(1969) 04 MP CK 0008

Madhya Pradesh High Court

Case No: S.A. No. 266 of 1968

Chhaganlal and another		APPELLANT
	Vs	
Smt. Parvati Bai		RESPONDENT

Date of Decision: April 9, 1969

Acts Referred:

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

Citation: (1972) MPLJ 51

Hon'ble Judges: A.P. Sen, J

Bench: Single Bench

Advocate: Y.S. Dkarmadhikari and G.K. Shrivastava, for the Appellant; J.V. Jakatdar and D.P. Verma, for the Respondent

Final Decision: Dismissed

Judgement

A.P. Sen, J.

This appeal, filed by the defendants, is directed against the judgment and decree of the IVth Additional District Judge, Jabalpur, dated 8th March 1968, affirming the judgment and decree of the IInd Civil Judge (Class I), Jabalpur, dated 1st September 1967, decreeing the plaintiff-respondent''s suit for ejectment u/s 12 (1)(e) of the Madhya Pradesh Accommodation Control Act, 1961, together with arrears of rent and mesne profits in respect of the accommodation in suit.

The facts leading to this appeal, shortly stated, are these. The plaintiff Smt. Parvati Bai had purchased the ground floor of House No- 461, Upraingani, Jabalpur, by a registered sale deed dated 5th December 1964 (Ex. P.-1) from one Smt. Shivkumari Bai. The defendants are tenants in the portion on the ground floor shown in red in the plaint-map on a rent of Rs. 12 /- per month, since before the purchase of that house by the plaintiff; their tenancy commences on the first day of each English calendar month, and the tenancy was, on these very terms, attorned to the plaintiff. Admittedly, the plaintiff has been occupying the first floors of the house which

belongs to her daughters. The suit premises had been let out to the defendants for residential purposes and are being used by them for that purpose. The plaintiff sought their eviction u/s 12 (1)(e) and (g) of the Act, on the grounds that (i) she required the premises for the bona fide residence of herself and the other members of her family residing with her; and (n) the demised portion required essential repairs which could not be carried out without the defendants vacating the premises. She alleged that her residential requirement of the suit premises was a felt need because she was a chronic heart patient and was also a patient of advanced Tuberculosis and was, as such, unable to climb up the stairs to reach the first floor belonging to her daughters with whom she was presently residing, and that she had been advised complete rest and forbidden climbing of steps by her doctors. In other words, the plaintiff pleaded that her condition of health made it absolutely necessary that she resides on the ground floor and, therefore, her requirement was a bona fide need within the meaning of section 12 (1)(e) ibid.

Apart from taking various other pleas in denial of the claim with which we are not concerned in this appeal, the defendants mainly resisted the plaintiff''s claim for eviction u/s 12 (1)(e) of the Act, by denying that she was a patient of heart ailment or was suffering from Tuberculosis, much less of an advanced nature. It was also specifically denied by them that she was either unable to move about or that she had been advised complete rest by her doctors or was unable to climb up and down the stairs. It was further alleged that the plaintiff had been residing in the first floor of the house for the last 7/8 years and that her claim was utterly false.

Both the Courts below have concurrently found that the plaintiff has established her bona fide requirement of the suit premises for residence of herself and the other members of her family. Admittedly, the plaintiff has no other equally suitable alternative accommodation of her own in the city of Jabalpur which she can utilise for this purpose. In this connection, the learned Additional District Judge states:

It is immaterial that she is staying in the first floor as a licensee or as a tenant, since that would not alter the position that she has no other accommodation of her own in Jabalpur for her residence. Equally irrelevant for this appeal is the consideration that plaintiff had built some three non-residential rooms adjoining the suit premises on the ground floor and let out those rooms on monthly rental of Rs. 40/-. u/s 12 (1) (e) of the Madhya Pradesh Accommodation Control Act, 1961, all that we have to see is whether on the date of suit plaintiff has no other reasonably suitable residential accommodation of her own in Jabalpur. This would not enable us to see whether plaintiff should have constructed residential premises in place of non-residential premises.

We find from the evidence on record that plaintiff who is aged about 25 years is suffering from T. B. and she has been advised rest by Dr. Bicharia (P. W. 6) who is treating her for the ailment. This witness has stated that she should not exert physically and such physical exertion would be disastrous for her life. In the face of

this testimony it could not be said that the need of plaintiff is not bona fide or it is a mere whim or fancy- In the present case we have not only the assertion of plaintiff about her bona fide need but cogent evidence to bear out the need, and hence as per the ruling in Sarvate v. Nsmichand 1966 M.P.L.J 26 (S.C.) plaintiff has proved her case Plaintiff has amply proved by the evidence on her side that her need is genuine and it proceeds from its reputed source, and is sincere and not false, fictitious, simulated or spurious: Damodar Sharma and Another Vs. Nandram Deviram, .

It was further argued by the appellants that there was no pleading on the aide of plaintiff about Doctor''s advising her complete rest. But I am not impressed with this argument, since all that plaintiff is to plead is that she bona fide requires the suit premises, and the rest of it is evidence in the case to show her bona fide need.

The appellants contended that plaintiff had not proved any heart trouble, or her inability to climb stairs- Looking to the scope of the present suit which is one against, tenant, all these matters were not at all required to be proved. AH that was necessary for plaintiff to prove was that looking to her; state of health she was advised to avoid exertion, and this she has done in this case. It is futile to suggest that climbing of stairs would not result in physical exertion There is also no reliable evidence on record to show that plaintiff has been moving about freely in spite of the ailment.

In Sarvate T.B. v. Nemichand their Lordships of the Supreme Court have stated that the High Court has no jurisdiction to interfere with a Banding of this nature which is an inference of fact drawn from the surrounding circumstances. The learned counsel for the appellants, however, contends that the Courts below have failed to reach a proper conclusion, having regard to the test laid down in Damodar v. Nandram and that there has really been no objective determination of the relevant fact being in issue. According to him, the plaintiff was already residing with her daughters in the first floor of the house for the last 7 /8 years without any let or hindrance; that there was no reliable evidence to establish her alleged need for the suit premises or of her so-called ailments; and that the alleged need was not a bona fide requirement, but just a pretence to secure eviction of the defendants. The contention cannot be accepted because the question whether the plaintiff has or has not discharged the burden of proving that she genuinely requires the accommodation in suit within the meaning of section 12 (1) (e) is a question of fact.

It is true that the mere assertion of a landlord that he requires for his use a particular premises for a particular purpose raises no presumption that he genuinely requires the premises for that purpose. Nevertheless, the Courts below have rightly found that the plaintiff here has established that she genuinely requires the premises on an objective determination of her alleged requirement, in the light of the established circumstances appearing on the record. In view of the present state of her health, the plaintiff must have the beneficial enjoyment of the suit premises, which is her property, for her personal residence; and that requirement, i.

e., residence on the ground floor, is in these circumstances, undoubtedly a matter of convenience to her. Indeed, the circumstances on record, if objectively viewed, result in an irresistible inference that she has really a felt need. The Courts below have rightly considered the evidence adduced by her, and found that she honestly and in good faith requires the premises in question and has established the case pleaded by her. That finding of theirs is based on an appreciation of evidence and is binding on the High Court in this appeal, particularly when they have kept in view the legal meaning of the expression ''requires bona fide1 occurring in section 12 (1) (e) of the Act and also have properly applied the rule enunciated be this Court in Damodar v. Nandram (supra). In Harnarayan v. Kanhaiyalal 1965 M.P.L.J. 97 this Court had occasion to charcterise that such a finding was not open to attack in second appeal.

Being faced with the situation that the finding as regards the plaintiff''s need u/s 12 (1) (e) ibid was a finding of fact binding on this Court in this appeal, the learned counsel for the appellant has endeavored to press in service a point of law which was not urged in the Court below, namely, that the present suit was barred under Order IX, rule 9, of the Code of Civil Procedure, inasmuch as the plaintiff had filed a previous suit for ejectment on precisely the same grounds, i. e., Civil Suit No. 234-A of 1965, which was dismissed in default by the II Civil Judge (Class II), Jabalpur, on 12th February 1966. Although that point was not argued in the Court below, I find that there is a plea in that behalf in paragraph 16 of the Written statement and also an issue, being Issue No. 1, framed thereon by the learned trial Judge. The contention that the suit is barred under Order IX rule 9, is, however, wholly devoid of substance and cannot be accepted for the reasons I shall presently state.

When a suit is dismissed in default under Order IX, rule 8, of the Code of Civil Procedure, the plaintiff is precluded from bringing a fresh suit in respect of the same cause of action under Order IX, rule 9. Rule 9 reads :

Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing ft fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

From a plain reading of this rule, it would appear that there is no statutory bar against the institution of a fresh suit in respect of a distinctly separate cause of action. Indeed, the rule is inapplicable to a suit for ejectment between landlord and tenant, because each such suit is necessarily based on a different cause of action, namely, the failure of a tenant to vacate the demised premises upon determination of his lease by a notice u/s 106 of the Transfer of Property Act, 1882.

As already stated, a plaintiff is precluded by Order [X, rule 9, from bringing a fresh suit in respect of the Sums cause of action. It is also true that where the cause of action is the same in both the suits, the bar under this rule cannot be avoided by a mere change in the form of relief''s asked for. See Thakur Singh v. Dava Shankas 15 IA 66. It is, however, observed by the Patna High Court that the words cause of action'' in this rule should be narrowly construed as it bars a party farm enforcing his rights in Court, See Mookia Singh v. R. Chariter AIR 1856 Pat. 143. Even otherwise, the dismissal in default of a suit for ejectment brought by a landlord is no bar to a subsequent suit by him against the tenant after a fresh nodes to quit. That is so, because the right of reversion of the landlord 1 to the demised pre noises inhere? and subsists as long as the parties fact and in the relation of landlord and tenant

Apart from this, a plaintiff is only precluded by this rule from bringing a fresh suit in report of the sane cause of action. Now, ''cause of action'' means all the essential facts constituting the right and its infringement. In other words, the expression means every fact which would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court. In Rajah of Pittapur v. Sri Raj Nath Venkata Maliipati Surva (1885) 12 I.A. 116 the Judicial Committee of the Privy Council, referring to the expression ''cause of action1 appearing in Order II, rule 2, said that it meant ''the cause of action for which the suit was brought''. In other words, it means the entire bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed in his suit. (See Mulla''s Code of Civil Procedure, 13th EdnT Vol. I, pp. 144,638 and 804.)

In support of his submissions, the learned counsel has relied upon Mohammad Khalil Khan v. Mehbub Ali; Mrs. L.A. Saunders Vs. Land Corporation of Bengal Ltd., ; Suraj Ratan Thirani and Others Vs. The Azamabad Tea Co. and Others, . The 1st and 3rd cases cited above are clearly distinguishable on facts, while the 2nd is quite against his contention.

In Mohammad KhaliI Khan''s case (supra) the Judicial Committee of the Privy Council stated that the cause of action in the two suits may be considered to be the same, if, in substance, they are identical, following Burusden v. Humphrey (1884) 14 Q.BD. 141. The circumstances of that case were that on the death of one Fida Ali Khan, Mohammad Khalil Khan and others instituted a suit for the recovery of certain properties in the Shahajahanpur district against one Mehbub Ali Mian and others. The short question for their Lordship''s consideration was, whether that suit was barred by Order II, rule 2, because in an earlier suit the claim in respect of the Shahjahanpur property had been omitted, and they held that the plaintiffs were precluded, by reason of that provision, from maintaining the subsequent suit, having regard to the circumstance that in she earlier suit they had omitted to claim that property.

In Mrs. L.A. Sounder''s case (supra), the Calcutta High Court rejected an argument based on Order IX, rule 9, in regard to a subsequent suit instituted by a landlord for the ejectment of his tenant, after an earlier suit had been dismisses I in default of his appearance. It was held that the ''notice of termination of the tenancy was an essential part of the cause of action for a suit for ejectment of the tenant. The notices not being the same, the causes of action upon which the two suits were based were different and, therefore, the subsequent suit is not barred" under Order IX, rule 9. That decision is obviously against the appellant.

The decision of the Supreme Court in Suraj Ratan''s case (supra) is equally inapplicable. Their Lordships were there dealing with a subsequent suit in which the plaintiffs had based their title and the right to relief on a bundle of facts which were essentially and identically the same as in the earlier suit. In holding that the plaintiffs were barred from bringing the later suit, their Lordship3, following the Privy Council decision in Mohammad Khalil Kharfs case (supra), stated that the real test to be applied ''was are the causes of action in respect of the two suits in substance and not technically identical''.

Applying these principles to the facts of the present case it must be held that the cause of action which had given rise to and formed the foundation of the first suit for ejectment dismissed in default, was entirely different from the cause of action which gave occasion for and formed the foundation of the present suit for ejectment.

The result is that the appeal fails and is dismissed with costs. Counsel- fee Rs. 50/-, if certified.