

Roshan Lal and Another

Vs

Madan Lal and Others

Civil Appeal No. 2473 of 1972

(A. Alagiriswami, P.K. Goswami, N.L. Untwalia JJ)

18.09.1975

JUDGMENT

UNTWALIA, J. -

1. This appeal by special leave has been filed by the tenant-defendants. The plaintiff-respondents, the landlords, filed a suit against the appellants in the Court of Second Civil Judge, Class II, Gwalior for a decree for eviction from the suit premises and for certain other reliefs. The appellants' eviction was sought on statement of facts mentioned in paragraph 3 of the plaint which squarely fell within clause (f) of sub-section (1) of Section 12 of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter referred to as 'the Act'). The appellants filed a written statement and in paragraph 3, they denied the respondents' assertion in plaint, paragraph 3. It appears that the suit which was filed in the year 1966 proceeded to trial in October, 1967 and some evidence was adduced. But eventually, the parties entered into a compromise, filed a petition to that effect in the trial Court which passed a decree for eviction and other reliefs in January 1968 in accordance with the terms of the compromise. Pursuant to the said compromise decree the appellants were to vacate the shop - the suit premises - by December 31, 1970. On their failure to do so, execution was levied by the respondents. The appellants objected to the execution on the ground that the compromise decree was void and inexecutable as being against the provisions of the Act. The execution Court accepted the appellants' objection to the execution of the decree and dismissed the execution case. A miscellaneous appeal filed by the respondents was dismissed by the Third Additional District Judge, Gwalior. They preferred a second miscellaneous appeal before the Madhya Pradesh High Court. A learned Single Judge following the Bench decision of that court in *Smt. Chandan Bai v. Surjan* (AIR 1972 MP 106 : 1972 MPLJ 216), came to the conclusion that the decree was not a nullity and was executable. Hence this appeal by the tenant-judgment-debtors.

2. The point which falls for determination in this appeal is not *res integra* and has been the subject-matter of consideration in several decisions of this Court. In *Bahadur Singh v. Muni Subrat Dass* ((1969) 2 SCR 432 : (1970) 2 SCJ 153), a decree for eviction based on an award without anything more was found to be a nullity as it was held to have been passed against the prohibitory mandate of Section 13(1) of the Delhi and Ajmer Rent Control Act, 1952. Following the said decision the compromise decree was also held to be a nullity in the case of *Kaushalya Devi v. Shri K. L. Bansal* ((1969) 2 SCR 1048 : (1969) 1 SCC 59). The earlier two decisions were followed again in *Ferozi Lal Jain v. Man Mal* ((1973) 3 SCC 181). In all these cases the decrees were found to have violated Section 13(1) of the Delhi Act of 1952.

3. The law was reviewed exhaustively by this Court in *K. K. Chari v. R. M. Seshadri* ((1973) 3 SCR 691 : (1973) 1 SCC 761). Vaidialingam, J., delivering the judgment on his behalf as also on behalf

of Dua, J., pointed out that under the terms of the compromise under consideration in that case the defendant had withdrawn all his defence to the application filed by the landlord and submitted to a decree for eviction unconditionally. The three earlier cases of this Court were distinguished and it was said at page 704 : [SCC p. 774, para 30]

The true position appears to be that an order of eviction based on consent of the parties is not necessarily void.

And finally it was held [SCC p. 774, para 31]

it is no doubt true that before making an order for possession the Court is under a duty to satisfy itself as to the truth of the landlord's claim, if there is a dispute between the landlord and tenant. But if the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the Court to act on that admission and make an order for possession in favour of the landlord without further enquiry.

One of us (Alagiriswami, J.) while agreeing with Vaidialingam, J. added a few words of his own. In the separate judgment it has been pointed out that the view taken by Grover, J. of the Punjab High Court in *Vas Dev v. Milkhi Ram* (AIR 1960 Punj 514 : 62 Punj LR 888), was exactly the position in K. K. Chari's case (supra). Sarkaria, J., delivering the judgment on behalf of the Court in *Nagindas Ramdas v. Dalpatram Ichharam alias Brijram* ((1974) 2 SCR 544 : (1974) 1 SCC 242) took pains to go into the matter elaborately once more and said at page 552 : [SCC pp. 251-252, para 27]

From a conspectus of the cases cited at the Bar, the principle that emerges is that if at the time of the passing of the decree, there was some material before the Court, on the basis of which the Court could be prima facie satisfied about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction, though apparently passed on the basis of a compromise would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement itself.

On facts the case of *Nagindas Ramdas* (supra) was found to fall in line with that of K. K. Chari. Distinguishing the earlier cases, Chari's case was followed.

4. Before we state the principles of law governing such a case we would like to point out that the language of Section 12 of the Act is somewhat different from many similar State statutes. Section 12(1) says :

Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :

Thereafter grounds (a) to (p) have been enumerated. On a superficial reading of the provision aforesaid it would appear that the inhibition related to the filing of the suit only. No suit can be filed for eviction of a tenant except on one or more of the grounds enumerated in Section 12(1). In sub-sections (2) to (11) of Section 12 certain conditions have been engrafted to show under what circumstances an order for the eviction of tenant cannot be passed in relation to some of the grounds enumerated in sub-section (1). Reading the section as a whole and remembering the beneficial object of the Act for the protection of a tenant based upon public policy, we do not find much difficulty in bringing the section at

par with other similar State statutes and holding as a matter of construction that no decree for the eviction of a tenant from any accommodation can be passed except on one or more of the grounds mentioned in Section 12(1). A Bench of the Madhya Pradesh High Court in Smt. Chandan Bai's case (supra) seems to have taken too literal a view of the section when in paragraph 5 of the judgment it says :

There is nothing in Section 12 of the Act or any other provision which prevents the tenant in vacating the accommodation in spite of the that none of the grounds mentioned in Section 12 exists. Similarly, there is nothing in the Act which may prevent the tenant in agreeing to vacate the accommodation in future.

It says further in paragraph 10 :

Merely enumeration of grounds on which relief can be claimed does not either expressly or impliedly exclude the operation of Order 23, Rule 3, because grounds for claiming relief are always limited whether the relief be claimed under the general law or a statute.

A similar argument advanced in the case of Nagindas Ramdas (supra) with reference to the relevant provisions of Bombay Rent Act, 1974 was repelled at page 550 and the view taken by a Bench of the Gujarat High Court in the case of Shah Rasiklal Chunilal v. Sindhi Shyamlal Mulchand (12 Guj LR 1012), that in spite of the fact that there is no express provision in the Bombay Rent Act prohibiting contracting out, such a prohibition would have to be read by implication consistently with the public policy underlying this welfare measure was approved.

5. In order to get a decree or order for eviction against a tenant whose tenancy is governed by any Rent Restriction or Eviction Control Act the suitor must make out a case for eviction in accordance with the provisions of the Act. When the suit is contested the issue goes to trial. The Court passes a decree for eviction only if it is satisfied on evidence that a ground for passing such a decree in accordance with the requirement of the statute has been established. Even when the trial proceeds ex parte, this is so. If, however, parties choose to enter into a compromise due to any reason such as to avoid the risk of protracted litigating expenses, it is open to them to do so. The Court can pass a decree on the basis of the compromise. In such a situation the only thing to be seen is whether the compromise is in violation of the requirement of the law. In other words, parties cannot be permitted to have a tenant's eviction merely by agreement without anything more. The compromise must indicate either on its face or in the background of other materials in the case that the tenant expressly or impliedly is agreeing to suffer a decree for eviction because the landlord, in the circumstances, is entitled to have such a decree under the law.

6. It is too late in the day to contend that the provisions of Order 23, Rule 3 of the Code of Civil Procedure cannot apply to eviction suits governed by the special statutes. Undoubtedly, a compromise of such suit is permissible under the said provision of law. The protection of the tenant is inherent in the language of Order 23, Rule 3 when it says :

Where it is proved to the satisfaction of the Court that a suit has been adjusted by any lawful agreement or compromise the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.

If the agreement or compromise for the eviction of the tenant is found, on the facts of a particular case, to be in violation of a particular Rent Restriction or Control Act, the Court would refuse to record the compromise as it will not be a lawful agreement. If on the other hand, the Court is satisfied on consideration of the terms of the compromise and, if necessary, by considering them in the context of the pleadings and other materials in the case, that the agreement is lawful, as in any other suit, so in an eviction suit, the Court is bound to record the compromise and pass a decree in accordance therewith. Passing a decree for eviction on adjudication of the requisite facts or on their admission in a compromise, either express or implied, is not different.

7. We now proceed to consider the facts of the case on hand. The ground for eviction from the accommodation let for non-residential purposes mentioned in clause (f) of Section 12(1) of the Act is that the accommodation is required bonafide by the landlord for the purpose of continuing of starting his business . . . and that the landlord . . . has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.

In paragraph 3 of the plaint the respondents' necessity was pleaded both in the positive and the negative aspects of clause (f). Both were denied in paragraph 3 of the written statement of the appellants. Paragraph 1 of the compromise petition says :

That due to the necessity of the plaintiffs for their own business - opening grocery shop, decree for ejection may be granted to them against the defendants.

In this case it is not necessary to refer to any piece of evidence adduced at the inconclusive trial. The meaning of paragraph 1 of the compromise petition is clear and definite especially in the background of the pleadings of the parties and in our opinion it squarely makes out a case of eviction within the meaning of Section 12(1)(f) of the Act on admission of the appellants. We reject the argument of Mr. Andley, learned Counsel for the appellants, that paragraph 1 of the compromise petition was an admission in respect of only the first part, namely, the positive aspect of clause (f) and not of the second part, namely, that the landlord has no other reasonably suitable non-residential accommodation. The admission, necessary implication, was in respect of both.

8. In the order recording the compromise the Court said :

On a perusal of the joint compromise it was found that the same is legal and is within the purview of the plaint. Therefore, plaint verification is accepted and the case is decreed in accordance with the conditions of the compromise as under :

1. That the defendants shall vacate the shop in dispute by December 31, 1970.

The order so recorded in our judgment was in full compliance with the requirement of Order 23, Rule 3 of the Code of Civil Procedure. The Court found that the compromise was legal, that is to say, lawful and was in accordance with the plaint. The averment in the plaint was, therefore, accepted and the suit was decreed. It is regrettable that though the appellants got about three years' time to vacate the shop in dispute from the date of the compromise decree, they were ill-advised to fight the litigation further and thus cause delay in the vacating of the shop by another five years. We have no doubt in our mind that on the facts and in the circumstances of this case the compromise decree was clearly valid and executable. We

uphold the decision of the High Court but on a slightly different basis.

9. For the reasons stated above, the appeal fails and is dismissed with costs.

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