

# MADHYA PRADESH HIGH COURT

Anant Gadre

Vs.

Gomtibai (M.P)

First Appeal No.190 of 1980  
(G.P. Singh, C.J. and K.K. Dube, J.)

03.11.1981

## JUDGMENT

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

1. This is an appeal by the defendant against the judgment dated 31st October 1980 passed by the Additional District Judge, Hoshangabad, decreeing the suit for ejectment and mesne profits in respect of a cinema hall situated at Itarsi and dismissing the appellant's counter-claim.
2. The suit was instituted by the original plaintiff Maoji on 27th January 1975. Maoji died during the pendency of the suit on 16th January 1978 and his legal representatives who are respondents in this appeal were substituted in his place.
3. The suit is based on an oral lease of the cinema hall given by Maoji in favor of the appellant which was terminated by notice with effect from 1st February 1975. The cinema hall was first leased out in 1958 to the appellant. Thereafter, it was again leased out in 1968. The monthly rent agreed was Rs. 900/-. As there is no writing evidencing the lease, the tenancy has been treated to be from month to month, and there is no dispute between the parties on that point. The trial Court held that the lease was really a lease of cinema business and was not covered by the Madhya Pradesh Accommodation Control Act, 1961, and, therefore, it was not necessary to plead and prove any of the grounds mentioned in Section 12 of the Act. Even so, the trial Court held the need of the plaintiff under Section 12 (1) (f) to be established. The trial Court also decided an issue having reference to Section 12 (1) (m) in favor of the plaintiff. The trial Court allowed the manse profits at the rate of Rs. 900/- per month from the date of termination of tenancy. It further directed that in case the appellant did not vacate within two months from the date of the decree, the plaintiff would be entitled to

get manse profits at the rate of Rs. 1500/- per month from the date of the suit. There was a counter-claim by the appellant. The appellant's case was that he made certain constructions with the consent of the plaintiff in which he spent Rs. 31,954.18 and that he was entitled to get this amount from the plaintiff. The counterclaim was dismissed on the finding that the constructions were not made with the consent of the plaintiff.

4. The first question that arises in this appeal is whether the trial Court was right in holding that the lease was really a lease of cinema business and that it was not governed by the provisions of the Accommodation Control Act. It is only a lease of an accommodation as defined in Section 2 (a) of the Act which is governed by the provisions of the Act. Therefore, if in a given case what is leased out is a business carried on in a building, the lease will be outside the provisions of the Act. The principles bearing upon this question have been decided by the Supreme Court in *Uttamchand v. S.M. Lalwani*,<sup>1</sup> and *Dwarka Pd. v. Dwarka Das*.<sup>2</sup> The test to be applied is of dominant intention and the question to be decided by us is whether the dominant intention was to let out the cinema business or, whether, it was a lease of the cinema building with furniture and fittings. The facts relevant on this point are that the plaintiff Maoji never carried on the business of exhibition of films in the cinema hall. The cinema hall is equipped with fans, furniture and some fittings. It, however, contains no machinery installed by the plaintiff for exhibition of films. The projector was installed by the appellant and it was thereafter that the exhibition of films started in the cinema hall. In deciding the question of dominant intention, one has to see whether the cinema hall is so equipped that the business of exhibition of films could be started by the lessee without incurring any substantial expenditure in making it reasonably fit for carrying on the business. Now when the projector or the machinery itself was not installed in the cinema hall, it cannot be said that it was equipped up to that standard. In such a situation, in our opinion, it cannot be held that the dominant intention was to let out the cinema business. The dominant intention here was to lease out the building with furniture and fittings. We may also refer to Ex. P-9 which is a certificate for purposes of assessment of property tax given by the appellant to the plaintiff stating that he paid Rs. 800/- for cinema premises and Rs. 100/- towards the rent of furniture in the cinema house. This certificate also shows that the rent was paid for the building and furniture and not for any business.

5. Learned counsel for the respondents referred to us a passage from the case of *Uttamchand v. S.M. Lalwani* (supra) in which it is stated that the fact that the

machinery of a Dal Mill which was transferred to lessee under the lease was found to be not very serviceable and the lessee had to bring in his own machinery, would not alter the character of the transaction. These observations have to be appreciated in the light of the facts of that case. In that case, Dal Mill building with fixed machinery in working order and accessories was leased out on an annual rent. The machinery installed was serviceable, although it may not have been very serviceable in the sense that the lessee had to bring in new machinery also. It was held that the lease was a lease of the Dal Mill located in the building and not a lease of a building where the fixture of the machinery incidentally passes with the lease and in this context it was said that the fact that the lessee had to bring in his own machinery also did not alter the character of the lease. In the instant case, the machinery for exhibition of films was not at all fitted in the cinema hall when it was leased out to the appellant and, therefore, the inference that arises is that it was not a lease of cinema business although the lessee took the lease of the cinema hall for carrying on that business by installing his own machinery. In the case of *Dwarka Pd. v. Dwarka Das* (supra), also what was leased out was a running cinema business i.e. a cinema hall fitted with a projector and other accessories for running cinema business. Similar were the facts in *Harisingh v. Ratanlal*,<sup>3</sup> and *S.G. Film Exchange v. H.H. Tej Kunwar*,<sup>4</sup>. No case has been pointed out to us where a lease of a cinema hall without machinery for exhibition of films may have been held to be lease of cinema business. For these reasons, we hold that the lease in the instant case was a lease of the cinema building with furniture and other fixtures, governed by the Madhya Pradesh Accommodation Control Act.

6. On the finding reached by us, it was necessary for the plaintiff to prove one or more of the grounds mentioned in Section 12 of the Act for obtaining a decree for ejectment. We have earlier stated that the Court below has found in favor of the plaintiff existence of grounds under clauses (f) and (m) of Section 12 (1). As regards the ground under Section 12 (1) (f), we notice that initially what was pleaded was the need of the original plaintiff Maoji. The need of Maoji came to an end on his death and, therefore, the suit could not be decreed on the basis of that need. It is now well settled that the need on the basis of which ejectment is sought, must exist till the end; (see *Hasmat Rai v. Raghunath Prasad*),<sup>6</sup> The finding on the question of need, therefore, cannot be supported. Learned counsel for the respondents, however, pointed out that an application was made on 11th December 1976 in the trial Court to plead that the cinema hall was needed by the plaintiff and his major sons Visram Bhai and Purushottam Bhai for carrying on cinema business. Vishram Bhai and Purushottam

Bhai are amongst the legal representatives who were joined after the death of Maoji. Vishram Bhai also died during the pendency of the suit. This application, filed by the plaintiff, was rejected by an order passed on 11th December 1976 itself on the plea that according to the plaintiff the cinema building was not covered by the Accommodation Control Act. The rejection of this application was clearly wrong. It is true that the plaintiff's case was that the cinema building was not covered by the Accommodation Control Act, but he could plead in the alternative requirements of Section 12 for claiming ejectment. In our opinion, the amendment application made on 11th December 1976 ought to have been allowed by the trial Court. Had that application been allowed, the issue whether Vishram Bhai and Purushottam Bhai who were later on joined as legal representatives, needed the cinema hall for running cinema business could have been tried. Now that Vishram Bhai also died during the pendency of the suit, the only amendment that can be permitted is about the need of Purushottam Bhai for carrying on cinema business in the cinema hall.

7. As regards the question as to the existence of the ground under Section 12 (1) (m), we find that there is an issue (Issue No. 4) framed by the trial Court which substantially covers the ground under that section, but there is no clear pleading to that effect. Although that issue has been decided in favour of the plaintiff by the trial Court, the finding is not very happy. The trial Court came to the conclusion that the constructions made by the appellant were not made with the consent of the plaintiff. The trial Court did not give any specific finding that these constructions materially altered the accommodation to the detriment of the landlord's interest or that they were likely to diminish its value substantially. In the absence of any such finding, it could not be said that the ground under Section 12 (1) (m) was made out. The trial Court's decree, therefore, cannot be supported even on this ground. However, as the issue was there and there is also some pleading that the constructions were made without the consent of the plaintiff and they damaged the building, we permit the respondents to apply for amending the plaint for pleading clearly the ground mentioned in Section 12 (1) (m).

8. Learned counsel for the respondents also submitted that the cinema hall has been let out by the appellant during the pendency of the suit. If that be so, a ground of subletting can also be added by amending the plaint.

9. Coming to the counter-claim, learned counsel for the appellant has failed to show

any substantive law under which he could be entitled to the value of the constructions made by him, in case they were not made with the consent of the plaintiff, Except for the word of the appellant, there is no evidence whatsoever that the constructions were made with the consent of the plaintiff or at his request. In these circumstances, the appellant was not entitled to counter-claim for the value of the constructions. The question whether these constructions enhanced the value of the cinema hall or whether they were detrimental to it or whether they materially altered the building, is left open to be decided by the trial Court, if the plaint is amended to bring in the ground under Section 12 (1) (m).

10. The appeal is allowed. The judgment and decree of the trial Court pertaining to ejection and manse profits are set aside and the suit is remanded to it for trial in accordance with law. The respondents will file an application for amendment of the plaint on the date of appearance fixed by us which will be decided by the trial Court in the light of the observations made above. The appellant will have a right to amend the written statement in answer to the amendment of the plaint. Both parties will be allowed to lead evidence on the new points arising out of the amendment. The decree dismissing the counter-claim is upheld. There will be no order as to cash of this appeal. Parties will appear before the trial Court on 2nd December 1981.

Appeal allowed.

Cases Referred.

1. AIR 1965 SC 716
2. AIR 1975 SC 1758
3. 1969, MPLJ 622
4. 1978 MPLJ 302
5. AIR 1981 SC 1711