

HIGH COURT OF MADHYA PRADESH, JABALPUR
SINGLE BENCH:HON'BLE SHRI JUSTICE VIVEK RUSIA
SECOND APPEAL No.474/2013

Sushil Nigam

Vs.

Jahur Khan & Another

Shri Umesh Gajankush, learned counsel for the appellant.

None for the respondent, though served.

Whether approved for reporting: Yes

Reserved on 24.01.2019

JUDGEMENT

(Delivered on 30/01/2019)

The plaintiff/appellant has filed the present appeal against the judgement and decree dated 13.09.2013 by which the suit as well as first appeal both have been dismissed.

By order dated 25.07.2014, the appeal has been admitted on following substantial questions of law:

“(i) Whether Courts below committed error to dismiss the suit on the ground of arrears of rent without duly appreciating the documents Ex.P/2 & P/3, however, the findings to not grant the decree under Section 12(1)(a) of the M.P. Accommodation Control Act can be sustained in law?”

“(ii) Whether in the facts and circumstances of the case, Courts below has rightly non-suited the the plaintiff's, refusing decree under Section 12(1) (b) of the M.P. Accommodation Control Act?”

“(iii) Whether in the facts and circumstances of the case, Courts below has rightly non-suited the plaintiff's, refusing decree under Section 12(1)(c) of the M.P. Accommodation Control Act?”

Facts of the case are as under:-

That Smt. Koushaliya Devi and Sushil Nigam being plaintiffs filed the suit for ejection and recovery arrears of

rent Rs.24,413/- against the defendants. According to the plaintiffs in the house situated at Rajghat Road, Barwani there are five shops known as Nigam Market. The plaintiff No.1 is maternal grandmother of plaintiff No.2 and the name of plaintiff No.1 is recorded as owner of the house. The plaintiff No.2 is having power of attorney and the plaintiff No.1 vide lease agreement dated 25.11.2000 (Exhibit P/1) room measuring 8x12 feet and the godown measuring 18x37.6 in House No.108 and another godown was given on lease to the defendants. The rent was fixed at Rs.650/- for shop, Rs.1000/- for one godown & Rs.500 for other godown with Rs.100/- as electricity bill, payable by 5th each of month was agreed between them. It has been alleged that defendant No.1 had delayed in payment of rent from August, 2002 and he had vacated one godown in the month of November, 2004 and continued into the possession in one room and another godown. The plaintiffs served a legal notice dated 01.06.2008 to the defendants to vacate and hand over the possession as the tenancy came to an end w.e.f 31.07.2008. The aforesaid notice was served upon the defendants on 16.08.2008 vide Exhibit P/2 & P/3. Thereafter, the plaintiffs filed suit for eviction and arrears of rent on 24.09.2008. Thereafter, the plaintiffs carried out the amendment claiming the arrears of rent from January, 2000 to May, 2008 as the remaining rent was deposited by the defendants. During the pendency of the plaint, the plaintiff No.1 Koushalya Bai expired and Court has permitted to delete her name and permitted the plaintiff No.2 to continue

the suit on the basis of Will dated 07.05.1993 in his favour.

After notice, the defendants filed the written statement by submitting that plaintiffs are not owner of the accommodation in question. The plaintiff No.1 had mortgaged the entire Nigam Market to Gurdeep Singh on 31.07.1993 for taking loan of Rs.1.00 lac .It was a conditional sale and if the amount is not returned within two months, then Gurdeep Singh would be entitled to get all 5 shops mutated in his name. Since, Koushalya Bai did not returne the amount of Rs.1.00 lac, name of Gurdeep Singh has been mutated in the record of the Municipal Council and one Civil Suit No.11-A/2006 is pending between Koushalya Bai and Gurdeep Singh in respect of the ownership, therefore, plaintiffs have no right to claim rent and eviction from the defendants. There are no arrears of rent from 01.06.2008 to 31.07.2008. The plaintiff by way of forgery has given a shop to the defendants on rent and took the amount of Rs.45,000/- as advance money. It has further been submitted that the defendant No.2 is a son and being a family member is also using the shop alongwith defendant No.1.

On the basis of pleadings, the trial Court framed 10 issues for adjudication. The plaintiff examined Sushil Nigam as PW1, Raja Mohammad as PW2, Rajendra Kumar as PW3, Shakil Ahmed as PW4 and got exhibited 12 documents as P1 to P/12 and defendants did not examined any witnesses but cross-examined the plaintiffs' witnesses.

Vide judgement dated 30.04.2012, learned Civil Judge

has dismissed the suit and thereafter the plaintiffs preferred a first appeal and that too has been dismissed vide judgement dated 13.09.2013, hence, the present second appeal before this Court.

I have heard Shri Umesh Gajankush, learned counsel for the appellants.

Finding of substantial question No.1:

According to the plaintiffs, he served a notice dated 01.06.2008 to the defendants terminating the tenancy and directing him to hand over the vacant possession. The said notice was duly served to both the defendants vide acknowledgment Exhibit P/2 and P/3. Despite receipt of the aforesaid notice, the defendants did not pay the rent. The defendants did not entered into the witness box to deny the acknolegment of notice dated 01.06.2008. The issue No.5 was framed in respect of service of notice to the defendants. Learned trial Court did not consider Exhibit P/2 and P/3 which are acknowledgment dated 18.06.2018 by which the defendant Nos.1 and 2 both have been served with the envelop send by postal department. Though, copy of notice dated 1.6.2008 has not been marked as exhibit but the defendants did not come into the witness box to deny the contents of the envelop which they duly received vide Exhibit P/2 and P/3. The trial Court has only considered Exhibit P/5 to P/7. Even the first appellate Court did not consider about the acknowledgment Exhibit P/2 and P/3. hence Courts below have committed error in dismissing the suit on the ground of arrears of rent without duly

appreciating the documents Ex.P/2 & P/3 .The defendants did not deposit the rent in the Court from May, 2008 to October, 2008 on the ground that the plaintiffs are not owner of the suit property. The defendants did not enter into the witness box to deny that they did not receive any notice dated 1.6.2008 from the plaintiffs and their signature over Exhibit P/2 and P/3 are forged, therefore, the findings in respect of service of notice and demand of rent are perverse and not liable to be affirmed, hence, the question of law No.1 is answered in favour of the appellant.

Now it is required to consider as to whether the findings for denial of the decree under Section 12(1)(a) of the M.P. Accommodation Control Act is sustained in law?

The plaintiffs filed an application under Section 13(1) of the M.P. Accommodation Control Act and vide order dated 11.02.2010 the right of defence was closed due to non-compliance of Section 13(1) of the M.P. Accommodation Control Act. Once, the right of defence has been closed due to non-payment of rent, therefore, the trial Court as well as first appellate Court ought to have granted decree under Section 12(1)(a) to the plaintiffs.

In case of *Sushma Vs. Late Gulabchandra & Others*, reported in **2011(2) MPLJ 39** this Court has held that learned Court below committed error of law in not passing the decree against respondent under Section 12(1)(a) of the Act by giving benefit of Section 12(1)(3) and Section 13(5) of the Act which is liable to be given to the tenant only when the tenants deposit the entire rent and also continues to

deposit the rent month to month, therefore, the plaintiff is entitled for the decree under Section 12(1)(a). Relevant portion of the aforesaid judgement is reproduced below:

“17. Even if for the sake of arguments it is assumed that no illegality has been committed by the learned trial Court in allowing the application filed by Respondent for condonation of delay up to the date of order which is 7-8-1998, then too, it appears that subsequently also Respondent could not deposit the rent in time. Rent was due w.e.f. 1-3-1994 and the total amount of rent deposited as is evident from the chart submitted by the Respondents themselves comes to Rs. 20,600/- up to 10-7-2003 when the suit was decided. While up to that date the rent which was due was Rs. 22,400/- for which neither there is any explanation nor any subsequent application for condonation of delay. In view of this this Court is of the view that the learned Courts below committed error in not passing decree against the Respondents under Section 12(1)(a) of the Act by giving benefit of Sections 12(3) and 13(5) of the Act. In fact benefit of Sections 12(3) and 13(5) of the Act can be given to a tenant that too once only when the tenant deposits the entire arrears of rent and also continues to deposit the rent month to month as per Section 13(1) of the Act. Since the Respondents were in default in spite of the fact that delay was condoned, therefore, no benefit of Sections 12(3) and 13(5) of the Act could have been given to the Respondents. In the matter of Sayeda Akhtar v. Abdul Ahad AIR 2003 SC 2985 wherein tenant committed two defaults in depositing the rent for the month of November, 1985 and June, 1988, Hon'ble Apex Court observed that the application could not have been entertained for commission of default in depositing the rent.

18. In view of this, this Court is of the view that the learned Courts below acted illegally and contrary to law in holding that the ground under Section 12(1)(a) of the Act is not made out and also committed error in not passing decree of eviction against the Respondents under Section 12(1)(a) of the Act.”

In case of *Santosh Kumar Sharma Vs. Sooraj Prasad Shrivastava*, reported in 2014(4) MPLJ 3, this Court has held that after committing the default in depositing the rent, entire sum of the arrears and recurring rent in compliance of Section

13 (1) of the Act, the tenant is bound to suffer the consequences of it as per the provisions and scheme of Section 12(1)(a) and 13(1) of the Act. Since, the petitioner has committed default in depositing arrears of rent and in such premises, the trial Court did not have any other option, but to grant the decree under Section 12(1)(a).

In case of *Subhash Jaiswal vs. Trilokinath Kakkad*, reported in 2003(1) MPLJ 453 has held that the suit has been filed by the plaintiff after taking fresh notice of demanding arrears of rent which was not deposited even after granting decree in the suit. However, he sought eviction under Section 12(1)(a) of the Act. The defendant denied the decree on the ground that the plaintiff itself is a tenant and he cannot seek eviction under Section 12(1)(a) & (c) of the Act. During the trial, the trial Court has struck out the defence of the defendant under Section 13(6) and granted the decree under Section 12(1) (a) and accordingly, the High Court has maintained the decree under Section 12(1)(a) of the Act.

In the present case also, vide order dated 11.02.2010 the right of defence has been closed due to non-compliance of Section 13(1) of the Madhya Pradesh Accommodation Control Act. Learned trial Court vide order dated 11.02.2010 has observed that the defendant has deposited the rent with the permission of the Court for the period May 2008 to October, 2008, Rs.6,000/- on the ground that the plaintiff is not the owner of the house in question but after 24.10.2008, he did not file any application to deposit the rent, whereas Section 13(1) contemplates the deposit the rent regularly month by month basis and he has violated the provisions of Section 12(3) of the

Madhya Pradesh Accommodation Control Act. Section 12(5) provides if a tenant makes a deposit or payment as required by sub section 1 or sub section 2, no decree or order shall be made by the Court for recovery of possession of the accommodation on the ground of default in payment of rent by the tenant, therefore, by virtue of Section 12(5) the provisions of Section 12(1) (a) would not be available if rent is deposited. Since, the right to defence under Section 13(6) due to non-deposit of the rent, hence, protection under Section 12(1)(a) would not be available to the defendants, hence, the plaintiff is entitled for the decree under Section 12(1)(a).

Finding on substantial question No.2:

So far as the substantial question No.2 is concerned. For the ready reference Section 12(1)(b) of the M.P. Accommodation Control Act is reproduced below:

“(b) that the tenant has, whether before or after the commencement of this Act, unlawfully sub-let, assigned or otherwise parted with the possession of the whole or any part of the accommodation for consideration or otherwise; ”

The plaintiff is entitled for the decree under Section 12(1)(a) if the tenant before or after the commencement of this Act unlawfully sublet, assigned or otherwise parted with the possession of whole or any part of the accommodation for consideration or otherwise. In the present case, the plaintiff has alleged that the defendant No.1 is doing the business of furniture in the suit accommodation and now he has permitted defendant No.2 to open a mobile shop in part of the shop, therefore, he has parted with the possession of part of the accommodation.

Admittedly, the defendant Nos.1 and 2 are father and son. In Exhibit P/1, there is no description of nature of business for which the shop and go-down were given on rent. The shop in question was given on rent for non-commercial purpose without describing any nature of business. The defendant No.2 is also using part of accommodation for non-commercial purpose. As per requirement of sub-Section 12(1)(b) sub letting, assignment or parting of the accommodation should be unlawful then only the plaintiff/landlord would be entitled for the eviction. Therefore, learned trial Court as well as first appellate Court both have rightly denied the decree under Section 12(1)(b), hence substantial question No.2 is answered against the appellants.

Finding on substantial question No.3:

For the ready reference, Section 12(1)(c) is reproduced below:

“(c) that the tenant or any person residing with him has created a nuisance or has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation, or which is likely to affect adversely and substantially the interest of the landlord therein ”

As per Section 12(1)(c) if the tenant has created the nuisance or has done any act which is inconsistent for the purpose for which he was kept as a tenant or which is likely to effect adversely and substantially the interest of landlord. According to the plaintiffs, the defendants are entitled, therefore, they have caused nuisance and he is entitled for decree. Undisputedly the dispute of ownership of the

plaintiff No.1 Kaushalya Bai was pending with Gurdeep Singh. The Civil Suit No.11-A/2006 has been decided in favour of Kaushalya Bai vide judgement dated 19.05.2004 vide Exhibit P/12 by which it has been held that the deed dated 31.07.1993 is a mortgage deed with a conditional sale and direction was given to the plaintiff to return the amount of Rs.1.00 lac. Against the said judgement, the first appeal is pending before this Court, therefore, the defendants have bona-fidely denying the title of the plaintiffs hence did not cause the nuisance. Hence, substantial question No.3 is also answered against the plaintiffs/appellants.

In view of the above answer to the question No.1, the findings recorded by the trial Court under Section 12(1)(a) is hereby reversed hence decree under section 12(10) (a) is granted to the plaintiff with recovery of arrears of rent. Accordingly a decree be drawn. Parties to bear their own cost.

Appeal stands partly allowed.

(VIVEK RUSIA)
Judge

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