

HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)
SINGLE BENCH : HON'BLE JUSTICE NANDITA DUBEY

SECOND APPEAL No. 354/2006

Purshottam Shrivastava
Vs.
Bhagwandas and others

Shri Shobhitaditya, learned counsel for the appellant.
Shri Ashish Shrotri, learned counsel for the respondents.

Arguments heard on : 25.02.2020

Judgment delivered on : 03.06.2020

J U D G M E N T

This is defendant's second appeal under Section 100 of C.P.C. The substantial question of law which was formulated at the time of admission of this appeal by the order dated 20.08.2008 is as follows.

“Whether the respondents were entitled for a decree of eviction on the ground of bonafide need of grand son namely Vinay who was minor on the date of filing of the suit?”

2. The facts shorn off unnecessary details are that initially the suit for eviction under Section 12 (1) (f) of the M.P. Accommodation Control Act,

1961 (hereafter referred to as 'the Act') and *mesne* profit against the defendant was filed by Smt. Bhawari Bai alleging the bonafide requirement of her grand son Vinay. It was alleged that the cause of action accrued on 14.01.2000, when despite receipt of registered notice dated 27.12.1999, defendant failed to vacate the premises. After the death of Smt. Bhawari Bai on 17.07.2001, present plaintiffs were brought on record as her legal heirs. Vinay is the son of plaintiff No.2. By an amendment, it was incorporated in the pleadings that plaintiff No.2's son Vinay is unemployed and desirous of opening a 'Kirana Shop' in the suit premises and no other suitable non-residential accommodation is available for this purpose.

3. Defendant in his written statement has refuted the claim of plaintiffs on the ground that Vinay was minor and a High School student and under Section 12 (1) (f) of the Act, the eviction can only be for the requirement of major son. It was further contended that plaintiff has three vacant shops available to him. Two in the building at Ghodanakkash and one in the building No.38 at Hanumanganj, Jumerati.

4. The trial Court recorded the finding that plaintiff is the owner of suit the shop and suit accommodation was let out to the defendant for non-residential purpose. The tenancy starts from first of every month and ends on the last date of the month. There is no alternate suitable accommodation in the city of Bhopal for the purpose of business of Vinay, son of plaintiff No.2. The trial Court however, held that plaintiff is not entitled to vacant

possession of the suit shop as the requirement of his son was not found bonafide. This finding was arrived at for the reason that Vinay (PW/3) in his cross-examination has deposed that his date of birth is 17.10.1982. This admission has been used by the trial Court in para 11 and 12 of the judgment for holding that plaintiff's son was minor (seventeen years five months) on the date of institution of the suit. Thus the ground for eviction under Section 12 (1) (f) of the Act was not found established and the suit for eviction has been dismissed.

5. This finding regarding age of Vinay has been reversed by the appellate Court. The appellate Court observed that no issue as to "whether Vinay was minor at the time of institution of the suit", was framed by the trial Court. Moreover, there was no cross-examination done or suggestion given to the plaintiffs with regard to Vinay being minor. The appellate Court has further observed that the oral admission of Vinay regarding his date of birth is not substantiated by any documentary evidence and relying on the decision in the case of *R.P. Tiwari Vs. Smt. Sulochana Choudhary [2000 (1) MPHCT 481]*, held Vinay to be major and decreed the suit.

6. It is mainly urged by the learned counsel for the appellant/defendant that under Section 12 (1) (f) of the Act, decree for eviction can be passed only for the need of major son and not the grand son. As the grand son of original plaintiff was minor at the time of institution of the suit, hence the suit was premature and this defect could not have been rectified even if

Vinay has attained the majority during the pendency of the suit. Reliance is placed on *[2000 (II) MPWN 98] Vahidan Vs. Budha Devi*, wherein it is held:

“In the present case, considering the scope of Section 12 (1) (f) of the Act, the plaintiff-landlord could sue for her own need or for the need of her major son.

The trial Court recorded the finding that on the date of filing of the suit, the son of the plaintiff was not major, therefore, the suit was premature. The defect in the suit cannot be rectified if the minor attains majority during the pendency of the suit. The age of son is to be considered on the date, the cause of action accrued to the plaintiff. Therefore, the findings recorded by the first appellate Court while reversing the judgment and decree of the trial Court, are perverse. Question of law No. (i) is answered accordingly.”

7. He has further relied on the observation made in para 13 in the case of *Hemraj Nema Vs. Raj Narayan and others [1980 MPRCJ 65]*, wherein the Court has observed that, “the requirement has to be a need in *presenti* and not a need in future. To hold otherwise will mean virtually repealing the provisions for eviction on the ground of bonafide need.”

8. Learned counsel for the respondent/plaintiff has argued that it is not necessary that the need must be immediate and existing on the date of application of ejection. The landlord is entitled to claim for a prospective need arising in the near future.

9. The arguments of Shri Shobhitaditya, learned counsel for the appellant that the need of landlord is to be in *presenti* and not in future has no substance. In the case reported in *[1970 RCJ 479 (Kerala)]*, *A.P. Madhavan Vs. M.P. Ram Chandra*, it has been held that the concept of bonafide need cannot be narrowly understood or pedantically interpreted but applied in a pragmatic way. It is not necessary that there should be a current urgent need. It is enough, if it is reasonably likely to arise in the near future. Knowing that between the institution of the petition and the ultimate order from the Apex Court passed, it will be as good as repealing the provisions for eviction on the ground of bonafide need if Courts insists on landlords.

10. In *R.P. Tiwari Vs. Sulochana Choudhary (supra)*, the Single Judge of this Court has relied on the case of *Chhotelal Vs. Akbar Ali and another, [AIR 1983 MP 50]*, wherein it has been held by the Full Bench of this Court that the ground for eviction which was not in existence at the time of filing of the suit but came into existence during the pendency of the suit can be made a ground for eviction by amendment of the plaint and a decree for eviction can be passed on such ground, and that ground is established by the plaintiff. Further in para 4, it has been observed that the Court can always take notice of the subsequent events for the just decision of the case and mould the relief in the light of those events. As the landlord is required to show the need subsists till the last decree, he can also show that his need has become more accrued.

11. So far as the substantial question of law is concerned, it is observed that though suit was initially filed by Late Smt. Bhawri Bai for the need of her grand son but after her death her sons were brought on record as plaintiffs. The plaintiff's application for amendment was allowed vide order dated 22.01.2001 and the words 'plaintiff's grand son' were substituted by 'plaintiff No.2's son.' This amendment was not challenged by the defendant/appellant at the relevant time. Even if Vinay's date of birth is taken as 17.10.1982, his age was 17 years five months on a date when the suit was filed by Late Smt. Bhawri Bai. He attained majority within seven months of the institution of the suit and was definitely major when the amendment was incorporated and on the date when the judgment was passed by the trial Court and also by the First Appellate Court. Starting of a business can not be accomplished before possession of accommodation is obtained. Hence, if plaintiff in anticipation of requirement of business for his son who was to become major in the near future (7 months time) files a suit for eviction of the tenant on the ground that his son wants to start a business of *Kirana* shop, it cannot be said that the requirement was not bonafide. The interest of justice requires that if a subsequent event can be considered in favour of tenant, it should also be taken into consideration in favour of the landlord. Therefore, the First Appellate Court has not committed any error in decreeing the suit for eviction under Section 12 (1) (f) of the Act. The Substantial question of law is answered in negative.

12. This second appeal is accordingly dismissed.

13. However, looking to the Covid-19 Pandemic nine months' time from today is granted to the defendant/appellant to vacate the premises, subject to filing the usual undertaking on the affidavit of the appellant to deliver vacant and peaceful possession over the premises to the plaintiff/respondent at the end of the extended time and in between regularly paying the rent. In case the undertaking or the rent is not deposited regularly, the plaintiff would be at liberty to execute the decree even before the period of nine months is over.

(NANDITA DUBEY)
JUDGE
03/06/2020