(1960) 03 MP CK 0002

Madhya Pradesh High Court

Case No: S.A. No. 522 of 1958

Motilal Damji and Another		APPELLANT
	Vs	
Champabai Manikchand		RESPONDENT

Date of Decision: March 9, 1960

Acts Referred:

- Madhya Bharat Accommodation Control Act, 1955 - Section 17, 4, 4(a)

Citation: (1961) MPLJ 31

Hon'ble Judges: P.K. Tare, J

Bench: Single Bench

Advocate: Rama Gupta, for the Appellant; A.P. Sen, for the Respondent

Final Decision: Dismissed

Judgement

P.K. Tare, J.

This appeal is by the defendants against the decree dated 11-12-1958, passed by Shri D.P. Tiwari, First Additional District Judge, Raipur, in Civil Appeal No. 2-A of 1957, arising out of the decree dated 14-12-1956, passed by Shri A.M. Dalani, Civil Judge, Mahasamund, in Civil Suit No. 13-A of 1956.

The appellants were tenants of the original landlord, Seth Hanutmal who is father of the respondent. The agreed rent of the premises was Rs. 50 per month. By a registered gift deed dated 23-3-1945 (Ex. P-1), Seth Hanutmal gifted the suit house in favour of his daughter, the present respondent.

The respondent filed a suit for ejectment and arrears of rent amounting to Rs. 1,750 alleging that the tenants were in arrears and that they were irregular in making payments and that in spite of demands, the arrears had not been paid. The respondent had obtained permission from the Rent Controller for determining the

tenancy. But, a copy of the order of the Rent Controller is not on record. Therefore, it cannot be ascertained on what ground the requisite permission was obtained from the Rent Controller. The only ground alleged in the plaint was arrears of rent and on that ground alone the tenants were sought to be ejected. Prior to the filing of the suit, the respondent had served a notice on 13-1-1956 (Ex. P-3) terminating the tenancy on the ground of habitual default and arrears of rent.

In reply to the respondent''s notice terminating the tenancy, the present appellants sent a reply notice dated 4-1-1956 (Ex. P-2), denying the gift in favour of Smt. Champabai, as also her title to the suit property. They alleged that the original owner Seth Hanutmal was still their landlord and that they were not bound to pay any rent to Smt. Champabai. In their written statement filed in the Court, the appellants reiterated their allegations and denied the title of Smt. Champabai to the suit house and also her status as their landlord.

The Courts below decreed the claim of the plaintiff holding that she had obtained a valid title to the suit house on the basis of the gift deed, dated 23-3-1945 executed by her father, Seth Hanutmal. It was also held that the respondent was the landlord of the present appellants and that the arrears of rent amounting to Rs. 1,750 be paid to the respondent by the appellants.

As this case involved a question about the interpretation of section 17 read with section 4 of the Madhya Pradesh Accommodation Control Act, 1955 (No. 23 of 1955), it was heard along with Second Appeal No. 255 of 1957, which was specifically referred to a Division Bench for decision of the important questions. The learned Judges constituting the Division Bench held that no decree for eviction could be passed, except on one or more of the grounds mentioned in section 4 of the Madhya Pradesh Accommodation Control Act, 1955, and that a decree for eviction obtained before 1-1-1959 could not be executed against a tenant so long as the Act remained in force, except on any of the grounds mentioned in section 4 of the Act. Having expressed that opinion, the Division Bench sent this case back to the single Bench for further decision on merits. Therefore, the case has now to be decided in the light of the opinion given by the Division Bench.

The learned counsel for the respondent filed some preliminary objections, wherein he raised the ground that the tenants having abjured their status within the meaning of section 4(f) of the Act had denied the relationship of landlord and tenants. As such their tenancy stood forfeited and, consequently, the respondent would be entitled to obtain a decree on the basis that the tenancy had been forfeited. He also raised the ground that the appellants having not appealed from the decree for arrears of rent and mesne profits, would be deemed to be defaulters within the meaning of section 4(a) of the Act and being in arrears of rent and mesne profits, they would be debarred from challenging the decree for ejectment due to the operation of section 5 of the Act and as each their defence was liable to be struck off.

As the questions raised by the respondent in her preliminary objections, dated 4-3-1960 become relevant after the decision of the Division Bench, I permitted the counsel for the respondent to urge them at the time of the hearing. Taking up the second objection for consideration, it cannot be tenable in view of the fact that this Court, by order, dated 25-6-1959, had directed the appellants to deposit all arrears of rent till that date. In compliance with the said order, the appellants, according to the learned counsel, have deposited all arrears of rent. The learned counsel further made a statement that the subsequent rent or mesne profits have regularly been deposited by the appellants in the trial Court. In view of the full satisfaction of the rental arrears, the ground mentioned in section 4(a) of the Madhya Pradesh Accommodation Control Act, 1955 is not available to the respondent, as there has been a compliance with the order of the Court, as is envisaged by section 5 of the Act. Therefore, no decree for eviction can be passed against the appellants on the ground mentioned in section 4(a) of the Act.

Coming to the other ground about forfeiture of the tenancy on account of the denial made by the appellants, it was urged by the learned counsel for the appellants that the plaintiff had not based her suit on the ground of forfeiture and that the written statement or the reply notice given by the appellants could not be considered for the purpose of determining this question. It was further urged that the landlord by not basing her suit on the said ground should be deemed to have waived her right regarding forfeiture of the tenancy, as is contemplated by section 4(f) of the Madhya Pradesh Accommodation Control Act, 1955. On the other hand, the learned counsel for the respondent urged that it is not only the plaint that ought to be looked into. But, the plaintiff would be entitled to a relief in view of the stand taken by the appellants not only before the suit, but also during the suit and even in the memorandum of appeal filed before the first appellate Court and this Court. Therefore, it was argued that the plaintiff would be entitled to the relief on the pleadings, as they are raised by the appellants in their statements, as also in the grounds of appeal. As there was a foundation for the relief to be found in the pleadings raised by the appellants, it was urged that this Court could grant the relief of eviction on the dictum laid down by their Lordships of the Supreme Court in Srinivas Ram Kumar Vs. Mahabir Prasad and Others, .

Although it is true that the respondent did not base her cause of action in the suit on the ground of forfeiture of the tenancy due to the denial of her status by the appellants, it is clear that the consistent stand of the appellants has been that the respondent is not their landlord and that the gift deed in her favour executed by her father is not a valid deed so as to confer a title on her respecting the suit property or to make her their landlord. This is what their Lordships of the Supreme Court laid down in the case referred to above:-

As regards the other point, however, we are of the opinion that the decision of the trial Court was right and that the High Court took an undoubtedly rigid and

technical view in reversing this part of the decree of the subordinate Judge. It is true that it was no part of the plaintiff''s case as made in the plaint that the sum of Rs. 30,000 was advanced by way of loan to the defendants, second party. But it was certainly open to the plaintiff to make an alternative case to that effect and make a prayer in the alternative for a decree for money even if the allegations of the money being paid in pursuance of a contract of sale could not be established by evidence. The fact that such a prayer would have been inconsistent with the other prayer is not really material. A plaintiff may rely upon different rights alternatively and there is nothing in the CPC to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative. The question, however, arises whether, in the absence of any such alternative case in the plaint it is open to the Court to give him relief on that basis. The rule undoubtedly is that the Court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had no opportunity to meet. But when the alternative came, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendant''s own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances when no injustice can possibly result to the defendant, it may not be proper to drive the plaintiff to a separate suit. As an illustration of this principle, reference may be made to the pronouncement of the Judicial Committee in AIR 1943 29 (Privy Council) . This appeal arose out of a suit commenced by the plaintiff-appellant to enforce a mortgage security. The plea of the defendant was that the mortgage was void. This plea was given effect to by both the lower Courts as well as by the Privy Council. But the Privy Council held that it was open in such circumstances to the plaintiff to repudiate the transaction altogether and claim a relief outside it in the form of restitution u/s 65, Contract Act. Although no such alternative claim was made in the plaint, the Privy Council allowed it to be advanced and gave a decree on the ground that the respondent could not be prejudiced by such a claim at all and the matter ought not to be left to a separate suit. It may be noted that this relief was allowed to the appellant even though the appeal was heard ex parte in the absence of the respondent.

Therefore, if the appellants themselves have maintained this stand of denying the title of their landlord so as to entail a forfeiture of their tenancy, this Court in my opinion, could afford the respondent adequate relief by following the dictum laid down by their Lordships, as, in the present case, the requisite relief would be founded on the pleadings raised by the parties. It is not necessary that the relief should be based on the pleas raised by the plaintiff alone. A relief can, as well, be founded on the alternate case, however, inconsistent made out by the defendants

and granting of such relief would be proper and legal, as laid down by their Lordships of the Supreme Court. Therefore, I am of opinion that this Court can uphold a decree of eviction passed by the Courts below on the ground mentioned in section 4 of the Madhya Pradesh Accommodation Control Act, 1955. As such, the decree of the trial Court is not liable to be reversed on account of the operation of section 17 of the said Act. As all rental arrears as per the decree have been paid, that part of the decree stands satisfied and consequently there would be no arrears under the decree. As regards the future arrears, if any, in accordance with the terms of the decree passed by the trial Court or otherwise, the same matter can be agitated in the executing Court and if it is so agitated, the executing Court should decide the matter.

As a result, this appeal fails and is dismissed with costs throughout.