
(2008) 03 MP CK 0043
Madhya Pradesh High Court
Case No: None

Shri Karan Lal Kesharwani

APPELLANT

Vs

The Sardar House and Others

RESPONDENT

Date of Decision: March 13, 2008

Acts Referred:

- Evidence Act, 1872 - Section 116

Citation: (2008) 3 MPHT 168 : (2008) 2 MPLJ 365

Hon'ble Judges: A.K. Shrivastava, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.K. Shrivastava, J.

This revision application has been directed by the applicant/landlord against the impugned order dated 7-8-2002 passed by learned Rent Controlling Authority, Jabalpur, dismissing his application for eviction filed u/s 23-A (b) of Chapter III-A of the M.P. Accommodation Control Act, 1961 (in short "the Act").

The applicant demonstrating himself to be the landlord of the suit shop as envisaged u/s 23-J (iv) of the Act in which the respondents/tenants at the rate of Rs. 100/- per month are carrying on the business of electrical goods. According to the landlord, the tenant is in occupation of the suit shop at the time when it was purchased by the applicant on 3-7-1978 and the tenancy is oral.

According to the landlord, the suit shop is required bonajidely by him for doing the business of steel and crockery and at present he is carrying his business in a rented shop in Sardar Bazar and is paying rent to the Cantonment Board, Jabalpur. The landlord has two grown up sons and he wants to settle them and the suit shop which is in occupation of respondents, is sufficient for doing the business of steel

and crockery.

In the application for eviction it has been pleaded that physically handicapped certificate of the Medical Board is being filed alongwith the application. The suit shop is required bonafidely by the applicant to start the business of steel and crockery and the landlord has no reasonably suitable vacant accommodation of his own in the city of Jabalpur. On these premised pleadings, it has been prayed by the applicant/landlord that order of eviction of the suit shop be passed.

The tenant after obtaining leave to defend as envisaged u/s 23-C of the Act filed written statement and pleaded that the applicant is not the owner of the suit shop and since he is not the owner of the suit shop which is paramount consideration in order to pass an order of eviction u/s 23-A (b) of the Act, therefore, the application filed by the landlord be dismissed. In the written statement, specifically it has been denied that applicant is the owner of the suit shop. The factum of purchasing the suit shop vide registered sale deed dated 3-7-1978 has also been denied.

According to the tenants, the allegation of landlord that the sale deed was executed in his favour by Amir Bhai, Smt. Tara Bi, Razia Bi and Hatim Bhai, but, Smt, Razia Bi and Gul Mali were not the resident of Jabalpur City on the date when the sale deed was executed in favour of the applicant. According to the tenant sale deed does not show as to under which power of attorney Ameer Malik could act on behalf of Smt. Razia Bi and Hatim Bhai. The execution of power of attorney by Smt. Razia Bi and Hatim Bhai in favour of Ameer Malik authorising him to alienate the property in favour of tenant, has been specifically denied. An alternative plea has also been raised that if it is assumed that power of attorney was executed in favour of Ameer Malik, such power of attorney was a forged document because the persons who alleged to have executed power of attorney were not residing at Jabalpur and as per the best information received by the tenant they were also not present in the country itself.

On these premised pleadings, it has been pleaded in the written statement that the landlord is not the owner of the suit shop. Further it has been pleaded that sale deed executed on 3rd July, 1978 also does not show that how Ameer Malik and Smt. Tara Bi acquired any right, title and interest over the property which was later on alienated to the present applicant/landlord.

It has also been pleaded in the written statement that the shop in possession of non-applicants was divided into two portions and they were denoted as Shop Nos. J-1 and J-2. The shop right from the beginning, was one shop constructed by late Shri K.K. Minocha and after his death non-applicants have been enjoying physical possession of the same.

Further it has been pleaded that non-applicants/tenants have already instituted a suit for declaration before 12th Additional District Judge, Jabalpur (Civil Suit No. 62-A/2001) seeking declaration that the sale deed dated 3rd July, 1978 is invalid

under law and has also sought relief for permanent injunction restraining the present applicant/landlord from dispossessing the non-applicants from the suit shop on the basis of sale deed executed in his favour on 3-7-1978.

The Rent Controlling Authority framed as many as six issues and after recording the evidence of the parties, came to hold that the applicant is not a physically handicapped person as envisaged u/s 23-J (iv) of the Act and further arrived at the conclusion that applicant/landlord is not the owner of the suit shop and dismissed the application for eviction filed by the landlord.

In this manner, this revision application has been filed by the applicant/landlord u/s 23-E of the Act.

The contention of Shri R.S. Tiwari, learned Counsel for the applicant, is that learned Rent Controlling Authority, on the basis of the irrelevant considerations, has arrived at a conclusion that the applicant/landlord is not a handicapped person under the Act, indeed, he is a handicapped person and in that regard document (Exh. P-20) (photocopy Exh. P-20-C) has also been filed by him as he is suffering from blindness and the disability is 45%. Hence, according to learned Counsel, since the applicant is a "physically handicapped person" as defined u/s 23-J of the Act, he is entitled to obtain decree of eviction.

By hammering the findings of learned Rent Controlling Authority, it has been then contended by Shri R.S. Tiwari, learned Counsel for the applicant that if an application is filed u/s 23-A (b) of the Act against the tenant, degree of proof of ownership is not that much higher in comparison to prove the ownership in a title suit and, therefore, the same principle cannot be made applicable in order to ascertain ownership of landlord in an application filed under the aforesaid provisions of the Act. In support of his contention, learned Counsel for the applicant has placed reliance on the decision of Supreme Court Anar Devi (Smt.) v. Nathu Ram 1994 JLJ 486 and also a later decision of Supreme Court [Sheela and Others Vs. Firm Prahlad Rai Prem Prakash](#), . learned Counsel has also placed reliance on Single Bench decision of this Court R.P. Sharma v. Smt. Leeladevi 1997 (1) MPWN 75. On these premised submissions it has been argued by Shri Tiwari, learned Counsel for the applicant that this revision application be allowed by setting aside the impugned order of Rent Controlling Authority and the application for eviction be allowed.

On the other hand, Shri A.K. Jain, learned Counsel for the respondents/tenants, submits that applicant is not a physically handicapped person as defined u/s 23-J (iv) of the Act and, therefore, the application has been rightly rejected by learned Rent Controlling Authority holding that the applicant is not a physically handicapped person. The contention of Shri Jain, learned Counsel for the tenant is that a person is said to be physically handicapped when he suffers from deformity akin to those disability. By placing reliance on the decision of Karnataka High Court Suresh K. Bhat v. University of Mangalore and Anr. AIR 1987 Kar 158, it has been argued by learned

Counsel that a scar on the face, a torn ear with perfect hearing, a torn nose with no breathing trouble, amputation of a toe or a finger do not fall within the purview of "physically handicapped". By further placing reliance on Single Bench decision of this Court *Satulal v. Mandal Abhiyanta Telegraph* 1988 (1) MPWN 154, it has been argued by learned Counsel that the crushed foot injury would not come under the ambit and sweep of physically handicapped person. By placing reliance on another decision of the Single Bench of this Court *Krishan Kumar Baori v. Ganga Prasad Singhi* 1996 J LJ 386, it has been argued that physically handicapped would mean who cannot pursue his normal course of life and since there is nothing on record that applicant is unable to pursue his normal course of life, he would not be included in the term of "physically handicapped person" as envisaged u/s 23-J (iv) of the Act.

Learned Counsel has further contended that in order to obtain an order of eviction u/s 23-A (b) of the Act, proving of ownership of the suit shop by the landlord is presupposed and since this has not been so proved by the applicant, learned Rent Controlling Authority has rightly dismissed his application holding that the ownership is not proved. In support of his contention of learned Counsel has placed reliance on the decision of Supreme Court *Sheela* (supra), which has also been placed reliance by learned Counsel for the applicant and Single Bench decision of this Court in [Dheerajbai Vs. Ushabai](#), .

It has been then contended by learned Counsel for the tenant/respondents that he was the tenant of two shops. The first shop which is alleged to have been purchased by the applicant and another shop which has alleged to have been sold to one Shankarlal and, therefore, filing of application for eviction of the suit shop amounts to splitting of tenancy, which is not at all permissible under the law. On these premised submissions, it has been argued by learned Counsel for the tenants/respondents that this revision application be dismissed.

Having heard learned Counsel for the parties, I am of the view that the finding of learned Rent Controlling Authority holding that applicant/landlord is not the owner for the purpose of eviction application, is liable to be set aside and the finding of learned Rent Controlling Authority holding that applicant/landlord is not a "physically handicapped person" is required to be upheld.

There is sufficient force in the submission of Shri R.S. Tiwari, learned Counsel for the applicant, that the degree of proving ownership in the matter between landlord and tenant under the proceedings of eviction as envisaged u/s 23-A (b) of the Act cannot be equated and would not be that much higher as required to be proved in a suit for establishing title. There is much substance in the submission of Shri Tiwari, learned Counsel for the applicant, that continuously for last 23 years the tenant/respondents were paying rent to the applicant and during this long period of 23 years, they never challenged or disowned the ownership of the applicant. Indeed, in his cross-examination the tenant has admitted that he is paying rent to the applicant

and has paid rent to him up to the year 2001. Thus, I am of the view that since for a considerable long period for more than 23 years, without any hindrance, the respondents were paying rent to the applicant and they never raised any objection in respect of his ownership during a very long period of 23 years and has raised this objection only when the present proceedings for eviction was filed by the landlord, by his conduct he is estopped from raising the dispute of title of the landlord and principle of estoppel would apply against the tenants u/s 116 of the Indian Evidence Act, 1872.

At this juncture, I may mention that the deposition sheets of cross-examination of Sanjay Minocha are missing from the file of Rent Controlling Authority, fortunately, learned Counsel for the applicant is having certified copy of the deposition sheet of cross-examination and he has filed the same for the perusal of the Court.

The decision of Sheela (supra) has been placed reliance by learned both the Counsel for the parties. Shri Jain, learned Counsel for the tenant is placing reliance on Para 10 of the said decision and has contended that a person may be a landlord though not an owner of the premises. The factor determinative of relationship is the factum of his receiving or his entitlement to receive the rent on any accommodation. Such receiving or right to receive the rent may be on the own account of landlord or on account of or for the benefit of any other person. Such landlord would be entitled to seek an eviction of the tenant on one or more of such grounds falling within the ambit of Section 12(1) of the Act, which do not require the landlord to be an owner also so as to be entitled to successfully maintain a claim for eviction. By further putting emphasis on the later part of Para 10 of the said decision, it has been argued that Clause (f) contemplates a claim for eviction being maintained by an owner-landlord and not landlord merely.

I have considered the above said judgment but in the later part of Para 10 in the above said decision it has been explained by Their Lordships of the Supreme Court that the concept of ownership in a landlord and tenant litigation governed by rent control law has to be distinguished from the one in a title suit. Their Lordships have further held that ownership is a relative term the import whereof depends on the context in which it is used.

In rent control legislation, the landlord can be said to be owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else, to evict the tenant and then to retain control, hold and use the premises for himself. Their Lordships further explained that what may suffice and hold good as proof of ownership in a landlord and tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit and ultimately it was held in the last of Para 10 that the burden of proving ownership in a suit between landlord and tenant where the landlord and tenant relationship is either admitted or proved is not so heavy as in a title suit and lesser quantum of proof may suffice than what would be needed in a suit based on title against a person setting up a contending

title while disputing the title of the plaintiff.

In Para 16 of the decision of Sheela (supra), it has been held by the Supreme Court that if the tenant having been apprised of the transfer, assignment or devolution of rights acknowledges the title of transferee either expressly or by paying rent to him, the rule of estoppel once again comes into operation for it is unjust to allow tenant to approbate and reprobate and so long as the tenant enjoys everything which his lease purports to grant how does it concern him what the title of the lessor is. To me, since it has been admitted by tenant/respondent that he has paid rent of suit shop for considerable long period of 23 years to the landlord, the rule of estoppel u/s 116 of the Evidence Act would be applicable against him.

In an earlier decision Anar Devi (supra), the Supreme Court in Para 13 held that once the tenant has acknowledged the title of landlord by attorning the rent, the tenant is estopped from raising any dispute about the ownership of the landlord. The decision of Single Bench of this Court R.P. Sharma (supra), is also on the same footing. Thus, I am of the view that for the purpose of eviction of tenant from the suit shop on the ground envisaged u/s 23-A (b) of the Act, present applicant is not only his landlord but is also owner of the suit shop. Needless to emphasis, the provisions of Section 12(1)(f) of the Act is at par with that of Section 23-A (b) of the Act and only difference is that the provisions of Section 23-A (b) can be invoked by specified landlord only who has been defined u/s 23-J of the Act. The finding of learned Rent Controlling Authority holding that the applicant is not the owner for the purpose of application for eviction, if accordingly, set aside.

However, there is much force in the contention of Shri A.K, Jain, learned Counsel for the respondents, that applicant cannot be termed as "physically handicapped person " as envisaged u/s 23-J(iv) of the Act. The term "physically handicapped" used in Clause (iv) of Section 23-J of the Act has not been defined and, therefore, the dictionary meaning is to be seen. In Law of Lexicon Dictionary by P. Ramanatha Aiyer "handicapped" means a person with physical disability that limits the capacity to work and puts him to disadvantage

By placing reliance on the decision of Satulal (supra), wherein the different dictionary meaning of term "handicapped" has been mentioned, this Court in the case of Krishan Kumar Baori" (supra), has mentioned different meanings of term "handicapped" and "handicap" which means as under:

(1)"Handicapped":

(i) crippled or physically disabled;

(ii) mentally deficient;

(iii) (of a constant) marked by; being under, or having a handicap person;

The Random House Dictionary of the English Language--(The Unabridged Edn.)

(2) "Handicap": A disadvantage that makes achievement unusually difficult esp. a physical disability that limits the capacity to work.--Webster's Third New International Dictionary--(The Unabridged Edn.)

(3) "Handicap" : A person specifically children physically or mentally defective. --A Supplement to the Oxford English Dictionary (Vol. 12)

By placing reliance on the decision of Krishan Kumar Baori (supra), I am of the view that word "handicapped" must mean something more than mere claim of being physically handicapped person. It was necessary to establish and satisfy the Court with regard to the nature and extent of his disablement or handicappedness and also to show as to how it has a material bearing on the need propounded by him. To me, in order to interpret the term "physically handicapped person" as envisaged u/s 23-J (iv) of the Act he must be such a person suffering from disease which may prevent him from following ordinary pursuits of his life.

A person may be sound in health apparently, but he may be suffering from such a disease which may prevent him from pursuing ordinary daily pursuits, but it is for the person claiming himself to be handicapped to establish by cogent and convincing evidence that he is suffering from such disease that he cannot pursue his normal course of life and, hence, I am of the view that since applicant has not proved all these things, he cannot be said to be a "physically handicapped person" for the purpose of Section 23-J (iv) of the Act. The finding of learned Rent Controlling Authority in that regard is hereby affirmed.

I am not at all impressed by the submission of learned Counsel for The tenant/respondents that since the eviction has been sought from the suit shop, originally two shops adjoining to each other were given to him on tenancy basis and, therefore, bringing a suit for eviction for one shop only would tantamount to splitting of the tenancy. According to me, the specific case of plaintiff is that he bought the suit shop and the rate of rent of suit shop is 100/- per month. The defendants are paying the rent throughout for last 23 years of the suit shop to the plaintiff and, therefore, question of splitting of tenancy does not arise. Apart from this, it is borne out from the record that the adjoining shop was sold to someone else. I may further add that the factum of splitting of tenancy has not at all been pleaded neither in the written statement nor in the application seeking leave to defend by the defendants. To me, since this plea is having nexus with the facts, it ought to have been raised before the Rent Controlling Authority. In absence of raising such plea before the Rent Controlling Authority, the same cannot be raised for the first time in this revision application. In this context, I may profitably rely the decision of Supreme Court [C. Mackertich Vs. Steuart and Co., Ltd.](#) .

Resultantly, this revision application fails and is hereby dismissed though it is held that for the purpose of M.P. Accommodation Control Act, the applicant is the owner of tenant/respondents. Looking to the facts and circumstances, parties are directed

to bear their own costs throughout.