Shyam Charan

Vs

Sheoji Bhai and Another

Civil Appeal No. 704 of 1971

(A. C. Gupta, Syed M. Fazal Ali, P. K. Goswami, N. L. Untwalia, Jaswant Singh JJ)

12.10.1977

JUDGMENT

UNTWALIA, J. -

1. This is an appeal by certificate for the decision of the Madhya Pradesh High Court affirming the final decree of mesne profits made by the trial Court in favour of respondent 1 (hereinafter called the respondent) against the appellant. Only a few facts are necessary to be stated. The respondent was the landlord of the premises known as Jairam Theatre in the town of Raipur. The appellant was given a lease of the said property by the respondent in the year 1940 of a period of 10 years. On the expiry of the said period, the lease was renewed by a Registered Deed dated August 18, 1951 w.e.f. May 22, 1950 for a further period of 10 years. In this lease the agreed rent payable was fixed at Rs. 1600 per month. The lease expired on May 21, 1960. Since the appellant did not vacate the premises on expiry of the lease by efflux of time under Section 111(a) of the Transfer of Property Act, the respondent filed a suit against him on June 25, 1960, for eviction, rent and mesne profits. The trial Court passed a decree of eviction on November 3, 1962. The appellant filed an appeal in the High Court which was dismissed on February 26, 1964. The decision of the High Court was affirmed by this Court on September 25, 1964. Thereafter the appellant vacated the suit premises on October 4, 1964.

2. In the proceeding for fixation of mesne profits, various pleas were taken by the appellant. The trial Court awarded a final decree for mesne profits at the rate of Rs. 4000 per month as against the respondent's claim of Rs. 6000 per month from the date of determination of the lease i.e. from May 22, 1960 upto the delivery of vacant possession by the appellant i.e. October 4, 1964. The High Court has affirmed this decree both in regard to the period and the rate of damages. Hence this appeal.

3. Mr. M.N. Phadke, learned Counsel for the appellant made only two submissions in this appeal :

> (1) That according to the definition of the tenant in clause (i) of Section 2 of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter called the Act) the appellant even after the termination of the lease continued in possession of the accommodation as a tenant under the Act, which is conveniently called a statutory tenant. Counsel submitted that the occupation of the accommodation by the appellant became unauthorised and wrongful on and from November 3, 1962 when a decree for eviction was passed by the trial Court and not before that. Mesne profits could be awarded only from the said date.

(2) That the Courts below were not justified in awarding damages at the rate of Rs. 4000 per month when the agreed rent as per the lease was only Rs. 1600 per month.

4. In Chander Kali Bai v. Jagdish Singh Thakur [(1977) 4 SCC 402.] the judgment of which was delivered by us on October 6, 1977 we have dealt with a similar, almost identical point as the one urged by Mr. Phadke. On the facts of that case we held that no damages or mesne profits could be awarded for the period between the termination of the contractual tenancy and the passing of the eviction decree. But the ratio of that case is not applicable in the present appeal. Under the Madhya Pradesh Control Act, 1955 - places of entertainment like the one in question were excluded from the operation of the Act as provided for in Section 2(1)(d). The lease of the accommodation was, therefore, not governed by the 1955 Act. The suit was filed on June 25, 1960 and the rights and liabilities of the parties in the suit was filed on June 25, 1960 and the rights and liabilities of the parties in the suit were governed simply by the Transfer of Property Act. The 1961 Act came into force on December 30, 1961, and became applicable in the town of Raipur even to the places of entertainment. In other words, if the provisions of the Act or the definition of the term 'tenant' therein could be applied for determining the rights and liabilities of the parties in the pending suit which had been instituted prior to the coming into force of the Act then perhaps there would have been no difficulty in accepting the first contention put forward on behalf of the appellant. But the very basis of this argument is erroneous and it has no legs to stand upon.

5. Sub-section (1) of Section 51 of the Act repealed the 1955 Act. Sub-section (2) further provided :

> Notwithstanding such repeal, all suits and other proceedings under the said Act, pending, at the commencement of this Act, before any Court or other authority shall be continued and disposed of in accordance with the provisions of the said Act as if the said Act had continued in force and this Act has not been passed and the provision for appeal under the said Act shall continue in force in respect of suit and proceedings disposed of thereunder.

As we have indicated in our judgment referred to above the appellant, perhaps, would not have succeeded in making his point good even if the suit could be taken to have been filed under the 1955 Act. The definition of the tenant in that Act and in the Act of 1961 is vitally different. But we need not dilate upon this aspect of the matter any further, as, it is manifest that the suit in question was not filed under the Act of 1955 because the accommodation was exempt from the operation of that Act. That being so, the suit filed in accordance with the Transfer of Property Act could not attract any provision of the Act as there is nothing in it to make it applicable to a pending suit of that kind. The Act being not applicable to the pending suit of that kind. The Act being not applicable to the pending suit the rights and liabilities of the parties were governed by the provisions of the Transfer of Property Act. That continued to be so even after coming into force of the Act.

6. It is no doubt true as strenuously urged by Mr. Phadke that the definition of the term 'tenant' in Section 2(i) of the Act is retro-active in the sense that it embraces within its ambit even a person who continued in possession of the accommodation after the termination of its tenancy whether the said termination was before or after the commencement of the Act. Yet the retro-activity or retrospectivity of the definition of the term 'tenant' was not sufficient to make the appellant a tenant within the meaning of the Act unless it could be held that the provisions of the Act applied to the pending suit in question. As usual, the definition Section 2 starts with the phrase "In this Act, unless the context otherwise requires", clearly indicating that the definition of the term 'tenant' will apply if the Act would apply. Otherwise not. Mr. Phadke, however, contended that such as interpretation

would make the retro-active operation of the definition otiose. Obviously not. It would apply and was meant to cover a case where the contractual tenancy terminated before the commencement of the Act, but the suit was filed after its commencement. Such a suit has to be filed in accordance with Section 12 of the Act and attracted the other provisions also. Suppose in this case after the termination of the tenancy in the year 1960 the suit for eviction would have been filed in 1962 the appellant could come under the definition of the term 'tenant' even though the termination of the contractual tenancy was before the commencement of the Act. But we are unable to accept the argument that the mere fact that the definition of tenant is retrospective will make the appellant a tenant within the meaning of the Act. That being so, it is plain that his continuing in occupation of the accommodation on and from May 22, 1960, was unauthorised and wrongful and a decree for damages or mesne profits has rightly been awarded for the period commencing on that date and ending on October 4, 1964, when the appellant gave up vacant possession to the respondent.

7. It will suffice to dispose of the second point urged by the appellant only in a few words. On appreciation of the evidence adduced in the trial Court it fixed the monthly rate of damages at Rs. 4000 as against the respondent's claim of Rs. 6000. The High Court has also discussed the evidence on this question in detail and affirmed the finding of the trial Court. Having appreciated all that was urged on behalf of the appellant in this regard with reference to the relevant pieces of evidence, we find no justifiable ground to enable us to reduce the quantum of damages and to fix a lesser rate than the one concurrently determined by the Courts below.

8. In the result, we dismiss this appeal but in the circumstances make no order as to costs in this Court.

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