

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

First Appeal No.560/2011

(Hindustan Petroleum Corporation Ltd. Vs. Smt. Sangita & Anr.)

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Indore, dated 06/09/2018

Shri S. Kochatta, learned counsel for the appellant.

Shri Veer Kumar Jain, learned Senior Counsel with Shri Vishal Baheti, learned counsel for the respondents.

The present first appeal has been filed under Section 96 of the Code of Civil Procedure, 1908 against judgment and decree dated 05/05/2011 passed by learned 15th Additional District Judge, Indore in Civil Suit No.62-A/2009 by which the decree has been passed for ejectment in respect of open land and recovery of arrears of rent under Section 12 (1) (a) and (n) of the M. P. Accommodation Control Act, 1961.

02- The facts of the case reveal that the plaintiff, who is respondent No.1 before this Court, has filed a civil suit for eviction under Section 12 (1) (a) and (n) of the M. P. Accommodation Control Act, 1961 against the defendants for ejectment, claiming vacant possession as well as for recovery of rent / mesne profit in respect of suit premises. It was stated by the plaintiff that he is owner of the suit premises and defendant No.1 is tenant and defendant No.2 is the sub-tenant.

03- The facts further reveal that on 26/07/1954 the defendant No.1 – All India Trading Company obtained suit premises on lease from Satyanarayan Parasrampurua (Ex.-P/1 and P/3) and a lease agreement (Ex.-D/1) was executed on 15/08/1954 between All India Trading Company and Standard Vacume Oil Company. A registered

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lease deed was executed 25/08/1954 (Ex.-D/3).

04- The undisputed facts further reveal that on 31/08/1987, lease deed (Ex.-D/2) by defendant No.1 was executed in favour of defendant No.2 for a period of ten years. On 19/08/1996, the defendant No.1 wrote a letter to defendant No.2 refusing to accept the lease rent since lease has expired on 01/08/1996 (Ex.-D/4 and D/5). The defendant No.1 on 19/11/1996 wrote a letter to defendant No.2 with a refusal to accept rent of suit premises as lease was allegedly terminated on 01/08/1996 (Ex.-D/6 and D/7).

05- On 19/05/1997, again the defendant No.1 wrote a letter to defendant No.2 in respect of refusal to accept rent of suit premises as lease was terminated on 01/08/1996 (Ex.-D/8 and D/9). Similarly letter dated 22/08/1997, 19/11/1997, 03/06/1998, 24/02/1998, 22/08/1998 and 16/11/1998 (Ex.-D/10, D/11, D/12, D/13, D/14, D/15, D/16, D/17, D/18, D/19, D/20 and D/21) are the defendant's letters for refusal to accept the lease rent on account of termination of lease on 01/08/1996.

06- On 28/12/1999, the plaintiff purchased suit property from Mahesh Rampuria by a registered sale deed (Annex.-P/4) and a lease deed was executed between the plaintiff and defendant No.1 on 01/04/2005 (Ex.-P/4). The defendant No.1 tendered rent to the plaintiff up to 31/03/2007 @ Rs.9,000/- per month, however, as the rent was not paid beyond 31/03/2007 a legal notice was given by the plaintiff to

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defendant No.1 and 2 for terminating the tenancy and ejection from the suit premises (Ex.-P/5) dated 01/08/2007.

07- Thereafter, civil suit was filed by the plaintiff / respondent No.1 on 31/10/2007 for ejection of defendants as well as for possession, for recovery of rent of the suit premises @ Rs.9,000/- w.e.f. 01/04/2007 to 30/09/2007, notice charges @ Rs.2,500/-, mesne profit @ Rs.15,000/- per month w.e.f. 01/10/2007.

08- Written statement was filed by the defendant No.1 before the trial Court on 04/01/2008 and by defendant No.2 on 10/03/2008. Issues were framed on 07/04/2008 by the learned trial Judge and on 18/06/2008 affidavit of plaintiff (PW-1) Sangita Gupta was filed under Order XVIII Rule 4 of the CPC in respect of examination-in-chief by the counsel on 13/01/2009 and the statement of plaintiff's witness Vvinod Kumar (PW-2), Amar Verma (PW-3), Ramkrishan Roya (PW-4), D. K. Jain (PW-5) were recorded before the trial Court. The statement of defence witness Dinesh Gupta (DW-1) and Siddharth Jain (DW-2) were also recorded before the trial Court. The trial Court has passed a judgment and decree on 05/05/2011.

09- The facts of the case further reveal that plaintiff is undisputedly the owner of the suit premises. The plaintiff / respondent No.1 and defendant – respondent No.2 are tenant in respect of suit premises @ Rs.9,000/- per month. It was also not in dispute before the trial Court that the appellant is sub-tenant of respondent No.2 and respondent

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No.2 has filed written statement before the trial Court and admitted that plaintiff is owner of the suit land and he was tenant in the suit land and the respondent No.2 has sublet the suit land to the appellant.

10- The appellant took a defence to the effect that the suit land was taken on lease in the year 1954 from the respondent No.2 and the said lease was renewed from time to time and lastly it was renewed on 31/08/1987 for a period of ten years and again renewed for a further period of ten years and the stand of the appellant was there was no privity of contract between the appellant and respondent No.1.

11- The trial Court after appreciating the evidence has arrived at a conclusion that the appellant is certainly a sub-tenant in the suit land and no protection against eviction is available to the subtenant. The trial Court has passed a judgment of eviction against the main tenant respondent No.1 and the appellant subtenant under Section 12 (1) (a) and (n) of the M. P. Accommodation Control Act, 1961.

12- Based upon the evidence on record, it is established that the appellant is subtenant of respondent No.1. The original tenant is defaulter in respect of payment of rent and the suit property is required by respondent No.1 for the purpose of constructing a building. The said need has been proved before the trial Court and decree of eviction has been passed against respondent No.2 who is the main tenant as also against the present appellant. The main tenant has not preferred any appeal against the impugned judgment and decree.

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13- This Court has carefully gone through the pleadings on record and it is an undisputed fact that landlord wants to construct over the open land. Learned counsel has placed reliance upon a judgment delivered in the case of **Motilal Bhatia Vs. Yusuf Ali and Others** reported in **1972 JLJ 532**, **Abdul Gani Vs. Shri Jabalpur Kutch Gujar Kshatriya Samaj, Jabalpur** reported in **1981 MPRCJ-NOC-44**, **Sundermal Vs. Dadu Jagdish Prasad** reported in **1981 (II) MPWN – 109**, **M/s. Bharat Petroleum Vs. Ajit Singh** reported in **1984 MPRCJ-NOC-137**, **Jagdish Prasad V. Gurubux Singh** reported in **1992 JLJ 53**, **Praveen Vs. Khilan Singh** reported in **1996 (I) MPWN 18**, **Zafar Shah (Deceased) through LRs Munnibai Wd/o Chunnu and Others Vs. Rafique S/o Ramjani** reported in **2003 (II) MPACJ 62**, **Shrimant Sardar Virendrasingh Vs. Manohar** reported in **2005 (I) MPLJ 597**.

14- This Court has carefully gone through the judgment relied upon by learned counsel for the parties. In the case of **Motilal Bhatia** (Supra), this Court in paragraph No.9 has held as under:-

“9. The Learned Counsel urges that compound of a bungalow is not an open plot. There can be no quarrel with that because when a bungalow along with the compound is let out, the compound is appurtenant to the bungalow. But, when a portion of a compound is let out, not along with the bungalow the lease is of open land. The Learned Counsel also urges that the word "open" has not been used in the plaint, and therefore the plaintiffs' claim under section 12 (1) (n) does not arise. I am unable to agree with this submission. When the plaint is read as a whole, there is no manner of doubt that the claim is under section 12 (1) (n). The word "land" in paragraph 1 of the plaint must necessarily be read as meaning "open land" because the land leased formed ? portion of the plot. The Learned Counsel is also not right in suggesting that the determining factor is not the initial letting but the condition of the property leased when the plaintiffs became the lessors by operation of Law. For purposes of section 12 (1) (n), what is of significance is

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the nature of the subject-matter of the original lease. D.W.1 Motilal himself admits-

“कसटोडियन से सबसे पहिले ये प्लाट मेरे पिताजी को मिला था । प्लाट कसटोडियन से खुला (open) मिला था ।”

As stated by their Lordships in Krishnapasuba Rao's case (supra), the tenancy would still be in respect of the open land only and hence section 12 (1) (n) would be applicable.”

In the aforesaid case, this Court was dealing with a similar issue of a suit for eviction in respect of open land and therefore, keeping in view the aforesaid judgment, this Court is of the opinion that the trial Court was justify in decreeing the suit in light of Section 12 (1) (n) of the M. P. Accommodation Control Act, 1961.

15- Again in the case of **Abdul Gani** (Supra), the coordinate Bench of this Court in paragraph No.2 has held as under:-

“2. It was contended that the Court below considered the evidence of person who appeared in the witness box on behalf of the plaintiffs but they were not the current office bearers of the society (plaintiff) but were ex-president and ex-vice president, and on the basis of such evidence, it could not be held that the respondent – plaintiffs needed the premises for constructing a building over it for the purposes of the society. By sub-clause (n) of the Sub Section (1) of Section 12 of the M. P. Accommodation Control Act, what is required to be established is that the landlord required the premises for constructing a building over it. In this sub-clause, even the *bona fide* requirement has not been provided. Sub-clause (n) of Section 12 (1) provides :

“In the case of accommodation which is open land, that the landlord requires it for constructing a house on it.”

It is not in dispute that those who had stepped into witness box are the plaintiffs who filed the suit on behalf of the society initially and it is also apparent from the evidence that the society has taken a decision to construct a building on this open piece of land for the purposes of the society. The trial Court as well as the first appellate Court, after considering this evidence, accepted the evidence and came to a finding of fact that the plaintiff – landlord required the premises for construction of a house as contemplated by sub-Clause (n) of Section 12 (1) of the Act. Having gone through the evidence, it could not be said that the view taken by the Courts below is such which reasonably could not have been taken. Apart from it, this is a pure finding of fact and, therefore, it could not be

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interfered in a second appeal under Section 100 of the Code of Civil Procedure.”

After considering the evidence on record and keeping in view the aforesaid, the trial Court was certainly justify in decreeing the suit as the lease was in respect of open land.

16- The co-ordinate Bench of this Court in the case of **Sundermal** (Supra) has held as under:-

“There is no dispute between the parties that the subject matter of the demise was the open piece of land in suit. This I say so in view of the averments in paragraph 4 of the plaint which have been specifically admitted in the written statement filed by the appellants. The plaintiff respondent pleaded and proved during trial that he wanted to erect a building upon the land in question. That obviously cannot be done unless the premises are vacated by the appellants. The findings of the Court below to the effect that the plot of land is required for construction of a building over it is one of fact not open to any challenge in this second appeal. It was, however, argued that no plan for construction has been sanctioned and no estimate is prepared. I am afraid that it is not the requirement of law that ejection on the ground under section 12 (1) (n) cannot be granted unless plans and estimates have been prepared. I am, therefore, satisfied that the respondent made out a case for appellants' eviction from the suit plot under section 12 (1) (n). The appeal, therefore, has to be dismissed.”

17- A similar view was taken by this Court in the case of **M/s. Bharat Petroleum** (Supra). This Court in the aforesaid case has held as under:-

“None of the contentions raised by the learned counsel for the appellant has force. It is not in dispute that Burmah Shell Company has taken open land on lease from the plaintiff for constructing a petrol pump thereon. The lease was initially for a period of 10 years with a renewal clause. In the lease deed it was provided that on expiration of the lease the tenant shall remove the construction made by him on the demised land. If the accommodation at the inception of the lease was open land how it ceased to be so merely because the tenant had made construction thereon for carrying on his business. The learned counsel for the appellant contended that when in the year 1967 another lease-deed (Ex. P/5) was executed the accommodation was not open land and therefore it is not covered by clause (n) of Section 12 (1)

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of the Act. This contention has also no substance. By the lease-deed (Ex. P/5) the lease initially granted to Burmah Shell Company was only renewed and the renewed lease was also in respect of the open land only and not in respect of the superstructure constructed by Burmah Shell Company. In *Krishnapasuba Rao Kundapur v. Dattatraya Krishanji Karani (AIR 1966 SC 1024)* their Lordships of the Supreme Court have held that the open land demised does not cease to be open land merely because after the creating of the lease the tenant has made some temporary structure thereon. The learned counsel for the appellant sought to distinguish the aforesaid decision on the ground that in that case the tenant had made only temporary structure on the demised land while in the present case pakka structures have been constructed by the tenant. In my opinion, on principles it does not make any difference whether the construction made by the tenant on the demised open land is temporary or permanent. The Courts below thereafter did not commit any error in holding that the demised accommodation was open land covered by Section 12 (l) (n) of the Act.”

18- In all other judgments a similar view has been taken and it has been held that in case the lease is of open land and the landlord wants to construct, he is entitled to a decree under Section 12(1)(n) of the Act of 1961. The plaintiff has been able to establish a ground as provided under Section 12(1)(n) and therefore, in the considered opinion of this Court no case warranting interference is made out in the matter.

19- Learned counsel for the respondent has also placed reliance upon a judgment delivered in the case of **Smt. Ramdulari and Others Vs. Mohinder Singh and Others** reported in **1994 (II) MPJR 215** wherein this Court in paragraph No.9 has held as under:-

“9. It would have been better if the landlord – plaintiff would have sued for ejectment of the tenant by pleading and proving a simple case under Clause (n) because it would have been easier for him to secure a decree thereunder. He would have succeeded in securing ejectment of the tenant merely by proving 'requirement' though not even bona fide but something more than a mere desire. The volume of onus in a case under Clause (n) is far lesser than the one under Clause (f). Nevertheless, the plaintiff has come out with a case this is a 'genuine need' and what remains to be seen is

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whether he can be denied relief merely because he has failed to allege that he would be raising a construction before he may put in the premises to satisfy his bonafide requirement.”

20- In light of the aforesaid judgment as the landlord has been able to prove his requirement for construction, the Court below has rightly passed a decree for eviction. The findings of fact arrived at by the trial Court are based upon the evidence adduced by the parties and the findings are not at all perverse, hence no case for interference is made out in the matter.

21- In light of the aforesaid judgments, this Court is of the opinion that the trial Court was justify in passing the judgment and decree and this Court does not find any reason to interfere with the judgment and decree passed by the Court below and no case for interference is made out in the matter. The first appeal is accordingly dismissed.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

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