

Govind

Vs

Dr. Jeetsingh

Civil Appeal No. 3117 of 1984

(Sabyasachi Mukharaji, S. Ranganatha Shetty JJ)

25.11.1987

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This appeal by special leave is directed against the judgment and order of the High Court of Madhya Pradesh in Second Appeal No. 166 of 1980. By the aforesaid judgment, the High Court has reversed the findings of the first appellate court.
2. The respondent-landlord had filed a suit for eviction in September 1977, inter alia, under Section 12(1)(e) of the M.P. Accommodation Control Act, 1961 (hereinafter called 'the Act') alleging that the premises in question was required bona fide for the requirement of the landlord. It was stated in the written statement filed by the petitioner-tenant that the respondent-landlord had already in his occupation sufficient accommodation and the same was sufficient to meet his requirement and that the suit was filed in order to extract the higher rent. The trial court decreed the suit.
3. The appellant went up in appeal. The Additional District Judge, Indore which was the first appellate court allowed the appeal of the appellant-tenant and set aside the decree passed by the trial court under Section 12(1)(e) of the Act. The first appellate court looked into the evidence and came to the conclusion that the need in respect of suit accommodation was not bona fide one.
4. It was the case of the landlord that three rooms were in his possession in the ground floor and one tin shed which the landlord was formerly using as a garage for his car but which was no longer with him. Landlord was suffering from hernia and one of the wives was also suffering from asthma. After analysing the evidence the first appellate court came to the conclusion that the evidence was not such that the plaintiff-landlord found it difficult in climbing the stairs and there was no danger of heart attack as he had stated. So far as the wife's illness was concerned, this also, the first appellate court did not accept the case on the analysis of the evidence. It was observed by the first appellate court that the wife of the landlord did not come to the witness box to say that she was suffering from asthma. Nor the doctor who was stated to be the family doctor affirmed that fact. It may, however, be mentioned that the landlord himself is a doctor. The landlord had stated that six rooms were in his possession and he explained how six rooms were being used and the accommodation with his wife in the ground floor comprises of three rooms; for her residence, kitchen and store and a tin shed for storing fuel etc. In the aforesaid background the first appellate court came to the conclusion that the requirement of the landlord was not reasonable nor bona fide. It is a well settled law in this branch that the need of the landlord must be reasonable and must be bona fide in order to evict the tenant on the relevant provisions of the various Acts. Whether in a particular situation the need was reasonable or bona fide must be judged from the objective

viewpoint not merely by assertion or denial of the parties. The learned Judge of the first appellate court applying the tests which appeared to him to be objective test found, that such need is not bona fide or reasonable. He accordingly allowed the appeal and set aside the order of eviction.

5. The landlord went up in appeal before the High Court in second appeal. The High Court came to the conclusion that the first appellate court had drawn wrong inferences and there was no proper appreciation of facts and furthermore the High Court was of the opinion that all the facts had not been borne in mind by the first appellate court. The High Court allowed the appeal and set aside the judgment and decree of the first appellate court and restored the order of the trial court and ordered eviction.

6. The tenant has come up here. It is well settled law that in second appeal the scope of interference by the High Court is limited.

7. This Court in the case of *Mattulal v. Radhe Lal* ((1975) 1 SCR 127 : (1974) 2 SCC 365 : AIR 1974 SC 1596) had occasion to consider the scope of the second appeal under the Madhya Pradesh Act. There this Court held that the High Court had exceeded its jurisdiction in second appeal in reversing the decision of the first appellate court. This Court further observed that the issues whether the respondent required the shop in question for the purpose of starting new business as a dealer in iron and steel materials, and if so, whether his requirement was bona fide were both questions of fact. Their determination did not involve the application of any legal principles to the facts established in the evidence. This Court further held in that case that the findings of the first appellate court on these issues were no doubt inferences from other basic facts, but that did not alter the character of these findings and they remained findings of facts and therefore, the conclusion of the first appellate court that the respondent did not bona fide require a shop premises in that case for the purpose of starting new business as a dealer in iron and steel materials represented findings of facts and could not be interfered with by the High Court in second appeal unless it was shown that in reaching it a mistake of law was committed or that it was based on no evidence or was such as no reasonable man could reach.

8. We are prima facie inclined to take the view that it might have been possible in this case to hold that the High Court was in error in interfering with the findings of the first appellate court but in the facts of this case we need not rest our decision on that basis, because subsequent to the decision of the High Court the first wife of the landlord had died and three rooms which were in her occupation have become vacant. In that view of the matter and taking into cautious consideration all the subsequent events it must be held that there was no more bona fide need of the landlord to evict the tenant of the premises in question.

9. This appeal must, therefore, be allowed and the order of eviction set aside. The appeal is accordingly allowed. The parties will bear their own costs.

10. This, however, will not prevent the parties from exchanging their position by mutual arrangements or agreement by the tenant going upstairs in three rooms, now in occupation of the landlord, and the landlord getting three more rooms in the ground floor in the occupation of the tenant.

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