

(2009) 08 MP CK 0047

Madhya Pradesh High Court

Case No: None

Ram Vishal @ Vishali Kachhwaha

APPELLANT

Vs

Dwarka Prasad Jaiswal

RESPONDENT

Date of Decision: Aug. 17, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100, 96
- Evidence Act, 1872 - Section 116, 58, 68

Citation: (2009) ILR (MP) 3390 : (2009) 5 MPHT 44

Hon'ble Judges: U.C. Maheshwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

U.C. Maheshwari, J.

The appellant/defendant, being aggrieved by the judgment and decree dated 31-10-06 passed by II Addl. District Judge (Fast Track), Katni in Civil Regular Appeal No. 41-A/06, affirming the judgment and decree dated 17-7-06 passed by II Civil Judge Class II, Katni in Civil Original Suit No. 12-A/2000, decreeing the suit of the respondent for eviction against him, has filed this appeal.

2. The facts giving rise to this appeal in short are that the respondent herein filed the suit for eviction against the appellant/defendant with respect of tenanted premises, the part of House No. 278 described in the plaint and the annexed map, situated in Subhash Ward, Katni. As per averments of the plaint, such suit was filed on the grounds available under Sections 12(1)(a), 12(1)(c), 12 (1)(e) and 12 (1)(h) of the M.P. Accommodation Control Act (hereinafter referred to as "the Act"), the arrears of rent, disclaimer of title, bonafide genuine requirement of the disputed accommodation for residence of respondent's family, and also on the ground that same being in dilapidated condition is required bona fide for the purpose of

substantial addition and alteration which could not be carried out without vacating the premises otherwise it may cause an unhappy incident. As per other averments of the plaint, the appellant is tenant of the respondent in the aforesaid residential premises @ Rs. 200/- per month.

3. In the written statement of the appellant, the relationship of landlord and tenant with respondent is denied. It is stated that the appellant was inducted as tenant in such premises by the earlier landlord Shri Ramavtar Jaiswal and not by the respondent. Subsequent to death of said Ramavtar, he neither attorn his tenancy nor paid any rent to the respondent for the accommodation by deeming him to be his landlord. The aforesaid grounds of eviction are also disputed and denied. In such premises, prayer for dismissal of the suit was made. It is noted that the aforesaid ground of eviction u/s 12(1)(c) regarding disclaimer of title was not taken at the initial stage of the suit but after filing the written statement, by way of amendment, such ground was taken by the respondent in his plaint. It also appears from the pleadings of the parties that in pendency of the suit, some of the accommodation had got vacated by the respondent for which, by way of amendment, appellant pleaded in his written statement the availability of alternative accommodation with the respondent for his alleged need. While other hand, the appellant has also putforth the pleadings regarding explanation of such alleged alternative accommodation stating that despite such accommodation his need is still in existence.

4. After casting the issues and recording the evidence, on appreciation of the same, the Trial Court by holding the relationship of the landlord and tenant between the respondent and the appellant decreed the suit for eviction on all the aforesaid grounds. Being dissatisfied, the appellant filed an appeal u/s 96 of the CPC. After extending the opportunity of hearing, on consideration, by affirming the judgment and decree of the Trial Court, the appeal was dismissed, on which, the appellant has come forward to this Court with this appeal.

5. Shri A.K. Jain, learned Counsel of the appellant, by referring the pleadings, evidence and the exhibited documents on record, said that in the available circumstances, the respondent has failed to prove the relationship between the parties as landlord and tenant. As such, the appellant was inducted by the then landlord Ramavtar and appellant never attorn his tenancy in favour of the respondent at any point of time. Mere on the basis of a thumb impression on the rent receipts (Exhs. P-2, P-3 and P4), it could not be deemed that the tenancy has been attorned by the appellant in favour of the respondent. He further said that the respondent has claimed the right of landlord on the strength of some Will, as alleged, executed by Ramavtar in favour of the respondent Dwarika Prasad. The same has not been proved in accordance with the provisions of Section 68 of the Evidence Act by its attesting witnesses. In such premises, it could not be deemed that the tenancy was ever attorned by the appellant in favour of the respondent. In

support of such contention, by placing his reliance on a reported cases in the matter of *Rajendra Kumar Mahawar v. Smt. Shakuntala Makhanlal Kesarwani* 2000 (1) MPLJ 44 and in the matter of [Bajranglal Verma Vs. Smt. Gyaso Bai and Others,](#), he said that the approach of both the Courts below holding relationship of the parties as landlord and tenant is not sustainable. It was also argued that in the lack of relationship of landlord and tenant the appellant was not bound to pay the rent to the respondent and was also having the right to challenge the derivative title of the respondent under the provision of Section 116 of the Evidence Act. So, the decree of eviction passed by the Courts below on the grounds u/s 12(1)(a) and 12(1)(c) are not sustainable. It was also said that unless the title of the respondent over the disputed premises is proved by admissible document and the evidence, the decree of eviction u/s 12(1)(e) of the Act could not be passed against him. So far the ground u/s 12(1)(h) is concerned, he said that the approach of both the Courts below in this regard is apparently perverse as the same is not based on admissible evidence. In such premises, he prayed for admission of this appeal on the proposed substantial questions of law mentioned in the appeal memo.

6. Having heard the Counsel at length, I have gone through the record and also the judgments of both the Courts below. There is concurrent findings of both the Courts holding the relationship between the appellant and the respondent as tenant and landlord and on perusing the deposition of the witnesses examined, the approach of both the Courts below in this regard do not appear to be perverse as the same is based on appreciation of the evidence and also on admission of the appellant with respect of the rent receipts (Exhs. P-2, P-3 and P-4) on which the appellant has admitted his thumb impression. Apart this, it is settled proposition of law that the concurrent findings on the question of relationship between the parties as landlord and tenant being finding of fact could not be interfered at the stage of second appeal u/s 100 of the CPC as laid down by the Apex Court in the matter of *Kalyan Singh v. Ramswaroop and Anr.* 1996 JLJ 247 and also by this Court in the matter of *Machala Bai v. Nanak Ram* 2006 (2) MPLJ 484 . In such premises, it is held that this appeal does not involve any substantial question of law on the question of relationship between the parties.

7. So far the case law cited by the appellant's Counsel are concerned, this Court has no dispute regarding the principle laid down in such cases but the same are not helping to the appellant in the present scenario because the appellant himself has admitted his thumb impression over the receipts of rent (Exhs. P-2, P-3 and P-4) in his deposition. As stated above, such admission of the appellant is binding against him u/s 58 of the Evidence Act. In such premises, the approach of both the Courts below holding the relationship between the parties as landlord and tenant does not appear to be perverse or contrary to law. It is settled proposition of the law that once the rent is paid by the tenant to a person who acquired the right over the property then subsequent to it, the tenant has no right to deny the title or landlordship of the person to whom he paid the rent. Such question was answered

by this Court in the matter of Zehra Bai (Mst.) v. Jagmohan Arora 2000 (2) MPWN 142 , which reads as under:

Perused...It is not necessary for the landlord to produce the document of her title when defendant had admitted the relationship of landlord and tenant. Once rent is paid to landlady, she shall be landlord within the definition of the landlord under the M.P. Accommodation Control Act....

Hence, this appeal does not involve any substantial question of law in such background also.

8. In a suit for eviction between the landlord and the tenant, the title of the landlord does not require strict investigation as required in the title suit as laid down by the Apex Court in the matter of Dr. Ranbir Singh (supra), therefore, even in the absence of the examination of the attesting witnesses of the Will, the approach of the Trial Court, based on admission of the appellant, does not appear to be contrary to law or record.

9. So far the ground of Section 12(1)(a) of the Act is concerned, it is apparent fact on record that the appellant even after receiving the demand notice from the respondent did not pay him the arrears of the rent and even after receiving the summons of the Court did not deposit the same in accordance with the provisions of Section 13 of the Act. In such premises, keeping in view the relationship between the parties as landlord and tenant the Courts below have not committed any error in passing the decree on such ground as laid down by the Apex Court in the matter of [Jamnalal and Others Vs. Radheshyam](#) , the impugned decree cannot be interfered at this stage.

10. So far the ground of Section 12(1)(c) is concerned, in view of the concurrent findings of both the Courts below holding that the appellant committed nuisance by denying the landlordship and title of the respondent with respect of the disputed premises. Although, such ground was taken at later stage by the respondent but in view of the law laid down by this Court in the cases of Bharosilal v. Kishorilal 1992 (1) MPWN 77 , Radheshyam v. Mansharam 1992 (1) MPWN 174 and in the matter of Ramesh Chandra v. Rajesh Kumar and Ors. 1995 JLJ 583 . Such approach of the Trial Court being finding of fact does not require any consideration u/s 100 of the CPC at this stage by framing any substantial question of law.

11. So far the finding with respect of bonafide genuine requirement u/s 12(1)(e) of the Act is concerned, the concurrent findings of both the Courts on this question being based on appreciation of evidence does not give rise to any question of law which could be interfered u/s 100 of the CPC as laid down by the Apex Court in the matter of [Dr. Ranbir Singh Vs. Asharfi Lal](#) .

12. So far the ground of Section 12(1)(h) is concerned, the approach of both the Courts below is based on appreciation of admissible evidence being finding of fact is

not open to interfere u/s 100 of the CPC.

13. In view of the aforesaid discussion, I have not found any perversity in the impugned judgments giving rise to any question of law, muchless, the substantial question of law requiring any interference at this stage u/s 100 of the CPC. Hence, the appeal being devoid of any merit, deserves to be and is hereby dismissed at the stage of motion hearing.