

CASE NO.:
Appeal (civil) 1233 of 2006

PETITIONER:
Ushabai & Ors

RESPONDENT:
M/s.Balakrishna Biharilal & Ors.

DATE OF JUDGMENT: 23/02/2006

BENCH:
A.R.Lakshmanan & A.K. Mathur

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P.(c) No.11446 of 2003]

A.K. MATHUR, J.

Leave granted.

This appeal is directed against an order passed by the learned Single Judge of the Madhya Pradesh High Court in Second Appeal No.382 of 1999 whereby learned Single Judge allowed the appeal of the defendants and set aside the decree of eviction granted by the first appellate court . Hence this appeal.

The original owner of the property which is situated in Khargaon Nagar was one Madhav Rao. He let out the suit premises to one Balakrishna on a monthly rent of Rs.50/- on 1.12.1950. Later on a rent note was executed inter se parties on 24.11.1955. On 3.3.1964 Madhav Rao felt the need of money and therefore, he took a sum of Rs.15,000/- from Balakrishna and executed a mortgage deed on 3.3.1964 in favour of Balakrishna's two sons namely Vijaykrishna and Shyam Sunder mortgaging the suit premises. Madhav Rao then effected a partition of his properties including the present suit house which fell in the share of his son, Mahesh Parsai. Mahesh became the owner of the suit house. On his death, the present plaintiffs who are the widow and sons respectively succeeded to the suit premises and became owners. The plaintiffs claiming to be the owners and landlords of the suit premises filed a suit out of which this present appeal arises against two sons of Balakrishna for their eviction from the suit house. The plaintiffs got the mortgage deed redeemed in their favour on 8.6.1982 after tendering the mortgage money. Thereafter, the plaintiffs called upon the defendants to vacate the suit premises as there was bona fide need of the plaintiffs i.e. for one of the sons, namely Pramod for doing business. It was also pointed out that the defendants had created sub-tenancy. Thus, the plaintiffs sought eviction of the defendants from the suit premises on two grounds i.e. bona fide need of Pramod for doing business under Section 12(1)(f) of the Madhya Pradesh Accommodation Control Act (hereinafter to be referred to as "the Act") and sub-letting of the suit premises to one firm falling under section 12(1)(b) of the Act.

The defendants contested the averments of the plaintiffs and resisted the suit for eviction. The defendants averred that the suit was not maintainable because there did not exist any relationship of landlord and tenant between the parties after execution of mortgage deed, Ext. P-1. Redemption of the mortgage deed was also denied by the defendants.

The trial court held that the mortgage has not been

redeemed, no case for bona fide need as contemplated under Section 12 (1) (f) of the Act was made out and that no case for sub-letting was also made out. However, the trial court decreed mesne profit for a sum of Rs.300/- per month against the defendants. Aggrieved against the said decree, the plaintiffs as well as the defendants filed appeals before the first appellate court. The plaintiffs in their appeal contended that they were entitled to seek eviction of the defendants on both the grounds whereas the defendants contended that no decree for mesne profit at the rate of Rs.300/- per month could be granted and the suit should have been dismissed in its entirety.

The appellate court allowed both the appeals. So far as the defendants' appeal was concerned, the appellate court set aside the decree for mesne profit granting Rs.300/- per month and so far as the plaintiffs' appeal was concerned, it was partly allowed resulting in eviction on the ground falling under Section 12(1)(f) of the Act i.e. bona fide need. It was found that the plaintiffs required the suit accommodation for bona fide need of their son, Pramod. It was also held that since the plaintiffs have redeemed the mortgage by paying the mortgage money to the defendants, earlier relationship of landlord and tenant came into existence enabling the plaintiffs to seek eviction on the ground of bona fide necessity. Against this order, second appeal came up before learned Single Judge of the High Court in which two substantial questions of law were initially framed which are as follows:

" 1. Whether in the facts and circumstances of the case the findings of the first appellate court on the point of genuine need of plaintiff/ respondents, is perverse, as arrived at in total disregard of objective facts required to prove the alleged need ?

2. Whether in the facts and circumstances of the case the courts below erred in not considering the entire joint family property for availability of alternative accommodation for starting the business of plaintiff's major son Pramod Kumar?"

But the learned Single Judge realized that more substantial questions of law arise in the matter, therefore, the following substantial questions of law were framed later on.

" 3. Whether lower appellate court was justified in holding that consequent upon the payment of mortgage money by Ushabai redeeming the mortgage (Ex.P.-1), the tenancy between the parties revived ?

4. Whether, finding of lower appellate court that the mortgage stood redeemed is sustainable with reference to facts ?

5. Whether, in the facts of the case, it could be gathered that it was a case of surrender of tenancy rights on execution of mortgage ?

6. Whether, plaintiffs were entitled to file a suit for eviction on the ground covered under Section 12(1) of the Act or their remedy was to claim possession on the strength of their title ?

7. In view of the finding that mortgage stood redeemed, whether decree for eviction can be upheld on the basis of plaintiff's title, as mortgagors and whether there is a material to sustain such decree ?

8. Can a decree for eviction passed under the provisions of the M.P. Accommodation Control Act be confirmed on the basis of title if there is any material to sustain it ?"

The learned single Judge after hearing both the parties set aside the order of Ist Additional District Judge, Khargaon on the ground that there was complete surrender of tenancy in favour of defendant because of mortgage. Hence the present appeal.

We have heard learned counsel for the parties and perused the records. So far as the question with regard to mortgage is concerned, we are of the opinion that the mortgage is discharged after the entire payment has been made by the plaintiffs to the defendants and in view of the fact that the mortgaged money has been paid to the defendants, thereafter the only question that remained to be decided by learned Single Judge was whether the need of the plaintiffs was bona fide or not. Learned Single Judge of the High Court has unnecessarily mixed up the question of eviction with the mortgage, the mortgage deed; Ext.P-1 was redeemed after full consideration having been paid therefore, there was no necessity to go into the question whether mortgage was redeemed or not. After going through the finding of the first appellate court we are satisfied that the mortgage amount has been received by the defendants and this fact was admitted by Shyam Sundar that mortgage amount has been received. In such a situation, if no endorsement has been made on Ext.P-1, that would not make any difference. Once Shyam Sundar, one of the defendants has admitted receipt of the money then simply because of non-endorsement on Ext.P-1 would not mean that the amount in question has not been paid and the mortgage has not been redeemed. Once, mortgage has been redeemed, then the plaintiffs became full owner of the suit premises as per the partition and therefore, they are entitled to maintain the suit on the ground of bona fide necessity. But the question of bona fide necessity was not considered by learned Single Judge. Learned Single Judge has interpreted Ext.P-1 to be subsisting mortgage. This, in our opinion, is not the correct approach. It was also admitted by the defendants that they were inducted as tenants in the suit premises and the suit premises belonged to one Madhav Rao who has given it to the plaintiffs. Therefore, the plaintiffs are entitled to maintain their suit for eviction on the grounds of bona fide need and sub-letting. However, the question of sub-letting has failed. But so far as the question of bona fide need of the plaintiffs is concerned, it should be examined by the learned Single Judge of the High Court and finding be recorded whether the eviction sought by the plaintiffs on the ground of bona fide necessity has been correctly approached by the first appellate court or not. This question has not been examined by learned Single Judge of the High Court whether the bona fide need of the plaintiffs has been proved or not. Let this issue be examined by learned Single Judge of the High Court whether bona fide need has been established by the plaintiffs or not. Therefore, we allow this appeal, set aside the order of learned Single Judge of the High Court of Madhya Pradesh passed in Second Appeal No.382 of 1999 on 10.4.3003 and remit the matter back to the High Court to consider the issue whether the Court below has correctly approached the bona fide need of the plaintiffs or not. So far as framing of substantial questions of law by the High Court is concerned, it is always open if learned Single Judge considers that some more substantial questions of law arise in the matter, he can frame the same. This Court in the case of Thiagarajan & Ors. Vs. Sri Venugopalaswamy B. Koil & Ors.

reported in (2004) 5 SCC 762 has taken the view that by virtue of proviso to Section 100(5) the High Court can frame substantial questions of law if they arise in the matter for the reasons to be recorded. Hence we allow the appeal and set aside the order of the High Court and remit the matter to the High Court to decide the issue of plaintiffs' bona fide necessity. Since this is an old matter, we request that the High Court may expedite the hearing of the second appeal. No costs.

JUDIS