Sardar Mal Vs Shri 1008 Shri Chandra Prabhu Janalaya Trustee, Sironj and others

S.A. No. 387 of 1972

Court: Madhya Pradesh High Court

Date of Decision: Oct. 16, 1978

Acts Referred:
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 â€" Section 12, 12(1), 12(1)(a), 13(1), 13(2)#Transfer of Property Act, 1882 â€" Section 111, 111(a)

Citation: (1979) JLJ 164

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

Bench: Single Bench

Advocate: K.N. Gupta, for the Appellant; U.K. Jain, for the Respondent

Final Decision: Allowed

Judgement

M.G. Mishra, J.
This is defendant"s appeal against the judgment and decree dated 8 9-72, whereby decree for ejectment granted by the

trial Court by its judgment dated 22-7-69, have been confirmed.

2. Facts essential for purposes of this appeal are as under:

(i) That the plaintiff/respondent Mandir Murti Chandra Prabhu Jinalaya, through Motilal son of Hiralal Jain, so called manager instituted a suit for

ejectment of defendant/appellant from the suit accommodation and mesne profits. The defendant is a tenant vide rent note Ex P/2 executed on

Falgun Vadi 15, Samvat 2015 (dated 9.3.59) at the rate of Rs. 10 per month. This rent note is executed by the defendant/appellant in favour of

members of managing committee namely (1) Motilal (2) Lakhmichand (3) Komalchand (4) Sardarmal Thekedar and (5) Mangilal. This rent note

was for a term of one year:

The plaintiff further averred that the defendant has paid rent up to Fagun Vadi 14, Samvat 2016. Accordingly, rent is due from Fagun Vadi 15

Samvat 2016. Demand cum-quit notice was served by Motilal son of Hiralal Jain, describing himself as Prabhandak (Manager) of Shri 1008

Chandra Prabhu Jialaya, Kadhali Bazar, Sironj on Magh Vadi 5 Samvat 2019. This notice was sent by registered post vide registration No. 117

dated 15th January, 1963 and was served on the defendant on 19-1-63. By this notice, the defendant was asked to quit by the midnight of Falgun

Vadi 15 Samvat 2019 and to pay rent due with effect from Falgun Vadi 15 Samvat 2016 (corresponding to 26-2-60) The present suit for

ejectment and recovery of rent and mesne profits was instituted on 17-4-63.

(ii) The defendant/appellant denied the cairn of the plaintiff-respondent and contended that the suit notice is invalid and that the plaintiff has no right

to bring the suit. The defendant also contended that it was agreed between the parties that the defendant-will be spending money on construction

over the suit premises and the amount so spent will be adjusted by the landlord towards the rent. After such adjustment Rs. 150 more are due

from the plaintiff to the defendant. As such, no rent is due; and the defendant is entitled to get the amount of Rs. 150 adjusted towards future rent.

3. The trill Court inter alia framed issue No. 3 and 4, which run as under:

Issue No. 3; Whether the notice given by the plaintiff is legally valid ?

Issue No. 4; Whether the plaintiff has no right to bring the suit ?

The suit was in the first round dismissed, by the trial Court by its order dated 24 6-66, on the ground of non-production of registration certificate in

respect of the plaintiff trust under the M. P. Public Trusts Act.

4. Aggrieved by this, the plaintiff preferred an appeal No, 104-A of 1966. This appeal was allowed and the case was remanded to the trial Court

by order dated 4-9-66, with a direction that on production of the registration certificate by the plaintiff/appellant as a Public Trust under the M.P.

Trusts Act, it shall proceed with the case according to law. After the remand plaint was amended by order dated 22-3 68 and in the amended

plaint, by substituting the Trust, Shri 1008 Chandra Prabhu Jinalaya Truit Kadhali Bazar Sironj, through its 11 trustees including Motilal, who had

instituted the suit on behalf of the deity was shown as plaintiffs.

5. On behalf of the plaintiffs Motilal (PW 1) was examined. After trial, the suit was decreed by the trial Court, Against this judgment and decree,

the defendant preferred appeal, which was also dismissed; hence this appeal.

6. Shri R. N. Gupta, learned counsel for the defendant/appellant contended that the notice Ex P/3 is legally not valid and also ineffective for the

purpose of earning a right to eject on the ground u/s 12(1)(a) of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as the Act);

and (2) that there was a dispute about amount of rent claimed in the plaint and as such no decree could be passed on the basis of ground u/s 12(1)

(a) of the Act, in absence of order u/s 13(2) of the Act.

7. Mr. U.K. Jain, learned counsel for the plaintiff-respondent argued in support of the impugned judgment and contended that the notice is valid

and effective for the purpose of section 12(1)(a) of the Act. No notice was necessary for termination of the tenancy as it stood terminated by efflux

of time, fixed by the rent note and that the dispute raised by the defendant does not fall u/s 13(2) of the Act.

8. After having heard the learned counsel for the parties, I am of the opinion that the appeal deserves to be allowed.

9. That the M. P. Accommodation Control Act, 1961 is not a self-contained statute. In order to get a decree for ejectment, landlord has to prove

both that:

(i) the tenancy of the defendant has been terminated in accordance with any one of the modes prescribed by section 111 of the Transfer of

Property Act, and/or under the contract of tenancy; and

(ii) that one or more of the ground u/s 12(1) of the Act are available to him.

Mere proof of availability of one of these rights is not enough. The plaintiff-landlord, in order to succeed has to prove that he has a right to eject the

defendant/tenant under the general law (Transfer of Property Act, and/or the contract) as well as special law (the Act). Accordingly, in this case, it

has to be examined, whether plaintiff has a right to eject the defendant both under the general law as well as special law. Even assuming that the

tenancy stood terminated by efflux of period delimited in the rent note Ex. P/2 and the status of the defendant became that of the statutory tenant;

to that there was no necessity of any notice to terminate the tenancy, even then it has to be shown by the plaintiff that a right to evict the defendant

has been earned by him as envisaged by the special law; also hereunder clause (a) of sub-section (1) of section 12 of the Act. Clause 12(1) (a) of

the Act runs as under:

12. Restriction of 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;

IN order to enable the plaintiff to claim ejectment of a tenant on the aforesaid ground, co-existence of the following essential ingredients has to be

alleged and proved:

(1) That there is relationship of landlord and tenant between the parties;

(2) That the notice of demand of arrears of rent was sent by the landlord to the tenant;

(3) That the notice of demand was served on the tenant; and

(4) That the tenant failed to pay the arrears of rent within two months of the date of receipt of the notice of demand thereof.

Section 12(1)(a) postulates a demand of arrears of rent to be made by the landlord; In the present case, as is clear from the reat note (Ex. P/2), it

is executed in favour of five persona, viz., (1) Motilal (2) Lakhmichand (3) Komalchand (4) Sardarmal and (5) Mangilal-members of the managing

committee of Shri 1008 Chadra Prabhu Jinalaya Trust, Sironj. Accordingly, they will be deemed to be landlords, for purposes of section 12(1)(a)

of the Act. In order to constitute a valid and effective demand for purpose of earning a ground of eviction under clause (a) of section 12(1) of the

Act, the notice (Ex. P/3) served by Motilal alone cannot be considered to be legally sufficient.

10. This brings me to the further contention, advanced by Shri U K. Jain, learned counsel for the plaintiff/respondent, to the effect that Motilal was

Manager (Prabhandak) of the managing committee. As such, demand should be considered to be valid and effective for the present purposes. This

contention too is not tenable in view of the fact that it is not established by the testimony of Motilal (PW 1) that he was the manager (Prabhandak)

of the managing committee of the Deity. In his deposition, para 1, he has stated that it was the managing committee which used to manage the

affairs of and the property belonging to the Deity; and that he was one of the members of the managing committee. Constitution or rules regarding

the working of the committee are not on record. It is also not shown when and how Motilal was appointed as managing member of the

Prabandhak Samiti (Managing Committee). Motilal (PW 1) has in para 5 further stated that he was authorised in writing by the members of the

Managing Committee to serve the aforesaid notice, but that written authority has not been brought on record.

11. It was the duty of the plaintiff to have produced and proved the authority so stated to be in writing. ID absence of the written-document, oral

evidence is of no effect and an adverse inference has to be drawn against the plaintiff, on account of non-production of it. It was for the plaintiff to

have produced and proved it and not for the defendant to have demanded its production by the plaintiff, as held in Murugesam Pillai v. Gnana

Sambandha Pandara Sannadhi AIR 1947 P.C. 6 (A), the relevant observations of which run as under:

A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract

doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its decision With regard to third parties this may

be right enough they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is in their Lordship"s opinion, an

inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession

which would throw light upon the proposition.

This dictum has the approval of the Supreme Court of India in a case reported in Hiralal and Others Vs. Badkulal and Others, and Gopal Krishnaji

Ketkar Vs. Mahomed Haji Latif and Others,

12. Thus, it appears that Motilal is a self styled Manager (Prabhandhak) of the Managing Committee of the Deity and was neither dejoure nor

defacto manager thereof.

13. Faced with this situation, Mr. U.K. Jain, placed reliance on a case reported in Shriji Lakherapura v. Gappulai 1977 JL3 87: 1977 MPLJ 804

and contended that rent was being paid and collected by Motilal alone. Therefore, he will be deemed to be the landlord within the definition of

''landlord'' as contained in section 2(b) of the Act, which runs as under:

2. Definitions, in this Act, unless the context otherwise requires:

(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;

14. In the present case, it has not been shown that Motilal was the person, who for the time being was receiving rent. No record, showing that

Motilal alone was acting as sole landlord vis-a-vis the defendant has been brought on record by the plaintiff There is also no averment to this effect

in the plaint. No document is produced or proved by the plaintiff to show that Motilal was either authorised to deal singally with the defendant or

actually dealt alone with the defendant, as landlord. Non production of material documents gives rise to adverse presumption against the plaintiff.

The learned Additional District Judge has ignored this aspect of the law and has satisfied himself by merely stating conclusion in para 8 to the effect

that the defendant has not given any reason as to how he treats the notice to be invalid. What ever may have been the position of law, prior to the

pronouncement of their Lordships of Supreme Court in Jagdish Chander Chatterjee and Others Vs. Shri Kishan and Another, after the

pronouncement of their Lordships in J.C. Chatterjee & others ''case (supra)'' the question of validity of notice can be raised and determined, even

where in a suit for ejectment of a tenant the plaint allegation as to termination of tenancy by a valid notice is neither denied nor any issue demanded

thereon by the defendant, the point as to termination of tenancy by a valid notice is neither denied nor any issue demanded thereon by the

defendant, the point as to termination of tenancy being essentially one of law can be raised in second appeal and decided by the High Court

without remanding the case.

This principle applies with still more vigour to the present case, which concerns itself with earning of a right of ejectment by showing existence of

grounds enacted by special law, viz, the M.P. Accommodation Control Act, 1961, Unless and until the plaintiff shows that the essentials necessary

to constitute the ground of ejectment as envisaged by section 12(1)(a) of the Act exist, the bar imposed by the special statute on the jurisdiction of

the Court to grant decree for ejectment is not lifted. In the present case, rent-note (Ex. P/2) shows that Motilal alone is not the landlord but there

were five persons with whom the contract of tenancy was entered into. According to the rent note, entire body of five persons, representing the

managing committee (or the executive committee) for the time being has to be regarded as landlord for the purpose of section 12(1)(a) of the Act,

15. Reliance on the case of Idol Shriji Lakherapura, Bhopal"s case (supra) is not available to the plaintiff/respondent in the present case. From the

facts stated in para 2 of that case, it is clear that before registration of the trust in that case, Babulal Sharma who gave notice, was the sole trustee

of the deity. As such, the notice to quit served in that suit by him was held to be valid and effective but here prior to the registration of the trust,

under the M.P, Trust Act, 1951, Motilal was not the sole trustee. Accordingly ratio of the aforesaid case is not applicable to the present case.

16. All the persons of the managing committee of the deity of Shri 100 Chandra Prabhu Jinalaya Sironj, ought to have joined in the notice to earn a

ground envisaged by clause (a) of section 12(1) of the Act.

17. Mr. U. K. Jain further placed reliance on the case reported in Sri Ram Pasricha Vs. Jagannath and Others, The observations emerging from

para 30 run as under :

30. Mr. Tarkunde also submitted that since the Calcutta High Court has held in Yogamaya Pakhira v. Semi Sudha Bose, ILR (1968) Cal. 70 that

a permanent lessee is not an owner within the meaning of section 13(1) if a co-owner would not be a better position. We are of opinion that a co-

owner is as much as owner of the entire property as may sole owner of a property is. We, however, express no opinion about the case of a

permanent lessee as this point does not arise in this appeal.

In that case, the contract of tenancy was entered into by one of the co-owners and not all the co-owners. Therefore, it was held that the co-owner

landlord was owner of the suit accommodation within the contemplation of section 13 (l)(f) of West Bengal Premises Tenancy Act, (18 of 1956)

and as such he had a right to maintain the suit for the eviction on the ground of reasonable requirement of members of his family. In the present

case, the contract of tenancy was not entered with Motilal alone. It was entered with five members of the managing committee (Prabhandhak

Samiti) Besides this, the deity was the owner of the property and as such reliance on the case reported in Sri Ram Pasricha Vs. Jagannath and

Others, is not available to the plaintiff/respondent in this case. The ratio of the case reported in Birendra Mohan Ghosh Vs. Mohamed Umar, is

also not applicable to the present case. In that case, the co-landlord who issued the notice, was receiving rent for the time being. That is not the

case here.

18. Subsequent registration of the trust and addition of all trustees as co-owners cannot retrospectively validate the notice Ex. P/3.

19. A Division Bench of this Court in a case reported in Rajaram Baijnath and others Vs. Nandkishore Sheobux Rai and others, has held that:

A Public Trust is not a juristic person. It has no personality. The trust may not engage in juristic acts, sue or sued. A suit for enforcement of rights

on behalf of the public trust has to be brought by all the trustees acting together. Such a suit may, however, be brought by one trustee with sanction

or approval of his co-trustees, but such sanction or approval must be strictly proved. Laxman Prasad Vs. Shrideo Janki Raman, relied on.

The ratio of the aforesaid case can be usefully applied to the present case. Managing committee of the deity was admittedly not a registered body

at the time of issuance of the notice (Ext P/3) in the instant case. So the right to eject could not be earned by one member of the managing

committee, without sanction and approval of all other members or co-trustees. Such sanction or approval has to be proved strictly. This has not

been done in the present case.

20. The ratio of full Bench decision of Gujrat High Court in a case reported in Atmaram v. Galam Muhmmad 1972 All Ind RCJ 838, extracted

below is in line with the view of this Court reported in the case of Rajaram (supra):

Held that one co-trustee cannot give notice to quite determining the tenancy. The decision to determine the tenancy by giving notice to quit must be

taken by alt co-trustees unless, of course the instrument of trust otherwise provides or the beneficiaries being competent to contract consent, or in

any particular case it is established that on the peculiar facts obtaining in that case the delegation of the power to determine the tenancy was

necessary. When it is said that the tenancy must be determined by all co-trustees, it means that the decision to terminate the tenancy must be taken

by all co-trustees. The formal act of giving notice to quit pursuant to the decision taken by all the co trustees may be performed by one co trustee

on behalf of the rest. The notice to quit given in such a case would be a notice given with the sanction and approval of all the co trustees.

Held that unless the instrument of trust otherwise provides, all co-trustees must join in filing a suit to recover possession of the property from the

tenant after determination of the lease. No one single co-trustee, even he be a managing trustee unanimously chosen by the co trustees can maintain

such a suit against the tenant without joining the other co-trustees. All co-trustees must be joined in the suit and if any one for more of them are

unwilling to be joined in the suit as plaintiffs for some reason 01 other it is not possible to join them as defendants so that all co-trustees are before

the Court.

These principles can usefully be extended and applied to the present situation in view of the fact that service of a valid demand notice by or on

behalf of landlord is sine-qua non of acquisition of right to evict tenant u/s 12(1)(a) of the Act.

21. According to the aforesaid discussion, demand of rent by notice (Ex. P/3) cannot be regarded as a valid and effective demand by the landlord

within the contemplation of clause (a) of section 12(1) of the Act.

22. The judgment of the learned Additional District Judge is slip-shod and does not at all disclose active consideration of factors necessary for

determination of the real lit between the parties. Since service of notice of demand by the landlord is sine-qua non for constituting ground for

eviction under aforesaid provision, and Ex. P/3 is legally ineffective for the purpose. Therefore, the decree for ejectment cannot be sustained,

although serving of notice to quit may not be necessary in view of the provisions of section 111(a) of the Transfer of Property Act.

23. In this view of the matter, second contention advanced by the learned counsel for the defendant/appellant need not be gone into.

24. Accordingly, the appeal is allowed. The judgment and decree passed by both the Courts below are set aside, and the suit of the plaintiff for

abetment is dismissed. In view of the nature of the case, I direct that the parties will bear their own costs throughout.