

THE HIGH COURT OF MADHYA PRADESH 1
SA 688/2021
Rajendra Prasad Sikka (D) through Legal Representatives vs.
Sanjeev Maheshwari

Gwalior, Dated :23/09/2021

Heard through hybrid system of physical/ virtual hearing.

Shri Prashant Sharma, Counsel for the appellant/defendant
Rajendra Prasad Sikka (D) through Legal Representatives.

Shri JP Mishra, Counsel for the respondent/ plaintiff.

Heard on admission.

This Second Appeal u/S. 100 of CPC has been filed against the judgment and decree dated 19/04/2021 passed by First Additional District Judge, Guna in Regular Civil Appeal No.72/2018, affirming the judgment and decree dated 15/05/2018 passed by Fifth Civil Judge, Class-I, Guna in Civil Suit No.23-A/2017.

Facts giving rise to present appeal, in short, are that respondent/plaintiff is the owner of the suit premises and filed a suit for eviction on the ground of *bona fide* requirement u/S.12(1)(f) of MP Accommodation Control Act. It is pleaded that initially, defendant Rajendra was the tenant of disputed suit shop and was running a business of ready-made garments and after his death, his legal heirs were performing the same. It is pleaded that he was working in Maheshwari Garments Firm at a package of Rs.1 lac per year and resigned from his job on 30/06/2012. It is pleaded that now, he is unemployed, therefore, he is in need of said suit shop for his business. He is not in possession of any shop within local limits of Municipal

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Corporation, Guna. It is further pleaded that on eastern side of disputed shop, in another shop ad-measuring 7x12 ft. defendant Jagdish Prasad is a tenant. Behind the shop, there is one room of size 8 x15 ft which is required by plaintiff for the purpose of ready-made garments business. Therefore, plaintiff sought eviction by removing partition of two shops for running his business. It is further pleaded that arrears of rent @ Rs.2500/- pm from December 2012 to March, 2013 has not been paid by defendant. On 31st January, 2013 the tenancy rights of the defendant was closed by giving notice to him. On these grounds, he has filed a suit for eviction as well as for recovery of rent against appellant/defendant.

Appellant/defendant filed his written statement and denied the plaint averments. It is pleaded that the intention of plaintiff is to enhance the rent and he is the only son handling the business of his father and, therefore, there is no *bona fide* requirement of plaintiff and he is having an alternative accommodation.

The Trial Court, after framing issues and recording evidence of the parties, passed a decree of eviction against the appellant/defendant. The appellant was also directed to pay Rs.2500/- pm towards arrears of rent and he was further directed to hand over the vacant possession of the suit premises within a period of two months from the date of passing of judgment and decree i.e. 15/05/2018.

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Being aggrieved the judgment and decree passed by trial Court, appellant/defendant preferred an appeal before the appellate Court. During pendency of the appeal, appellant/defendant filed another application under Order 41 Rule 27 of CPC for bringing evidence regarding alternative accommodation of plaintiff in Dubey Colony on record and the same was dismissed by the appellate Court by discussing the matter in detail. Thereafter, appellant/ defendant also filed another application under Order 41 Rule 27 of CPC for pleading that the plaintiff was not an unemployed and same was dismissed. Thereafter, another application under Order 6 Rule 17 of CPC was filed by appellant/defendant seeking amendment in reply and same was dismissed.

The appellate Court by the impugned judgment and decree dated 19/04/2021, dismissed the appeal.

Challenging the judgment and decree passed by the Courts below, it is submitted by the Counsel for the appellant that the learned Court below has committed an error in granting a decree of eviction in favour of respondent/plaintiff. The plaintiff did not need the suit shop and he is financially quite capable. Before filing of the suit, the plaintiff was engaged in contractor-ship and was also performing the business of ready-made garments. Plaintiff did not disclose the details of his entire property/income and, therefore, decree of eviction granted in favour of

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plaintiff deserves to be dismissed. In support of his contentions, the learned Counsel for the appellant has relied upon the judgment passed by Supreme Court in the case of **Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta** reported in **AIR 1999 SC 2507**.

Learned counsel for the respondent/ plaintiff submitted that the Court below has not committed any error in taking material facts into consideration while granting a decree of eviction under Section 12(1)(f) of MP Accommodation Control Act. It is further submitted that the landlord is the best judge and he has complete freedom to decide as to whether for the purpose of carrying business he is in *bona fide* requirement of suit premises or not. It is argued that the findings of fact recorded by the Courts below need not require any interference. Hence, prayed for dismissal of the appeal. In support of his contentions, he has relied upon the judgment of Apex Court in the case of **Raghvendra Kumar Vs. Firm Prem Machinery and Co.** reported in **AIR 2000 SC 534**.

Heard the arguments advanced by learned counsel for parties.

On going through the record, it is seen that both the Courts below have given a finding that plaintiff is in *bona fide* need of suit accommodation for carrying his business and he is not having any other accommodation for the said purpose.

It is well-established principle of law that this Court while

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exercising powers u/S. 100 of CPC cannot interfere with the concurrent findings of fact until and unless they are perverse and contrary to record. This Court should not interfere with the concurrent findings of fact in a routine and casual manner. Concurrent findings of fact of both the Courts below regarding landlord-tenant matter, is not required to be interfered with unless shown to be perverse.

In view of above, I find no illegality or perversity in the findings arrived at by the Courts below. No substantial question of law arises in the present appeal.

As a result, the appeal fails and is hereby **dismissed** *in limine*.

(Deepak Kumar Agarwal)
Judge