

THE HIGH COURT OF MADHYA PRADESH
S.A. No.289/17
(Ashok Kumar Sen Vs. Babulal Sen)

Gwalior, Dated 13 /12/18

Shri N.K. Gupta, Senior Advocate for the appellant.

Shri Nirmal Sharma, Advocate for the caveator.

Concurrent findings of both the courts below are assailed in this second appeal filed u/S. 100 of CPC, where the suit for eviction filed on the ground of non-payment of arrears of rent and bonafide need of landlord to do business has been decreed by both the courts below.

Learned counsel for the appellant is heard on the question of admission and record of the courts below is perused.

The facts reveal that plaintiff/landlord came with the case that he is the owner of the suit shop admeasuring 77.84 sq. ft. situated at Talaiya Mohalla Evam Khyavda Chauraha Guna having purchased the same by sale deed dated 14/12/07 from the predecessor-in-title Smt. Kiran Prajapati. It was averred in the plaint that appellant was inducted as a tenant by the said predecessor-in-title who duly informed the tenant about transfer of property in favour of the respondent/landlord. The plaint further discloses that ever since transfer of title of the suit shop in favour of respondent/landlord, appellant/tenant did not deposit any rent as a result of which a notice dated 25/6/08 was sent by registered post terminating the tenancy and asking tenant to vacate suit shop on the ground of non-payment of rent and

the suit shop required by landlord for doing business.

Tenant/defendant/appellant herein though accepted Smt. Kiran Prajapati as landlord but declined to accept the respondent herein as landlord by disclosing in the written statement that he had been inducted by the said Smt. Kiran Prajapati as tenant on rent of Rs. 375/- per month and that the said predecessor-in-title on 4/7/07 had borrowed Rs. 36000/- from the tenant/appellant herein with promise to refund the same in 5-7 years by adjusting the same against rent of suit accommodation. The defendant denied that predecessor-in-title ever informed about selling the suit shop to the respondent/plaintiff. WS further revealed that on coming to know of surreptitious transfer of suit shop by Smt. Kiran Prajapati to plaintiff/respondent herein, a notice was served by defendant upon the said Smt. Kiran Prajapati but the same did not invoke any response. In this factual background, WS alleged that appellant/defendant herein and Smt. Kiran Prajapati have colluded to create circumstances and give a false cause of action to the plaintiff/respondent herein to file a suit for eviction against defendant/appellant herein.

The trial Court framed eight issues. The issue of relationship of landlord and tenant between the rival parties was found established. However, the tenancy between the rival parties being @ Rs. 400/- per month was not established but instead it was found that tenancy was @ Rs. 375/- per month as contended by defendant/tenant. The third issue of

tenant having failed to pay arrears of rent of the stipulated period was found established in favour of the landlord. The ground of bonafide need of the landlord to do business and of not having any other alternative suitable accommodation within the municipal limit of Guna town was also found established in favour of the landlord. The suit was not found found hit by non-joinder of parties. Consequently, decree of eviction was passed against the appellant/tenant who was also directed to pay arrears of rent w.e.f. 14/12/07 @ Rs. 375/- per month after adjusting the amount of rent already paid or deposited. The first appellate court after appreciating the evidence on record and findings rendered by the trial court affirmed the decree passed and dismissed the appeal of the appellant/tenant in toto.

In the present second appeal, substantial question of law on which learned counsel for the appellant has laid emphasis is that the factum of relationship of landlord and tenant despite being not established, was found proved.

The aforesaid question is raised by arguing that there is material variance between the map of the said shop affixed with the sale deed dated 14/12/07 and the suit shop for which the present suit has been filed and therefore, both the courts fell in grave substantial error by not considering the question as to whether the shop in which appellant/defendant was inducted as tenant by Smt. Kiran Prajapati (predecessor-in-title of the plaintiff) and the suit shop are the same property or not.

In this regard, it is seen from the findings rendered by the trial court to issue No.1 that the trial Court found that the map annexed to the sale deed dated 14/12/07 Ex.P-1 was incorrectly showing boundaries and therefore, the amended sale deed was got executed and registered vide Ex.P-6 by the landlord on 23/7/10 between Smt. Kiran Prajapati and the plaintiff/landlord rectifying the defect in the map of the original sale deed Ex.P-1 and thereafter plaintiff carried out consequential amendment in the plaint by filing an application under Order 6 Rule 17 CPC which was allowed by the trial court on 27/9/10. In this regard, trial court found that variance in the boundaries of suit shop ceased to exist. Further, in regard to the contention of the tenant that photo of the suit shop did not show the actual suit shop, was rejected by the trial Court in the absence of any cogent evidence produced by the defendant/tenant.

Learned counsel for the appellant has proposed another substantial question of law that courts below have rendered substantially erroneous finding while accepting plea of bonafide need to do business raised by the landlord.

Issue No. 4 and 5 dealt with the aspect of bonafide need to do business and absence of any suitable alternative accommodation to do business of hair cutting. Defendant/tenant projected a case that plaintiff/landlord alongwith his brother Subhash Sen is running hair cutting saloon at two different places, first being a place behind suit shop and the other opposite Siddharth Hotel in Laxmiganj

where atleast 20 employees work. From the evidence adduced by defendant and as well as plaintiff, trial court found that though a famous hair cutting saloon is run by the family of plaintiff/landlord opposite Siddharth Hotel in Laxmiganj Guna but the said shop is owned by his brother Subhash Sen and not by plaintiff/landlord. Ex.D-1 produced by defendant/tenant in this respect to be one of the shop at Laxmiganj where owner was one of the brothers of plaintiff/landlord and not landlord and therefore, trial court found that there is no suitable alternative accommodation available to plaintiff landlord to do business within the municipal limit of town of Guna.

From the aforesaid evidence that has come on record, both the proposed substantial questions of law are not worth being framed since oral and documentary evidence produced by rival parties clearly reveal that the suit filed on the ground of section 12 (1)(f) of Madhya Pradesh Accommodation Control Act was rightly decreed in favour of landlord. No interference is called for in concurrent findings of facts on all the relevant issues.

Consequently, appeal is not worth admitting and is dismissed at the very outset at the admission stage.

No cost.

(Sheel Nagu)
Judge
13/12/18