

# MADHYA PRADESH HIGH COURT

Chandan Bai

Vs.

Surjan

Misc. (Second) Appeal No. 73 of 1970  
(S.P. Bhargava and G.P. Singh, JJ.)

20.12.1971

## ORDER

**G.P. Singh, J.**

1. This appeal comes before us on a reference made by one of us.
2. The appellant Chandanbai filed a suit for eviction against the respondent Surjan in 1964 on two grounds under Section 12(1) of the Madhya Pradesh Accommodation Control Act, 1961. The first ground was under clause (a) of the said provision that the defendant did not pay the arrears of rent within two months of the service of notice of demand. The second ground was under clause (e) that the house was required *bonafide* by the plaintiff for residential purposes. The defendant in his written-statement denied the existence of these grounds. During the pendency of the suit the parties, on December 15, 1965, entered into a compromise which was filed in Court and a decree was passed on its basis on the following terms :-

- (1) That the plaintiff's claim for ejection and possession be and is hereby decreed.
- (2) That the defendant shall be allowed time to vacate the house till 31.12.68 and till that time the decree shall not be executed.
- (3) That the defendant has paid the entire rent till 31.12.65 to the plaintiff. The amount deposited by the defendant towards the rent in Court shall be withdrawn by the plaintiff.
- (4) That the defendant shall pay future damages for his occupation from 1.1.66 till 31.12.68 at the rate of Rs. 35/- p.m.
- (5) That the municipal and other taxes from 1.1.66 onwards shall be paid by the

plaintiff. If the plaintiff fails to pay the same the defendant required to pay it, the defendant shall be entitled to deduct the same from the future damages.

(6) That the defendant shall be entitled to remove the materials fixed by him, viz. tin shed on electric fans and electric fittings.

(7) That in case the defendant fails to vacate the house on or before 31.12.1968, he shall be liable to pay damages from 1.1.1969 @ Rs. 70/-.

It will be seen that the defendant, under one of the aforesaid terms of the decree, was required to vacate the house by December 31, 1968. The defendant, however, did not comply with that term of the decree and did not vacate the house. The plaintiff-decree-holder then started execution proceedings for obtaining possession. In these proceedings an objection was taken by the defendant-judgment-debtor that the decree based on any of the grounds mentioned in Section 12(1) and being based solely on a compromise was a nullity and not executable. The objection was over-ruled by the executing Court. In appeal filed by the judgment-debtor the District-Judge, Raipur, allowed the objection and held that the decree was a nullity and was not executable. It is against this order that the plaintiff-decree-holder filed the present second appeal.

3. The main question in this appeal is, whether having regard to Section 12 of the Madhya Pradesh Accommodation Control Act, 1961, the Court has no power to pass a decree on the basis of a compromise.

4. Section 12 of the Act insofar as it is relevant reads as follows :-

"Section 12(1). Notwithstanding 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 :-

(1) 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 rent has been served on him by the landlord in the prescribed manner;

\* \* \* \*

(2) that the accommodation let for residential purposes is required *bonafide* the landlord for occupation as a residence for himself or for any member of his

family, if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonable suitable residential accommodation of his own in his occupation in the city or town concerned;

... ..

(3) No order for the eviction of a tenant shall be made on the ground specified in clause (a) of sub-section (1), if the tenant makes payment or deposit as required by Section 13 :

Provided that no tenant shall be entitled to the benefit under this sub-section, if, having obtained such benefit once in respect of any accommodation, he again makes a default in the payment of rent of that accommodation for three consecutive months.

(4) Where a landlord has acquired any accommodation by transfer, no suit for eviction of tenant shall be maintainable under sub-section (1) on the ground specified in clause (e) or clause (f) thereof unless a period of one year has elapsed from the date of the acquisition.

(5) Where an order for the eviction of a tenant is made on the ground specified in clause (e) of sub-section (1), the landlord shall not be entitled to obtain possession thereof before the expiration of a period of two months from the date of the order".

5. A reading of the section goes to show that it primarily applies at the stage when a suit is filed, the mandate of the section being that no suit shall be filed except on one or more of the grounds mentioned therein. There being no special procedure prescribed by the Act, after a suit is filed on one or more of the grounds mentioned in Section 12, the suit is to be tried and decided in accordance with the Code of Civil Procedure. If the parties do not compromise the suit till the end, the Court will have to find whether the plaintiff succeeded in establishing one or more of the grounds alleged in the plaint. If the Court finds that one or more of the grounds mentioned in Section 12(1) and alleged in the plaint have been established, a decree would be passed for eviction of the tenant; whereas, if no such ground is established, the suit would be dismissed. But as the suit is to be decided according to the Code of Civil Procedure, Order 23, Rule 3 of the Code will also apply and if the parties enter into a compromise and if the compromise is lawful, the Court will have to record the compromise and

pass a decree in terms thereof. There is nothing in Section 12 of the Act or any other provision which prevents the tenant in vacating the accommodation inspite of fact 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. All that Section 12 does is that a suit for eviction cannot be filed on that agreement, for a landlord can file such a suit only on one of the grounds mentioned in that section. The plaintiff will also have to establish one of those grounds for claiming eviction of the suit is tried in the normal way. But after the suit is filed, the tenant can enter into a compromise promising to give up possession in future, and as there is nothing *per se* illegal in such a promise, the Court would be bound to pass a decree in terms of the compromise under Order 23, Rule 3.

6. Learned counsel for the respondent placed strong reliance on three decisions of the Supreme Court. They are *Bahadur v. M.S. Das*,<sup>1</sup> *Ferozi Lal v. Man Mal*,<sup>2</sup> and *Kaushalya Devi v. K.L. Bansal*,<sup>3</sup> Rent Control. All these cases related to Section 13 of the Ajmer Rent Control Act, 1932. That section provides as under :

"Notwithstanding anything to the contrary contained in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of the landlord against any tenant including a tenant whose tenancy is terminated : Provided that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession if the Court is satisfied as to the existence of one or more of the grounds mentioned in the section".

It will be seen that in the aforesaid provision of the Delhi and Ajmer Rent Control Act the command is that "no decree - shall be passed 'unless the' Court is satisfied" as to the existence of the grounds mentioned in the Act. The expression 'the Court is satisfied' requires that the Court must itself decide whether the grounds exist or not. The section thus by implication excludes the application of Order 23, Rule 3 of the Code of Civil Procedure, for, when a Court passes a decree on a compromise, it need not be satisfied as to the existence of the grounds for eviction mentioned in the Act. It will be seen that Section 12 of the Madhya Pradesh Act does not open with the words 'no decree shall be passed'; it only directs that 'no suit shall be filed' except on certain grounds. Further, it does not provide that a decree can be passed only when 'the Court is satisfied' as to the existence of the grounds mentioned in the section. There being no

prohibition in the Madhya Pradesh Act for passing a decree for eviction except on satisfaction of the Court of the existence of the grounds mentioned in Section 12, the application of Order 23, Rule 3 of the Code is not excluded. In our opinion, the Supreme Court cases relied upon by the learned counsel for the respondent have no application because the language of the Madhya Pradesh Act, with which we are concerned is materially different from the language of the Delhi and Ajmer Act.

7. Reference was also made by the learned counsel to a decision of the Court of Appeal in *Peachey Property Corporation v. Robinson*,<sup>4</sup> In that case a default judgment for possession was obtained against a tenant without determining that it was reasonable to give such a judgment. It was held that the judgment was a nullity as it was given in contravention of Section 3(1) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. The said provision was to the effect :

"No order or judgment for the recovery of possession of any dwelling house to which the principal Acts apply or for the ejection of a tenant there from shall be made or given unless the Court considers it reasonable to make an order or give such a judgment...."

From this language it is clear that no judgment for eviction could be given under that provision unless the Court considered it reasonable to give such judgment. A judgment for eviction given without consideration of its reasonableness by the Court was, therefore, held to be a nullity. This case is similar to the Supreme Court cases noticed earlier and is not applicable as the language of Section 12 of the Madhya Pradesh Act does not contain words which require consideration by the Court itself of the grounds mentioned in that section before passing a decree for eviction.

8. We have already said that every suit filed, whether under the general law or a statute, has to be normally tried and decided in accordance with the Code of Civil Procedure. The statute, however, may contain words which may either expressly or by necessary implication negative the application of Order 23, Rule 3 or any other provision of the Code. Section 13(1) of the Delhi and Ajmer Rent Control Act can be cited as an example of a statute which by necessary implication excludes the applicability of Order 23, Rule 3 of the Code because by that provision the Court itself has to be satisfied of the existence of the grounds for eviction before passing a decree. Section 12 of the Madhya Pradesh Act neither expressly nor impliedly excludes the

operation of Order 23, Rule 3. It is true, as we have already pointed out, that if a suit proceeds in the normal course the plaintiff can only succeed if the Court decides that one or more of the grounds mentioned in Section 12 are established. But when the parties enter into a compromise, the suit would be decided under Order 23, Rule 3 in terms of the compromise without reference to the grounds mentioned in Section 12.

9. Section 12 of the Madhya Pradesh Accommodation Control Act, 1961, is to some extent modeled on Section 4 of the Madhya Pradesh Accommodation Control Act, 1955. A Division Bench of this Court in *Syed Manzurul Haq v. Tularam*,<sup>5</sup> held that a compromise decree under that Act was not a nullity and it was open to the executing Court to go behind the same and refuse to execute it on the ground that it was not passed on any of the grounds mentioned in Section 4 of the Act. In our opinion, the same rule applies in construing Section 12 of the present Act.

10. Reference was also made by the learned counsel for the respondent to a decision of Pande, J., in *Balgovind Shukla v. Mahavir Prasad Shrivastava and others*,<sup>6</sup> (Misc. Second Appeal No. 129 of 1969 decided on 16.3.1970). In that case it was held, following the Supreme Court cases to which we have already referred, that a compromise decree in a suit under Section 12 of the Madhya Pradesh Act, 1961, would be a nullity and will not be executable. With great respect, we do not agree with that decision. It was not noticed by the learned Judge that the language of the Delhi and Ajmer Rent Control Act, with which the Supreme Court was concerned, in the aforesaid cases, foresaid cases, was materially different from the language used in Section 12 of the Madhya Pradesh Act. We were also referred to an opinion expressed by Bhave, J., in the order of reference in the case of *Krishnabai v. Laxmibai*,<sup>7</sup> The opinion of Bhave, J., in the order of reference in that case does to some extent support the contention of the learned counsel for the respondent. However, the Division Bench, while deciding that case, did not consider that aspect and no opinion was expressed. Bhave, J., thought that when Section 12 requires that the suit can be filed only on one of the grounds mentioned in it, it also means that the Court can only decree it if one of those grounds are established and, therefore, a decree cannot be passed on a compromise. In our opinion, and we say it with great respect that is not the correct approach in construing Section 12. In that way the application of Order 23, Rule 3 would be excluded in all cases where relief is to be granted on the grounds mentioned in a statute. Even under the general law a plaintiff ultimately can only

succeed if he proves his right to the relief claimed and the Court can only pass a decree when it is satisfied that the plaintiff's right is established. But it does not follow from it that a Court cannot pass a decree on a compromise. The reason why the Court can pass a decree on a compromise is that Order 23, Rule 3, which is also a statutory provision, enable the Court to do so. Therefore, when a statute is passed providing for grounds on which a plaintiff can claim relief, the question that has to be examined is, whether the application of Order 23, Rule 3 in trial of a suit arising out of the statute is expressly or impliedly excluded. In the absence of any express exclusion or Order 23, Rule 3, that provision will apply unless the language used in the statute negatives its applicability by clear implication. 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.

11. In our opinion, the decree passed in the suit on the compromise was not a nullity and the first appellate Court was not right in holding that the decree was not executable being in contravention of Section 12 of the Act.

12. The appeal is allowed. The order of the District Judge, Raipur, is set aside and that passed by the executing Court is restored. In the circumstances of the case, there shall be no order as to costs throughout.

Appeal allowed.

Cases Referred.

1. (1969)2 S.C.R. 432
2. AIR 1970 SC
3. AIR 1970 SC 838
4. (1966)2 All England Reporter 981
5. 1961 M.P.L.J. 26
6. 1970 M.P.L.J. Note 83
7. 1970 M.P.L.J. 674