Sachchindanand Garg Vs Govindlalji Maharaj, Nathdwara

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: May 2, 1981

Acts Referred: Transfer of Property Act, 1882 â€" Section 106

Citation: (1986) MPLJ 530

Hon'ble Judges: A.R. Navkar, J

Bench: Single Bench

Advocate: K.S. Agarwal, for the Appellant; H.B. Mangal, for the Respondent

Final Decision: Allowed

Judgement

A.R. Navkar, J.

This is an appeal against the Judgment and decree passed by the Third Additional District Judge, Gwalior, dated 13-3-1978, which was passed in

Civil Appeal No. 78A of 1977 which was preferred against the Judgment and decree passed by the Fourth Civil Judge, Class II, Gwalior in Civil

Suit No. 120A of 1963 Original Civil, on 264-1977.

The facts giving rise to this appeal are that the plaintiff-respondent landlord filed a suit for eviction from residential accommodation against the

defendant-appellant on the ground that the defendant-appellant has purchased a house in the name of his wife situated at Daulatganj, Lashkar. The

plaintiff-respondent verbally told the defendant that he has purchased a house and as such he should vacate the disputed premises. Further, it was

also stated that the defendant has damaged the cement sheets and has caused loss to the plaintiff. It was further stated by an amendment in the

plaint that the defendant has opened a window in the suit house towards the Dharmashala. A notice regarding all these facts was given on 29-3-

1963 to the defendant and for termination of tenancy also. As the suit premises were not vacated by the defendant, the present suit is filed.

The defendant denied the plaint allegations and asserted that he has not purchased any house. The house which is purchased by his wife is not a

Benami transaction. It was her own house and as Shakuntaladevi, the wife is a blind woman, she cannot look after her affairs. Because of this, her

husband, that is, the defendant, is collecting rent on her behalf. Further, it was stated that the alleged house which is purchased by his blind wife, is

not suitable for his residence. Regarding damaging the residential portion, he denied all the allegations. On the contrary, he stated that the

defendant-tenant has spent Rs. 65/- in making repairs in the house and it was agreed by the landlord that this amount will be adjusted towards the

arrears of rent. Further, it was stated that the notice for eviction sent by the landlord is waived because the landlord has accepted rent for

subsequent months and, therefore, the landlord has accepted the defendant as his tenant and waived the notice of termination of tenancy.

The trial Court framed the following issues:-

1. Whether the house purchased by Shakuntaladevi has been sold away? If so, what is its effect on the suit?

Whether notice given by the plaintiff dated 29-3-1963 is illegal?

(a) Whether the defendant is using the suit house carelessly?

(b) Whether the defendant has damaged the cement sheeted shed fitted in the suit house?

4(a) Whether the defendant has spent Rs. 65/- on the repairs of the suit house?

(b) Whether the defendant is eligible to get these Rs. 65/- adjusted?

Relief and costs?

Whether the plaintiff has waived his notice by accepting the amount of rent from the defendant?

(a) Whether the plaintiff, being a charitable institution, is not registered under the M.P. Public Trust Act?

(b) Whether that institution (if it is mere) has no right to prosecute the suit because of non-registration?

Whether the defendant has damaged the suit house by opening windows from the side of the Dharmashala, without the permission of the landlord,

during the period of his tenancy?

Whether the plaintiff had filed a suit in the Court of Rent Controlling authority, which was dismissed and which was for enhancement of rent?

An taken that the plaintiff is a Public Charitable Trust and as long as the Trust is not registered under the M.P. Public Trust Act, the suit cannot

proceed. Regarding non-registration of the Trust under the M.P. Public Trust Act, the matter was taken up to this Court and subsequently the

Trust was registered.

The trial Court decreed the suit. An appeal was preferred against the judgment and decree of the trial Court and the appellate Court, after hearing

the arguments of both the parties, dismissed the appeal. This is the second appeal against the said decree and judgment.

The learned counsel for the appellant vehemently argued that as the notice of termination is waived, the plaintiff is not entitled to get the decree of

eviction. But, in my opinion, the argument has no force. As held by the Supreme Court in V. Dhanapal Chettiar Vs. Yesodai Ammal, , no notice is

required u/s 106 of the Transfer of Property Act for termination of tenancy il the suit is to be filed under Rent Registration Act. If the M.P.

Accommodation Act, 1961 (hereinafter referred to as the Act) requires specific notice to be given in case the landlord wants to press in service,

such a ground mentioned u/s 12 of the Act, then alone, the notice to the defendant is required. In the present case, the grounds for evicting the

tenant are based on two grounds mentioned u/s 12 of the Act, and those grounds do not require any notice to be given under the Act. As such,

whether the notice of termination is waived or not is immaterial to be decided in the present appeal. Therefore, the submission of the learned

counsel for the applicant that without a notice u/s 106 of the Transfer of Property Act, the suit cannot be decreed, I am not in a position to accept

and I reject the same.

The second ground urged before me was that the defendant has damaged the property and as he has damaged the property, the landlord is entitled

for decree of eviction. The learned counsel for the appellant has referred to me to Section 12(c) and 12(i) of the Act and has referred to the words

which is likely to affect adversely and substantially the interest of the landlord therein"". He submitted before me that the plaintiff-landlord has

neither proved that the interests of the landlord are adversely or substantially affected by the alleged acts of the tenant. The submission made by the

learned counsel has force. After going through the evidence. I do not see anything from which, 1 can say that the action of the tenant has adversely

and substantially affected the interests of the landlord. There is also no evidence to show that the tenant has done any act which is inconsistent with

the purpose for which he was admitted to the tenancy. Therefore, I will have to hold that the conditions mentioned u/s 12(c) of the Act are not

made out by the landlord-plaintiff and, there is no specific issue or pleading by the landlord-plaintiff to that effect in the plaint.

The only ground which was taken as proved by the Courts below is the one u/s 12(1)(i) of the Act, which reads as under:-

(i) that the tenant has, whether before or after the commencement of this Act, built, acquired vacant possession of, or been allotted an

accommodation suitable for his residence;

The Act is for protection of the tenant and once it is found that the tenant has acquired vacant possession or has been allotted an accommodation

suitable for his residence, the protection given by the Act ceases. I am supported by Dr. Gopal Dass Verma Vs. Dr. S.K. Bhardwaj and Another,

. Even if the tenant subsequently sells the house, he will not be entitled for a protection given by the Act. In my opinion, if a protection given by the

Act is withdrawn if some subsequent event happens, then such a provision is a penal provision in nature and such a penal provision, if it is to be

pressed into service for evicting the tenant to whom the protection is granted under the Act, which is a social welfare legislation, then such a

provision must be construed strictly. In the present case, there is no dispute that the accommodation purchased by the blind wife was sold

subsequently. If the wife is to be treated as the tenant, or if the purchase is to be treated as Benami by the husband in wife''s name, certainly the

protection given u/s 12(1)(i) of the Act cannot be claimed by the tenant. Therefore, I will have to construe the provision strictly and to see whether

the plaintiff can get the decree under the said ground. The Act says that if the tenant has, whether before or after the commencement of this Act,

built, acquired vacant possession of, or been allotted an accommodation suitable for his residence; then alone he will be evicted u/s 12(1)(i) of the

Act. The word ''tenant'' is defined in the Act itself. The definition given by the Act is as under:

tenant"" means a person by whom or on whose account or behalf the rent of any accommodation is, or but for a contract express or implied,

would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also any person continuing

in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against

whom any order or decree for eviction has been made.

If this definition of ""tenant"" is taken into consideration, then, the wife of the tenant is not covered under the definition. Therefore, unless it is proved

that the tenant himself has purchased the house which is suitable for his residence, aground u/s 12(1)(i) of the Act is not made out.

Faced with this difficulty, the learned couasel for the respondent submitted before me that the alleged transaction is a Benami transaction, that is to

say, that the real owner of the house purchased is a tenant of the plaintiff and the house and the name of the wife is only a Benami. But, after going

through the evidence, I do not find any evidence to support these facts. For holding a transaction a Benami one, certain facts are to be proved as

laid down in Smt. Surasaibalini Debi Vs. Phanindra Mohan Majumdar, and the onus to prove such a transaction to be Benami always lies on the

party who asserts it. I may refer to the following passage from the above Judgment:-

Burden of Proof - The Court will presume an ostensible title to be the real title unless a plaintiff who seeks to assert the contrary pleads and proves

that the ostensible owner is not the real owner, in other words the onus is on the person who alleges a transaction to be benami to make it out. Of

course, the source of the funds from which the purchase is made coupled with the manner of its enjoyment would be a very material factor for

establishing the case of benami but the mere proof of the source of the purchase money would not finally establish the benami nature of the

defendant''s title. Even where the plaintiff purchases property with his own funds in the name of ''B'' the surrounding circumstances, the mode of

enjoyment might still indicate that it was intended to be a gift to ''B'' and it would then not be a case of benami notwithstanding that the purchase

money did not proceed from the defendant.

If the plaintiff seeks the assistance of the Court to effectuate an unlawful transaction, the Courts will refuse to assist him. Where, however, the

plaintiff is seeking to enforce his title to property and it is not an integral part of his pleading which he must prove to entitle him to relief that there

was between him and the defendant an unlawful transaction or arrangement which he seeks to enforce the plaintiff will be entitled to the assistance

of the Court, even if the initial title of the plaintiff is rooted in an illegal transaction.

Similarly, when a property is purchased in the name of wife, what will be the position, of the wife and the husband vis-v-vis the ownership of the

property was considered in Kanakarathanammal Vs. V.S. Loganatha Mudaliar and Another, . I may refer to the passage from the above

Judgment which is as under:-

It is true that the actual management of the property was done by the appellant''s father, but that would inevitably be so having regard to the fact

that in ordinary Hindu families, the property belonging exclusively to a female member would also be normally managed by the Manager of the

family; so that the fact that appellant''s mother did not take actual part in the management of the property would not materially affect the appellant''s

case that the property belonged to her mother. The rent was paid by the tenants and accepted by the appellant''s father; but that, again, would be

consistent with what ordinarily happens in such matters in an undivided Hindu family. If the property belongs to the wife and the husband manages

the property on her behalf, it would be idle to contend that the management by the husband of the properties is inconsistent with the title of his wife

to the said properties. What we have said about the management of the properties would be equally true about the actual possession of the

properties, because even if the wife was the owner of the properties, possession may continue with the husband as a matter of convenience.

Therefore, even though mere is a concurrent finding that the transaction is Benami, as the Courts below have not applied the correct law laid down

by the Supreme Court, which I have referred to above, I can interfere with the finding in second appeal in the concurrent finding given by the

Courts below. The finding of the Courts below that the property purchased in the name of the wife by the husband was Benami and the property

purchased was sufficient to meet the needs of the tenant, in my opinion, cannot be accepted.

The finding of the Courts below that the tenant has acquired accommodation sufficient for his residence cannot be maintained in view of the

position of law mentioned above.

The result, therefore, is that ground u/s 12(1)(i) of the Act is not made out by the landlord against the tenant and as such, the appeal is allowed and

the suit is dismissed with costs. Counsel''s fee Rs. 100/-, if certified.