
(2016) 08 MP CK 0035

MADHYA PRADESH HIGH COURT

Case No: S.A. No. 1344 of 2012

Ramjan s/o Ismail

APPELLANT

Vs

Salim s/o Abdul
Rehman

RESPONDENT

Date of Decision: Aug. 30, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 - Section 12(1)(f)

Citation: (2016) 4 MPLJ 497 : (2017) 1 RCRRent 477

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

Bench: Single Bench

Advocate: Shri Avinash Zargar, Learned Counsel, for the Appellant; Shri Sanjeev Mishra, Learned Sr. Counsel with Shri Sameer Seth, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Joshi, J. - The appellant/original defendant has preferred this appeal under Section 100 of the CPC being aggrieved by the judgment dated 21.11.2012 passed by Fourth ADJ, Khadwa, passed in Civil Appeal No. 32-A/12, affirming the judgment and decree dated 30.06.2011 passed by Fourth Civil Judge, Class-II, Khandwa, in Civil Suit No. 5-A/2009, whereby the suit of the respondent filed against the present appellant for eviction of tenant and for getting vacant possession of the suit accommodation (non-residential), on the ground embodied under Section 12(1)(f) of the M.P. Accommodation Control Act, 1961 had been decreed.

2. It would be significant to mention here that originally the suit was brought by two real brothers Salim Shakur and Abdul Shakur, but during pendency of the suit before the trial Court Abdul Shakur has died, thus, his name was deleted from the plaint. Undisputedly, the respondent is owner and landlord of the suit accommodation, in which the appellant was a tenant for nonresidential purpose of suit accommodation at the rate of Rs. 400/-

per month and the month of the tenancy begins with first date of Gregorian Calender and ends with the last date of it.

3. The original plaintiff filed suit for eviction of tenant on the grounds that the present appellant remained irregular in paying the rent and had not paid rent from December 2007 and at the time of presentation of plaint, Rs.2400/- as arrears of rent were dues towards the appellant, which were not paid by the appellant despite receiving the notice sent prior to the suit by registered post.

Respondent/plaintiff Salim"s son Jawed is major and unemployed and is having experience of repairing of motorcycles. Jawed is willing to start his business of motorcycle"s repairing at suit accommodation and thus, the suit accommodation is bona-fidely required by the plaintiff and there is no any other suitable alternative accommodation of plaintiff in the Khandwa city. At presently, Jawed is performing the business of repairing of motorcycles in the street. Plaintiff Salim is having a shop of wood and there is no any other suitable alternative accommodation of the plaintiff, where Jawed could start his shop. The tenant has deposited Rs.85,000/- as security at the time of taking suit accommodation on rent and plaintiff is ready to return the above-mentioned amount at the time of vacating of the suit accommodation. The appellant had not complied with the notice sent prior to filing of the suit, thus, the suit was filed.

4. The tenant/present appellant besides above-mentioned admitted facts, denied all other adverse pleadings of the plaintiff and pleaded that under the agreement, the plaintiffs were not having any right for ejectment of the tenant. Salim"s son Jawed is already doing his business of motorcycle repairing in his own shop with ease, whereas the suit accommodation is comparatively not having much space required for motorcycle repairing business. Defendant had been regularly paying the rent and on false ground plaintiffs have filed this suit for eviction. Plaintiffs are not entitled for any relief.

5. The trial Court framed four issues. Before the trial Court Salim (PW-1) and Mohd. Jawed Qureshi (PW-2) were examined for the present respondent and Ramjan (DW-1), Liyaqat (DW-2) were examined for the appellant. The trial Court found after appreciation of the evidence that at the time of sending of notice by the landlord prior to the suit, rent was due from December 2007, but the tenant had paid the arrears of rent within two months from receiving the above-mentioned notice and the suit accommodation is bonafidely required by the plaintiff for non-residential requirement of his son and the plaintiff is not having any other suitable alternative non-residential accommodation in the Khandwa city, thus, the suit for eviction of tenant was decreed on the ground of Section 12(1)(f) of the M.P. Accommodation Control Act. The first appeal filed by the present appellant remained unsuccessful.

6. Before the trial Court, in cross-examination of the plaintiff"s witnesses and by the witness produced by the appellant and photographs, it was being tried to prove that in adjacent shop to the disputed shop plaintiff Salim is doing his business of wood. It was

being tried to prove that for repairing work of motorcycle, any shop is not needed, because this work is being done on vacant land or road. The tenant is not having the right to ask the landlord to vacate his own shop for starting shop of his son. Similarly, the tenant is not entitled to compel the landlord that his son or daughter do their business on the road or vacant area. Appellant Ramjan has clearly admitted in his cross-examination (para-18) that the plaintiff is not having any other shop in the Khandwa city, besides the suit accommodation and its adjacent shop, in which the plaintiff Salim is doing his wood business. Appellant's another witness Liyaqat (DW-2) had also admitted this fact in his cross-examination (para-15).

Thus, from admissions of the appellant and his witness, it was clear that the plaintiff/landlord was not having any other suitable alternative non-residential accommodation for starting shop of his son. It is clear that the findings given by the Courts below on the issue of alleged bona-fide requirement and nonavailability of any other suitable alternative non-residential accommodation in the same city to the landlord/plaintiff are based on proper appreciation of the evidence and requires no any interference.

7. It is apparent that there is concurrent findings of the Courts below on the above-mentioned point and therefore this appeal does not have any substance or the circumstance in the matter giving rise to any questions of law rather than substantial questions of law. It is also argued by the appellant's counsel that the respondent is having a deposit from the appellant of Rs.85,000/- as security, but it appears that this point was not raised before the appellate Court. On the other hand, the plaintiff has pleaded in his plaint that he is ready for refund of this deposited amount of Rs.85,000/- on vacating of the disputed or suit accommodation by the appellant. Thus, this point can be raised before the executing Court. Consequently, this appeal being devoid of any merits deserve to be and is hereby dismissed at the stage of motion hearing. There shall be no order as to the costs.