(1981) 04 MP CK 0004

Madhya Pradesh High Court (Indore Bench)

Case No: S. A. No. 424 of 1978

Pahilajrai		APPELLANT
	Vs	
Arun Kumar		RESPONDENT

Date of Decision: April 24, 1981

Acts Referred:

- Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 - Section 12(1)(a), 12(1)(f)

Citation: (1982) MPLJ 645

Hon'ble Judges: H. G. Mishra, J

Bench: Single Bench

Advocate: S. D. Sanghi with Anwarkhan, for the Appellant; K. N. Vijaywargiya, for the Respondent

Final Decision: Allowed

Judgement

H. G. Mishra, J.

This appeal by the plaintiff is against the judgment and decree dated 4-10-1978, whereby the learned Additional District Judge, Indore, has allowed the appeal preferred by the defendant-respondent and dismissed the suit brought by the plaintiff-appellant for his eviction from the suit shop on grounds u/s 12(1)(a) and section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961.

Facts material for decision of this appeal are as under : The plaintiff-appellant instituted a suit giving rise to the present appeal against the defendant-respondent on the allegations that the defendant was inducted as a tenant by Purshottamdas (D. W. I), ex-landlod, in the suit premises, which are on the groundfloor of house No. 25 Bada Sarafa, Indore, at the rent of Rs. 200 per month; that the suit premises have been purchased by the plaintiff from the ex-landlord under a registered sale-deed dated 29-1-1972; that after purchase of the suit premises the defendant has paid rent to the plaintiff, vide counter-foils of rent

receipts, Exs. P/6 to P/9, for the period between 1-2-1972 to 31-1-1973; that after serving the demand-cum quit notice (Ex. P/l, dated 7-1-1975) on the defendant vide Ex. P/5, dated I0-I-1975, the present suit has been brought on 20-3-1975, seeking eviction on grounds u/s 12(1)(a) of the Madhya Pradesh Accommodation Control Act, 1961 (for short, the Act), viz., failure to pay or tender arrears of rent within two months in spite of service of notice of demand thereof on the defendant and that u/s 12(1)(f) of the Act, viz., that the suit shop is genuinely required by the plaintiff for starting hotel business of his own, there being no other nonresidential accommodation of his own available for the purpose within the limits of the Municipal Corporation, Indore.

The defendant while admitting the factum of his induction as a tenant in the suit premises by Purshottamdas, resisted the claim on the ground that Narayandas, brother-in-law of the plaintiff, used to realise rent from him after passing receipts in the name of the plaintiff. On being asked the reason for doing so, Narayandas stated that the suit house has been purchased in the name of the plaintiff, who is his brother-in law (the lessor) that he does not know as to who has really purchased the suit premises and that the tenanted premises in respect of which the rent of Rs. 200 per month was to be paid by him consisted of two more rooms, the possession of which was handed over to Narayandas. Accordingly, in respect of the suit premises it was agreed that the defendant will pay Rs. 80 per month instead of Rs. 200 per month and that the notice to quit is bad in law because it is not for three months period as was agreed to between the parties.

The defendant submitted an application u/s 13(2) of the Act. The trial Court by order dated 7-5-1976 fixed reasonable provisional rent as Rs. 200 per month and directed the defendant to deposit the arrears of rent accordingly up to 17-7-1976. However, the defendant has, undisput-edly, not deposited any amount in accordance with this order.

In support of his case the plaintiff has examined himself as P. W. 1 and Tolaram (P. W. 2) and has produced besides the demand-cww-quit notice, Ex. P/l, the documents, Exs. P/2 to P/5, showing the factum of its being sent by registered post and its service on the defendant having been effected on 10-7-1975. In order to prove the factum of attornment by the defendant by payment of rent to him, the plaintiff has produced the counter-foils of the rent-receipts (Exs. P/6 to P/9), signed by the defendant-respondent. He has also produced the account-books, Exs. P/13A, P/I3B, P/14A and P/14B. Exs. P/I3A is entry in the Bahi in Sindhi language and Ex. P/13B is its Hindi transcription. Ex. P/14A is another entry in Sindhi language and Ex. P/14B is its Hindi transcription, for showing that Rs. 21,000 are available with the plaintiff for starting his hotel business. By the rent receipts, Exs. P/6 to P/9, rent from 1-2-1972 till 31-1-1973 has been paid. The plaintiff has also produced registered sale-deed, Ex P/I0, dated 29-1-1972 as also the records regarding property-tax assessments, Exs. P/ll andP/12. On behalf of the defendant Purshottamdas, the ex-landlord, has been examined as D.W. 1. However, the defendant himself has not entered into the witness-box.

The trial Court decreed the suit on the finding that the defendant is a tenant of the plaintiff; that the defendant paid rent to the plaintiff vide counter-foils of the rent receipts, Exs. P/6 to P/9 in respect of the, period commencing from 1-2-1972 till 31st of January, 1973; that the defendant has failed to pay the arrears of rent as demanded by the plaintiff vide the demand-cum-quit notice, Ex P/l, within two months of the service on him, that the defendant has failed to deposit rent in compliance with an order passed u/s 13(2) of the Act; that the plaintiff has proved that ground u/s 12(1)(f) of the Act is also available to him, inasmuch as he has proved that the suit shop is genuinely required by him for starting the hotel business and that there is no other suitable accommodation of his own available to him within the limits of the Municipal Corporation, Indore. So far as the ground of nuisance is concerned, the trial Court negatived the same. Aggrieved by this judgment and decree the defendant preferred an appeal, which has been allowed and after reversing the judgment and decree passed by the trial Court the suit has been dismissed in toto. Hence this Second Appeal by the plaintiff.

In this appeal Shri S. D. Sanghi, assisted by Shri Anwarkhan, learned counsel for the plaintiff-appellant contended that the learned Additional District Judge has acted illegally in overlooking the aspect of law that the defendant became tenant of the plaintiff by payment of rent; that the defendant is estopped by attornment by way of payment of rent and cannot assert that the plaintiff is not his landlord; that even on the plea set out by the defendant in answer to the suit, viz., that the plaintiff is Benamidar and the real owner of the suit premises is Narayandas, it ought to have been held by the learned Additional District Judge that the plaintiff has right to maintain the suit; that the plaintiff is landlord within the meaning of section 2(b) read with section 12(1)(a) of the Act; that even without establishing the ownership the plaintiff can maintain the suit as by virtue of being the landlord on ground envisaged by section 12(1)(a) of the Act; that in absence of any plea and proof of misrepresentation, mistake or ignorance in the matter of payment of rent by the defendant to Narayandas, the learned Additional District Judge could not hold that the defendant is not bound by the fact of payment of rent to the plaintiff; that ground u/s 12(1)(f) of the Act is also made out; that with proof of mistake in description of the suit property in the sale-deed, Ex. P/IO, without necessity of any suit or deed for its rectification, the plaintiff ought to have been regarded as owner of the suit premises; that an adverse presumption should have been drawn against the defendant on his failure to enter into the witness-box and that ingredients essential to constitute ground u/s 12(1)(f) of the Act having been made out, the decree passed by the trial Court on that ground could not be reversed by the learned Additional District Judge. Shri K N. Vijayvargiya, learned counsel for the respondent argued in support of the impugned order. Having heard the learned counsel for the parties I have come to the conclusion that this appeal deserves to be allowed.

The plaintiff claims to be landlord by virtue of the factum of purchase followed by payment of rent by the defendant for the period up to 31-1-1973. The factum of payment by the defendant for the aforesaid period is virtually admitted by the defendant in his

written-statement. However, what the defendant contends in para 1 of his written-statement is that payment of rent so made by him to Narayandas was on his representation that the house really belongs to him and that the plaintiff is his brother-in-law, the lessor, in whose name the suit premises have been purchased. This is stated to be the reason for passing of rent receipts by him (Narayandas) in favour of the defendant in the name of the plaintiff.

The plaintiff as P. W. 1 has stated that rent was in fact collected by Narayandas for him and has produced and proved the counter-foils of the rent-receipts, Exs. P/6 to P/9, which bear the signatures of the defendant. In these rent receipts the plaintiff is shown as landlord. The period in respect of which rent has been paid by the defendant is from 1-2-1972 to 31-1-1973, as stated therein. Thus, the defendant has paid rent in respect of the suit premises to the plaintiff. The payment of rent operates as attornment and the defendant-respondent would be estopped from denying the title of the plaintiff-appellant. In Parmeshwarlal v. Dalu Ram. A I R 1957 Assam 188 it has been held that " When a tenant in possession has by payment of rent attorned to the successor in interst of the deceased landlord, he would be estopped u/s 116, Evidence Act from denying the title of the successor landlord. Section 116, Evidence Act does not deal or profess to deal with all kinds of estoppel or occasions of estoppel which may arise between landlord and tenant. It deals with only one kind of estoppel. The section postulates that there is a continuing tenancy, that it had its beginning at a given date from a given landlord and it provides that neither a tenant nor anyone claiming through a tenant, shall be heard to deny that that particular landlord had at that date a title to the property. The words "at the beginning of tenancy" in section 116, Evidence Act, do not give a ground for the contention that when a person already in possession of land, becomes tenant to another, there is no estoppel against his denying his landlord"s title. It is, therefore, too much to contend that a tenant in possession, if he has in fact attorned to a landlord, would still be entitled to challenge his derivative title, because at the beginning of the tenancy he was not let into occupation by the landlord in question. The beginning of the tenancy in such a case would refer to the beginning of the new tenancy between the tenant and the landlord by virtue of the attornment, and the tenant"s occupation of the land thenceforward would be referable to that attornment. (Emphasis supplied).

While explaining the scope of the doctrine of estoppel enshrined in Section 116, Evidence Act, their Lordships of the Privy Council have in AIR 1937 251 (Privy Council) . observed that:-

The principle does not apply to disentitle a tenant to dispute the derivative title of one who claims to have since become entitled to the reversion, though in such cases there may be other grounds of estoppel, e. g., by attornment, acceptance of rent, etc., described above." (Emphasis supplied)

It is law well settled that the doctrine of estoppel by attornment can be shown not to have come into operation by pleading and proving such facts which have vitiating effect on

contracts, for example, misrepresentation, coercion, fraud, mistake etc., In Venkata Chetty v. Aiyanna Gounden. AIR 1917 Mad. 789 (2) F. B the law on the point has been laid down thus:

Per Seshagiri Aiyar and Phillips, JJ. (Abdur Rahim, Off. C. J. dissenting)- A tenant who has executed a lease but has not been let into possession by the lessor, is estopped from denying his landlord''s title in the absence of proof that he executed the lease in ignorance of the defect in his lessor''s title or that his execution of the lease was procured by fraud, misrepresentation or coercion.'' However, in the instant case, there is neither any specific plea of such a kind nor proof of any such vitiating circumstance at the instance of the defendant. It appears that the learned Additional District Judge has erroneously proceeded on the assumption that rent was realised by Narayandas vide rent receipts, Exs. P/6 to P/9 by misrepresentation or by mistake or had been paid by the defendant in ignorance-(See para 15 of the impugned judgment). Since no foundation has been laid by the defendant for reaching such a conclusion, the learned Additional District Judge has acted illegally in reversing the finding on the point recorded by the trial Court to the effect that there has been attornment by payment of rent. Here, it will not be out of place to state that the defendant has not entered into the witness-box to explain the circumstances in which the payment was made.

In view of the aforesaid discussion, it has to be concluded that rent was paid by the defendant to the plaintiff putting his signatures on counterfoils in token of having effected such payment against the rent receipts received by him. Accordingly, the trial Court was right in holding that the plaintiff-appellant was landlord vis-a-vis the defendant-respondent.

That apart, in order that a suit may be maintained u/s 12(1)(a) of the Act, what is necessary is that (i) the person instituting the suit should be landlord and (ii) the defendant should be his tenant and, (iii) that the tenant should have neither paid nor tendered whole of the arrears of rent legally recoverable from him within two months of the date on which the notice of demand for the arrears of rent was served on him by the landlord. Now, Section 2(b) of the Act defines the term ''landlord'', thus:

Section 2.-Definitions. In this Act, unless the context otherwise requires,-

(a).....

(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 or for the benefit 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.

In view of the aforesaid facts the plaintiff-appellant has to be regarded as landlord within the meaning of the aforesaid term. It is the plaintiff, to whom on the showing of the defendant himself rent ultimately reached and it is the plaintiff in whose name the receipts have been passed. For this reason also the trial Court was right in holding that the plaintiff is landlord vis-a-vis the defendant and the learned Additional District Judge acted contrary to the law in holding otherwise. Furthermore, unlike the grounds u/s 12(1)(e) and Section 12(1)(f) of the Act, Section 12(1)(a) of the Act does not postulate that the landlord should be owner of the suit premises. This will be clear from the reading of clauses (a), (e) and (f) of Section 12(1) of the Act, which are extracted as below:

Section 12. Restriction on eviction of tenants.-(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner;

(e) that the accommodation let for residential purposes is required bona fide by the landlord for occupation as a residence for himself or for any member of his family, if he is the owner thereof, or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned;

(f) that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters, if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned." (Emphasis supplied)

Since clause (a) of section 12(1) of the Act uses the expression ''landlord'' merely and dees not qualify it with further requirement that the landlord should be owner of the premises, proof of ownership cannot be regarded as sine qua non for maintainability of a suit brought under that clause [section 12(1)(a)].

In this case, as stated above, the defendant has expressly set out a plea in answer to the suit to the effect that Narayandas is the real owner and that it is in the name of the plaintiff that the suit premises have been purchased. This plea, in essence, means a plea to the effect that the plaintiff is a Benamidar. Even if it be assumed that the plaintiff is a Benamidar, he has right to maintain the suit in his own name. This is what has been held in Ch. Gur Narayan v. Sheolal Singh A I R 1918 P C 140, wherein it has been held as under:

The system of acquiring and holding property and even of carrying on business in names other than those of the real owners, usually called the benami system, is and has been a common practice in India. 37 All. 557 P C Rel. on. So long as a benami transaction does not contravene the provisions of the law, the Courts are bound to give it effect. The benamidar has no beneficial interest in the property or business that stands in his name; he represents, in fact, the real owner, and so far as their relative legal position is concerned, he is a mere trustee for him. In such circumstances there is no reason why an action cannot be maintained in the name of the benamidar in respect of the property although the beneficial owner is no party to it. The bulk of judicial opinion in India is in favour of the proposition that in a proceeding by or against the benamidar, the person beneficially entitled is fully affected by the rules of res judicata. It is open to the latter to apply to be joined in the action; but whether he is made a party or not, a proceeding by or against his representative in its ultimate result is fully binding on him." (Emphasis supplied.)

In Kumar Harish Chandra Singh Das and Others Vs. Bansidhar Mohanty and Others, , it has been held that :-

Benami transactions are not frowned upon in India but on the other hand they are recognised. Indeed section 84 of the Indian Trusts Act, 1882, gives recognition to such transactions. It must follow from this that the beneficial owner of property standing in the name of another must necessarily be entitled to institute a suit with respect to it or with respect to the enforcement of a right concerning the property of a co-sharer. It will follow that a person who takes benefit under the transaction or who provides consideration for a transaction is entitled to maintain a suit concerning the transaction. Thus, where a transaction is a mortgage, the actual lender of money is entitled to sue upon it though the mortgage deed is executed in favour of another. AIR 1918 P C 140, Expln., AIR 1915 P C 96, Rel. on." (Emphasis supplied.)

The authority of Ch. Gur Narayan''s case (supra) has thus remained intact. As such, the suit may be maintained either by the Benamidar or the beneficial owner, i.e. the real owner in his own name. The aforesaid principles are wide enough to cover the situation of the present character. Accordingly, even on the plea set out by the defendant-respondent in answer to the suit, it has to be held that the plaintiff has right to maintain the suit for eviction on ground u/s 12(1)(a) of the Act.

In this view of the matter, although even without bringing a suit for rectification of the mistake or even without getting a deed of rectification of the mistake, on proof that such a mistake has crept in, it can be held that the property really intended to be transferred stands transferred in favour of the purchaser, yet in view of the conclusions reached in the preceding paragraphs, i.e. the plaintiff is landlord and has right to maintain the suit, it does not, appear to be necessary to adjudicate upon the question as to whether there was really a mistake in description of the property conveyed under the sale-deed, Ex. P/10.

In the instant case the decree for ejectment is sought on grounds falling under clauses (a) and (f) of section 12(1) of the Act. In this case the plaintiff as P. W. I, by his statement and counter-foils of rent-receipts, Exs. P/6 to P/9. has proved the rate of rent to be Rs. 200 per month and that the rent remaining in arrears with effect from 1-2-1973. This statement has remained unrebutted. The defendant has not even entered into the witness-box. The defendant has failed to substantiate the dispute raised by him to the effect that the suit premises consisted of two more rooms and on surrendering of which to the ex-landlord the rent was toned down to Rs. 80 per month. The dispute raised by the defendant is accordingly baseless. The defendant has failed to pay or tender arrears of rent demanded by the plaintiff, vide demand-cum-quit notice Ex. P/l, within two months of the service thereof on him. The defendant has also not deposited any amount either within one month of the service of writ of summons on him or in accordance with the order passed by the trial Court on 7-5-1976 directing reasonable provisional rent to be deposited at the rate of Rs. 200 per month. Thus, the ground u/s 12(1)(a) of the Act is available to the plaintiff and the defendant has not shown that he earned immunity from ejectment by paying and /or depositing the rent in accordance with section 13 of the Act.

In order that a decree for eviction may be obtained, it is not necessary to prove more than one of the grounds enumerated in clauses (a) to (p) of section 12(!) of the Act. Since the plaintiff has proved the availability of ground under the clause (a) of section 12(1), as discussed above, it is not necessary to examine the question of availability of ground u/s 12(1)(f) of the Act to the plaintiff-appellant.

For the reasons stated above, the plaintiff is entitled to a decree for eviction of the defendant from the suit premises under clause (a) of section 12(1) of the Act, as discussed above. The trial Court was right in reaching the conclusions and ordering eviction on grounds u/s 12(1)(a) of the Act and decreeing the suit. The approach of the learned Additional District Judge is contrary to law and is an outcome of substantial error of law vitiating the judgment rendered by him. In view of the aforesaid discussion, it is clear that the appeal involves substantial questions of law. As such, the impugned judgment and decree are amenable to a challenge in an appeal u/s 100, as amended by the CPC Amendment Act No. 104 of 1976.

Accordingly, the appeal is allowed. The judgment and decree passed by the learned Additional District Judge are set aside and those passed by the trial Court (though on ground u/s 12(1)(a) of the Act merely) are hereby restored. Thus, the suit stands decreed for eviction of the suit shop and arrears of rent at the rate of Rs. 200 per month with effect from 1-2-1972 till 8-2-1978, the date of passing of judgment and decree by the trial Court. In respect of the period thereafter till recovery of possession, the plaintiff-appellant will be entitled to recover from the defendant-respondent mesne profits at the rate of Rs. 200 per month. The plaintiff will get costs all throughout from the defendant. Counsel''s fee shall be according to the schedule, if certified.