradesh High Court (Indore Bench)

Case No: Second Appeal No. 612 of 2002

Heeralal

APPELLANT

Vs

Babulal

RESPONDENT

Date of Decision: Jan. 25, 2011

Acts Referred:

- Transfer of Property Act, 1882 - Section 106, 106(3)

Citation: (2011) 3 MPHT 329 : (2011) 4 RCR(Civil) 699 : (2011) 2 RCR(Rent) 386

Hon'ble Judges: N.K. Mody, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

N.K. Mody, J.

This appeal was admitted by this Court vide order dated 26-3-2003 on the following substantial questions of law:

(1) It being an admitted position that provisions of M.P. Accommodation Control Act does not apply to the suit in question whether the Courts below were justified in passing a decree for eviction without properly going into question as to whether notice u/s 106 of Transfer of Property Act was given by the Plaintiff to the Defendant thereby properly determining the tenancy as contemplated u/s 106 of T.P. Act ?

(2) Whether Exh. P-3, i.e., notice dated 16-6-93 can be said to be a notice satisfying the requirement of Section 106 of T.P. Act so as to entitle the Plaintiff to seek eviction of the Defendant from the suit accommodation ?

(3) Was it not obligatory on the part of the Court below while sustaining the decree for eviction by giving categorical finding in respect of provisions of Section 106 of T.P. Act notwithstanding the fact that such a point was not put in issue - it being the only legal question to be gone into in such cases ?

2. Being aggrieved by the judgment dated 5-10-2002 passed by IInd Addl. District Judge, Khargone in Civil Appeal No. 9-A/2000, whereby the judgment dated 30-6-2000 passed by Civil Judge, Class II, Bhikangaon in Civil Suit No. 27-A/94, whereby the suit filed by the Respondent was decreed and the Appellant was directed to vacate the suit accommodation was confirmed, present appeal has been filed.

3. Short facts of the case are that Respondent filed a suit for eviction on 27-6-94 alleging that Respondent is owner of the house situated at Village Bilkhed (Adalpura), Tehsil Bhikangaon, Distt. Khargone. It was alleged that Appellant is in occupation of the suit accommodation as tenant @ Rs. 65/- per month. It was alleged that the tenancy of the Appellant was terminated vide notice dated 16-6-93, which was duly served on the Appellant. It was alleged that in spite of termination of tenancy neither the notice was replied nor the suit accommodation was vacated. In the suit it was prayed that decree of eviction be passed against the Appellant. The suit was contested by the Appellant on various grounds including on the ground that notice issued by the Respondent was not valid and was not competent to terminate the tenancy. It was prayed that suit be dismissed. After framing of issues and recording of evidence suit was decreed against which appeal was filed, which was dismissed, hence this appeal.

4. Learned Counsel for the Appellant submits that the impugned judgment passed by the learned Courts below is illegal and deserves to be set aside. Learned Counsel submits that notice, which was issued by the Respondent u/s 106 of T.P. Act was not competent to terminate the tenancy as contemplated u/s 106 of the Act. It is submitted that since notice was not satisfying the requirement of Section 106 of T.P. Act, therefore, learned Courts below committed error in decreeing the suit filed by the Appellant. It is submitted that appeal be allowed and the impugned judgment be set aside.

5. From perusal of the notice, which is Exh. P-3 it is evident that in the said notice it was alleged that Appellant should vacate the suit accommodation within a period of eight days. As per Section 106 of T.P. Act the minimum period of termination of tenancy is fifteen days. Section 106 of T.P. Act is amended w.e.f. 31-12-2002. Sub-section (3) of Section 106 of T.P. Act, which reads as under:

(3) A notice under Sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that Sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that Sub-section.

6. In view of the aforesaid amended provisions of law even if the notice, which terminated the tenancy is for lesser period, then too, it cannot be said that learned Courts below committed error in decreeing the suit. In view of the aforesaid position of law the substantial questions of law framed by this Court are answered against

the Appellant and the appeal filed by Appellant stands dismissed.

7. With the aforesaid observations appeal stands disposed of. No order as to costs.