

Chimanlal

Vs

Mishrilal

Civil Appeal No. 3356 of 1979

(R. S. Pathak, M. P. Thakkar, D. P. Madon JJ)

12.11.1984

JUDGMENT

PATHAK, J. -

1. This is a tenant's appeal, by special leave, against a decree of the High Court of Madhya Pradesh allowing the landlord's second appeal in a suit for eviction.
2. The respondent, as landlord, filed a suit for the eviction of the appellant-tenant on the ground that the appellant had neither paid nor tendered the arrears of rent legally recoverable from him. The plaint recited that the appellant had taken a portion of a shop and a verandah on the ground floor on rent at Rs. 150 per month for the purpose of his cloth business, that the appellant had not paid the arrears of rent totalling Rs. 2550 for the period June 26, 1968 to October 11, 1969, and that he was, therefore, liable to eviction on the ground set forth in Section 12 (1)(a) of the Madhya Pradesh Accommodation Control Act, 1961.
3. In his written statement the appellant pleaded that the respondent had described the tenanted premises incorrectly, that in fact the premises consisted of an entire shop, a kotha behind the shop and a verandah in front of the shop, that the expenditure on repairs to the premises undertaken by the appellant had to be adjusted against the arrears of rent and that the notice dated October 21, 1969 terminating the tenancy was invalid.
4. On receiving the writ of summons in the suit, the appellant deposited the arrears of rent in compliance with Section 13 (1) of the Act, but further compliance with Section 13(1) was not effected inasmuch as the rent which should have been deposited regularly from month to month was not deposited for several months.
5. The trial court found that the expenditure claimed by the appellant on repairing the premises had not been proved. It found further that the appellant was not entitled to the benefit of Section 13(1) of the Act as he had failed to deposit the monthly rent regularly during the pendency of the suit. But it agreed with the appellant that the respondent had not correctly described the extent of the premises in the notice terminating the tenancy, and holding that the tenancy had not been validly terminated it dismissed the suit. The respondent filed an appeal, and that appeal was dismissed. The respondent then preferred a second appeal, and during the pendency of the appeal the High Court permitted the respondent to amend the plaint so that reference to the tenanted premises now included the entire accommodation claimed by the appellant. In consequence, the suit now related to that accommodation. Thereafter, the High Court, by its judgment and decree dated October 12, 1979 allowed the the second appeal. It held that no notice under Section 106 of the Transfer of Property

Act terminating the tenancy was required in view of the decision of this Court in *V. Dhanapal Chettiar v. Yesodai Ammal* ((1980) 1 SCR 334 : (1979) 4 SCC 214 : AIR 1979 SC 1745), and it affirmed the finding of the subordinate courts that the appellant had failed to prove payment for repairing the premises.

6. On a conspectus of the entire proceeding it would appear that the only ground on which the subordinate courts dismissed the suit is that the notice dated October 21, 1969 did not validly terminate the tenancy as it referred to a part only of the tenanted premises, while the High Court, in second appeal, proceeded on the view that no. notice terminating the tenancy was required at all and, therefore, after permitting the respondent to amend his plaint in order to bring the entire tenanted premises within the purview of the suit, it decreed the suit.

7. Section 12(1)(a) of the Madhya Pradesh Accommodation Control Act, 1961 provides :

12. Restriction on eviction of tenants.- (1) 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 :

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of has been served on him by the landlord in the prescribed manner.

Section 12(3) prohibits the court from making an order of eviction on the ground specified in Section 12(1)(a) if the tenant makes payment or deposit as required by Section 13. And Section 13 provides :

13. When tenant can get benefit of protection against eviction. - (1) On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 12, the on him or within one month of the service of writ of summons on him or within such further time as the court may, on an application made to it, allow in this behalf, deposit in the court or pay to the landlord an amount calculated at the rate of rent at which it was paid for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to the in which the deposit or payment is made, and shall thereafter continue to deposit or pay, month by month, by the fifteenth of each succeeding month a sum equivalent to the rent at that rate.

8. It is urged by the appellant that an essential condition of the maintainability of the suit is non-compliance by the tenant with a valid notice demanding the rental arrears, and the notice to be valid must, inter alia, relate to the accommodation rented to the tenant and not any other accommodation. It is pointed out that in the present case the notice dated October 21, 1969 did not relate to the entire accommodation let to the appellant but only to a lesser part of it. There is substance in the contention. The notice dated October 21, 1969 is a notice demanding the arrears of rent in respect of accommodation which, according to the respondent, consisted of a portion of a shop and a verandah. The appellant, on the other hand, pleaded that he had been let the entire shop, the verandah and also a kotha. The subordinate courts held, on the evidence, that the appellant was right. It is apparent, therefore, that there is a substantial difference between the accommodation

mentioned in the notice and the accommodation actually let to the appellant. It must be taken that the notice relates to accommodation which cannot be effectively identified with the accommodation constituting the tenancy. This is not a case of a mere misdescription of the accommodation where both parties knew perfectly well that the notice referred to accommodation let to the tenant. Nor is it a case where the discrepancy between the accommodation alleged by the landlord and that actually let to the tenant is marginal or insubstantial. The proceedings show that there was a serious dispute between the parties as to the material extent of the accommodation let by one to the other. No congruency between the two versions was possible. Not at least until the respondent was compelled to seek an amendment of his plaint in the High Court at the stage of second appeal. Learned counsel for the respondent points out that there was no dispute that the rent for the accommodation was Rs. 150 per month, and urges that if the amount of the arrears of rent is admitted between the parties that is all that matters. To our mind, that is not sufficient. The notice referred to in Section 12(1)(a) must be a notice demanding the rental arrears in respect of accommodation actually let to the tenant. It must be a notice (a) demanding the arrears of rent in respect of the accommodation let to the tenant and (b) the arrears of rent must be legally recoverable from the tenant. There can be no admission by a tenant that arrears of rent are due unless they relate to the accommodation let to him. A valid notice demanding arrears of rent relating to the accommodation let to the tenant from which he is sought to be evicted is a vital ingredient of the conditions which govern the maintainability of the suit, for unless a valid demand is made no complaint can be laid of non-compliance with it, and consequently no suit for ejection of the tenant in respect of the accommodation will lie on that ground.

9. It is contended by learned counsel for the respondent that the plaint in the suit was amended in order to relate to the accommodation asserted by the appellant and that the amendment relates back to the institution of the suit. The submission can be of no assistance to respondent. We are concerned here not with the subject matter of the suit but with the validity of the notice which is a prior condition of the maintainability of the suit. The notice of demand is an act independent of the institution of the suit. The notice and the plaint are two distinct matters, different by nature, designed for different purposes and located in two different points of time. They operate in two different planes, and are related insofar only that one is a condition for maintaining the other.

10. Accordingly, we hold that the notice of demand dated October 21, 1969 served by the respondent on the appellant was invalid and therefore the suit was not maintainable. In the circumstances, we consider it unnecessary to enter upon the other points raised before us on behalf of the appellant.

11. In the result, we allow the appeal, set aside the judgment and order of the High Court and dismiss the suit. In the circumstances of the case, there is no order as to costs.

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