

PETITIONER:
NAI BAHU

Vs.

RESPONDENT:
RAMNARAYAN & OTHERS

DATE OF JUDGMENT 14/10/1977

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
SINGH, JASWANT

CITATION:
1978 AIR 22 1978 SCR (1) 723
1978 SCC (1) 58

ACT:
Madhya Pradesh Accommodation Control Act, 1955- Nullity-Consent decree, if a nullity-If requirements of provisions of Act must be satisfied-Whether pleadings and evidence can be looked into-Whether consent decree giving time to vacate can create fresh tenancy-Construction of a document-Whether dominant intention must guide the construction-Whether consent decree giving time to vacate bad for non-registration.

HEADNOTE:

The appellant filed a suit for eviction against the respondent tenant. All the witnesses on behalf of the appellant were examined. Thereafter 2 witnesses were examined on behalf of the respondents. At that stage a joint compromise petition was filed settling the matter. The compromise deed provided that the respondents admitted the full claim of the appellant for ejection, arrears of rent and mesne profits on the conditions that the respondents would put the appellant in vacant and peaceful possession of the entire tenancy premises except certain portion and that the said portion would be vacated on the expiry of 5 years; and that the future mesne profits would be paid. It also provided that the respondents would be entitled to construct separate latrine and urinal in the verandah near the staircase; that the respondents would remove their sign boards to the extent they prevent the proper light and air to the portion of the appellant on the second storey.

After the 5 years' period expired, the appellant took out execution proceedings which were resisted by the respondents. The plea of the adjustment raised by the respondents was negatived in the first round of litigation. However, the respondents challenged the decree as a nullity and further contended that the decree incorporated a lease which on account of non-registration was invalid and, therefore, not executable. The Trial Court rejected the objections raised by the respondents. An appeal filed by the respondents was dismissed. The High Court allowed the second appeal filed by the respondents holding that the term of compromise created a new demise on different terms in regard to the premises which were not identical with the

premises covered by the original lease. The High Court also held that the decree was passed in contravention of the provisions of Madhya Pradesh Accommodation Control Act, 1955. The High Court also held that compromise purported to create a lease for 5 years which was ineffective on account of non-registration.

Allowing the appeal,

HELD : (1) It is well-settled that where the Rent Control and Restrictions Act are in operation a landlord cannot obtain eviction of the tenant unless he can satisfy the requirements of the provisions in those Acts. It is also well settled that if the court does not find the permissible grounds for eviction disclosed in the pleadings and other materials on record no consent or compromise would give jurisdiction to the court to pass a valid decree of eviction. [726 G-H]

(2) The court after going through the pleadings and the evidence came to the conclusion that there was sufficient material for the court to be satisfied about the existence of the ground for eviction. The court held that if the pleadings and other materials on record make out a prima facie case about the existence of statutory grounds for eviction the compromise decree cannot be held to be invalid and the executing court will have to give effect to it.

[729 D-E]

Konchada Ramamurthy Subudhi & Anr. v. Gopinath Naik, 1968(2) SCR 559, Roshan Lal v. Madan Lal, 1976(1) SCR 878; Girdharilal (dead) by L. Rs v. Hukam Singh and Ors. AIR 1977 SC 129; Kartar Singh v. Chaman Lal & Ors. 1970(1) SCR 9 and K. K. Chari v. R. M. Seshadri, 1973 (3) SCR 691, referred to.

724

Dr. Gopal Dass Verma v. Dr. S. K. Bhardwaj and Another, 1962 (2) SCR 678, distinguished.

(3) The Court after a careful consideration of the terms of the compromise and the whole tenor of the compromise came to the conclusion that there was no intention to create a lease between the parties. It is the dominant intention of the document which must guide the construction of its contents. In the recital at 3 places it is stated categorically that the plaintiff shall be entitled to execute her decree against the defendants. Thus there was no intention to create a lease. The few alterations and improvements agreed upon by consent were merely an arrangement for vacating two floors and in order to vacate the remaining portion after using it for 5 years. Therefore, there is no question of registration of the decree. [731 A-C]

(4) There is nothing in the Madhya Pradesh Act to bar an eviction from a building if a non-residential accommodation is genuinely required not only for non-residential use but also a portion of it for bona fide personal residence. [731-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 25 of 1971. (Appeal by special leave from the judgment and order dated 19-8-1970 of the Madhya Pradesh High Court in Misc. Second Appeal No. 64 of 1968).

G. B. Pai, S. C. Jain, S. S. Khanduja and Baij Nath Pandey, for the appellant.

G. L. Sanghi and A., G. Ratnaparkhi, for the respondents.

The Judgment of the Court was delivered by

GOSWAMI, J.-This appeal, by special leave, is directed

against the judgment of the Madhya Pradesh High Court of August 19, 1970. The facts and circumstances in this appeal disclose the highly tortuous nature of litigation between the landlord and the tenants. To high light this aspect we may briefly state the facts.

A suit was filed by the appellant on February 17, 1959, for eviction of the respondents (tenants) from a three-storeyed premises. The tenants resisted the claim and trial proceeded in which, after the close of the plaintiff's case, the tenants examined two witnesses and the suit was adjourned for their further evidence to July 12, 1960. On that day a joint compromise petition was filed settling the matter. Statement of counsel on both sides was recorded by the court on the same day and an order was passed on the following day, namely, July, 13, 1960 and a decree was passed in terms of the compromise. Without referring to the details of the terms of compromise at this stage, it may be stated that the decree of eviction was executable only after five years.

Five years passed. The appellant took execution on July 21, 1965. The execution was resisted by the tenants. They set up a plea of adjustment under Order 21, rule 2 Civil Procedure Code. The said objection was rejected by the court on December 10, 1966. An appeal against the said order was also rejected on July 13, 1967. A second appeal by the tenants was dismissed by the High Court on September 27, 1968. Thus the first litigation regarding plea of adjustment of the decree terminated in the High Court on September 27 1968.

725

Even so, the tenants had already opened another front of attack against the decree on July 17, 1967, by means of an application in the executing court while the earlier litigation in respect of adjustment of the decree was pending. By that application the tenants challenged the decree as a nullity and further objected that the decree incorporated a lease which, on account of non-registration, was invalid and therefore was not executable. The application was rejected by the executing court on July 20, 1967. The judgment debtor then approached the appeal court which also did not oblige and dismissed this appeal.

Undaunted, the judgment-debtor filed a second appeal before the High Court of Madhya Pradesh and this time successfully. The High Court allowed the appeal and set aside the order. According to the High Court the main question for consideration in the appeal before it was "whether the terms of the decree, which was passed on the basis of a compromise between the parties, created a fresh tenancy and so inhibited the decree-holder from terminating it and taking possession of the demised premises otherwise than in accordance with the provisions of section 12 of the M.P. Accommodation Control Act". Answering the question in favour of the appellants (respondents herein the High Court held that "the terms of compromise created a new demise on different terms in regard to the premises which were not identical with the premises covered by the original lease". The High Court also held that the decree was passed in contravention of the provisions of the Act. The High Court also observed that "the compromise decree purported to create, as shown, a lease for five years" and was "ineffective" on account of non-registration.

The High Court refused to grant leave for Letters Patent Appeal and hence this appeal by special leave.

Mr. G. B. Pai, learned counsel for the appellant, submits that the High Court was entirely wrong in holding that the

decree was a nullity. He submits that the case is squarely covered by the decision of this Court reported in *Konchada Ramamurthy Subudhi & Anr. v. Gopinath Naik*.⁽¹⁾ In the said appeal the only point raised was whether the compromise decree created a lease or a licence. On the terms of the compromise this Court held that it did not create a lease as "the intention of the parties was not to enter into the relationship of a landlord and tenant". Mr. Pai also drew our attention to the decision of this court in *Roshan Lal v. Madan Lal*.⁽²⁾ This Court observed in that decision as follows

"If the agreement or compromise for the eviction of the tenant is found, on the facts of a particular case, to be in violation of a particular Rent Restriction or Control Act, the Court would refuse to record the compromise

e as it will not be a lawful agreement. If on the other hand, the Court is satisfied on consideration of the terms of the compromise and, if necessary, by considering them in the context of the pleadings and other materials in the case, that the agreement is law-

(1) [1968] 2 S.C.R. 559.

(2) [1976] 1 S.C.R. 878.

726

ful, as in any other suit, so in an eviction suit, the Court is bound to record the compromise and pass a decree in accordance therewith".

With regard to the objection that the decree was unregistered, Mr. Pai relied upon a decision of this Court in *Girdharilal (dead) by L. Rs. v. Hukam Singh and others*⁽¹⁾ and read to us the following observations therefrom :

"Even though the decree of a Court embodies an agreement between the parties, we do not think that the agreement between the parties placed before us, involving the recognition of a transfer, could require registration unless the terms of the compromise decree necessarily involved the execution of a deed of conveyance also."

Mr. Pai finally submits that a perusal of the terms of compromise in the joint application under Order 23, rule 3 of the Civil procedure Code and the order of the trial court in pursuance thereof and other materials on record will clearly show that the court was satisfied that a lawful compromise was entered upon between the parties and, that there was ground for eviction of the tenants as required under the law. The decree was, therefore, not a nullity and was clearly executable, says Mr. Pai.

On the other hand, Mr. Sanghi on behalf of the tenants submits that the decree was clearly invalid as it was passed in the teeth of the provisions of the Madhya Pradesh Accommodation Control Act, 1955 and it cannot be held that the court was satisfied that the compromise was lawful to enable it to pass a decree for eviction. According to counsel, any compromise which is against the law cannot confer on the Court a jurisdiction to pass a decree on its basis. Mr Sanghi further submits that the plaint in this case disclosed that the premises were let out for non-residential purpose. Since the plaintiff sought for eviction from the premises on the composite ground of bona fide requirement for residence as well as for business of money-lending and also to start her own business of cloth as she had no other

accommodation in the city for those purposes, the court has no; jurisdiction to pass a decree, on those grounds because originally the premises were let out for non-residential purpose.

It is well-settled that where the Rent Control and Restrictions Acts are in operation, a landlord cannot obtain eviction of the tenant unless he can satisfy the requirements of the provisions in those Acts. The general law of landlord and tenant to that extent will give way to the special Act in that behalf. It is also well-settled that if the court does not find the permissible grounds for eviction disclosed it, the pleadings and other materials on the record, no consent or compromise will give jurisdiction to the court to pass a valid decree of eviction.

(1) A.I.R. 1977 S.C. 129, 727

It will, therefore, be appropriate at this stage to look to the nature of the suit disclosed in the plaint. It is stated in the plaint that "the defendants are carrying on their business jointly in the aforesaid tenancy premises in the name and style of Lala Ramswarup and Sons". Para 4 of the plaint discloses the grounds under section 4 of the Madhya Pradesh Accommodation Control Act, 1955 which are to the effect that the plaintiff requires the premises for her own bona fide residence and also for her business of money lending and to start her own business of cloth and that she has no other suitable accommodation for either purpose in the city of Jabalpur. She has also mentioned the business need of her brother, Tek Chand, whose income from the business will be utilised to meet the expenses of the plaintiff. It is also stated that the defendants have built and acquired vacant possession of accommodation in Manjipura, Jabalpur and were in possession of three three-storeyed houses having three spacious shop premises therein. It will be necessary now to set out below the terms of compromise arrived at by the parties on the basis of which the decree was passed

"1. That the defendants admit the full claim of the plaintiff for ejectment, arrears of rent and mesne profits as claimed in the suit on the following conditions :-

(a) That the defendants shall put the plaintiff in a vacant and peaceful possession of the entire tenancy premises except portion of the ground floor only shown by letters A.B.C.D.E. in the map attached with this application, today. If the defendants fail to do so the plaintiff shall be entitled to execute her decree against the defendants for the same at their costs. The portion shown by letters A.B.C.D.E. is of the ground floor only.

(b) That the defendants shall vacate the portion marked by letters A.B.C.D.E. of the ground floor in the map attached with this application and put the plaintiff in its vacant possession by 15-7-1965, (Fifteen July Nineteen hundred and sixty five). If the defendants do not vacate the same by this date, the plaintiff shall be entitled to execute her decree against the defendants for possession of this portion at their costs.

2. That towards mesne profits from 15-2-59 upto 14-7-1960 the defendants have already passed a cheque dated 11-7-1960 hearing No.

28264 drawn on the Central Bank of India.
3. That towards mense profits from 15-7-1960 onwards the defendants shall pay Rs. 170/- per month to the plaintiff till they actually vacate the house by the appointed date. The defendants shall pay a sum of Rs. 3,000/- to the plaintiff by 15-8-1960 towards mense profits from 15-7-60

728

onwards in advance. This amount is liable to be adjusted towards mense profits at the rate of Rs. 170/- per month from 15-7-1960 onwards. After this amount is fully adjusted the defendants shall pay Rs. 170/- per month regularly on the 15th of the next month. If the defendants fail to comply with the above terms the plaintiff shall be entitled to execute her decree against the defendants for the same and in that case the defendants shall be liable for the costs of execution.

4. That the parties shall bear their respective costs of the suit. The parties shall not now claim anything against each other on account of costs awarded to them by the courts in previous litigation between the defendants and the plaintiff's husband.

5. That the defendants shall be entitled to construct a septic latrine and urinal in the verandah near the stair case near points D and C shown in the map at their own costs. The plaintiff shall allow the defendants facilities to make a drain for the proper discharge of water etc. from the septic latrines and urinal through her court yard. The cost of the drain will be borne by the Plaintiff.

6. That the defendants shall remove their sign Boards etc. to the extent they are preventing the proper light and air to the portion of the plaintiff on the second storey.

PRAYER

The parties, therefore, pray that a decree in terms of the above compromise be passed".

It is submitted by Mr. Sangbi that there is nothing to show either on the face of the decree or even on the materials on the record that the court applied its mind for the purpose of being satisfied that a decree for eviction on any of the admissible grounds under section 4 of the Madhya Pradesh Accommodation Control Act, 1955 (briefly the Act M.P. Act), were present in the case. Having examined the pleadings, the terms of the compromise as well as the statement of counsel of either party recorded by the trial court and the resultant order passed thereafter, we are unable to accede to the submission that the court did not apply its mind to the relevant question that was necessary to be considered at that stage at the time of passing the decree.

Mr. Sanghi next submits that the plaintiff did not at all establish the valid ground for passing a decree for eviction under the M.P. Act. According to him the house was let out for non-residential purpose, viz., for a shos. He states that it is clear from the averments in the plaint that the plaintiff wanted the house for her own use as well as for the purpose of business. Counsel asserts that the ground for eviction in this case is clearly under section 4(h) of

the M.P. Act. Since on her own showing that the plaintiff seeks eviction for a composite purpose, viz., for her residence and for business the house being a non-residential accommodation she is not entitled to eviction under section 4(h) of the M.P. Act. In this context Mr.

729

Sanghi relies upon a decision of this Court in Dr. Gopal Dass Verma V. Dr. S. K. Bhardwaj and Another(1) and read to us the following passage from that decision

"....where premises are let for residential purposes and it is shown that they are used by the tenant incidentally for commercial, professional or other purposes with the consent of the landlord the landlord would not be entitled to eject the tenant even if he proves that he needs the premises bona fide for his personal use because the premises have by their user ceased to be premises let for residential purposes alone".

Mr. Sanghi also relied upon another decision of this Court in Katar Singh v. Chamman Lal & Others (2) where the decision in Dr. Gopal Dass Verma (supra) has been followed. It is true that a decree for eviction of a tenant cannot be passed solely on the basis of a compromise between the parties (see K. K. Chari v. R. N. Seshadri"(3). The Court is to be satisfied whether a statutory ground for eviction has been pleaded which the tenant]as admitted by the compromise. Thus dispensing with further proof, on account of the compromise, the court is to be satisfied about compliance with the statutory requirement on the totality of facts of a particular case bearing in mind the entire circumstances from the stage of pleadings upto the stage when the compromise is effected.

When a compromise decree is challenged as a nullity in the course of its execution the executing court can examine relevant materials to find out whether statutory grounds for eviction existed in If the pleadings and other materials on the record make out a prima facie case about the existence of statutory grounds for eviction a compromise decree cannot be held to be invalid and the executing court will have to give effect to it.

According to Mr. Sanghi when the house was let for non-residential purpose the appellant cannot succeed in ejecting the tenant 'from the house for a composite purpose of residence as well as business and he submits that the principles laid down in Dr. Gopal Dass Verma (supra) fully support him.

In Dr. Gopal Dass Verma (supra) this Court was dealing with the provisions of Delhi & Ajmer Rent Control Act, 1952 (briefly the Delhi Act). Section 2(g) defines premises under that Act thus

" 'Premises' means any building or part of a building which is, or is intended to be let, separately for use as a residence or for commercial use or for any other purpose, "

We may contrast the definition of accommodation in the M.P. Act with which we are concerned. Under section 3(a) of the M.P. Act, "accommodation" means-

(x) any land which is not being used for cultivation,

(1) [1962] 2 S.C.R. 678.

(2) [1970] 1 S.C.R. 9.

(3) [1973] 3 S..C.R. 691.

730

(y) any building or part of a building, and it includes-

- (1) garden, open land and out houses, if any, appurtenant to such building or part of a building;
- (2) any furniture supplied by the landlord for use in such building or part of a building;
- (3) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof,).

It is significant that in the Delhi Act intention to let separately for use as a residence or for commercial use or for any other purpose is expressly mentioned under section 2(g) thereof. The principle underlying the scheme for letting separately for different uses is reflected in the Second Schedule to the Delhi Act in both Parts A and B (see paras 3 to 5 both in parts A and B). The said differentiation of purpose for separate letting does not find such significant importance in the M.P. Act as has been found by this Court in the Delhi Act. Mr. Sanghi, however, draws our attention to section 4(d) of the M.P. Act which provides that if the tenant has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation, that will furnish a ground for eviction under the M. P. Act. He also relies upon s. 6 of the M.P. Act where there is provision for compensation in the case of eviction on the ground mentioned in clause (h) of section 4 in case of non-residential accommodation. Counsel therefore submits that although the word 'separately' is absent in the definition of "accommodation" in the M.P. Act there is no difference whatsoever in the actual intent of the provisions in the M.P. Act to warrant a departure from the principles laid down in Dr. Gopal Dass Verma (supra).

We are unable to accept the above submission. It is clear that under the Delhi Act the scheme is significantly different from that of the M.P. Act. The definition of "premises" in the Delhi Act is a pointer. Under the M.P. Act a landlord can seek eviction of a tenant from a non-residential accommodation if he genuinely requires the same for his business purpose. But the position is not the same under the provisions of the Delhi Act where the landlord cannot ask for eviction of a tenant from the premises let for commercial use even if the former requires it bona fide for his own business purpose. The landlord may seek eviction of the tenant on other grounds but not on the ground of bona fide requirement for his own business under the Delhi Act. This brings out the difference between the scheme underlying the two Acts and Mr. Sanghi cannot call in aid the decision in Dr. Gopal Dass Verma (supra) in support of his submission. The High Court was not right in its conclusion that the decree was passed in contravention of the provisions of the Act.

Mr. Sanghi also submits that the decree in this case incorporated a lease for five years and in absence of registration under section 17(1) (d) of the Registration Act the decree is invalid and cannot be acted upon. As already pointed out this objection is untenable in

731

view of the decision of this Court in Girdharilal (supra). The question would turn on the terms of the compromise. After a careful consideration of the terms of the compromise and the whole tenor of the compromise petition it is absolutely clear that there was no intention to create a lease between the parties. It is the dominant intention of the document which must guide the construction of its

contents. In the recitals of the compromise petition in three places it is stated categorically that "the plaintiff shall be entitled to execute her decree against the defendants". There was therefore, no intention to create a lease with regard to any portion of the property although certain arrangements had been entered for the intermediate occupation of a certain portion before vacating that portion after expiry of five years. The few alternations and improvements agreed upon by consent were merely an arrangement for vacating two floors and in order to vacate the remaining portion after using it for five years. There was no intention whatsoever to create a new lease. There is, therefore, no question of registration of the decree. The submission is devoid of substance. The High Court is, therefore, clearly wrong in holding that a lease was created by the compromise and that the decree was ineffective on account of non-registration.

There is nothing in the M. P. Act to bar an eviction from a building if a non-residential accommodation is genuinely required not only for non-residential use but also a portion of it bona fide for personal residence. We are clearly of opinion that the compromise decree in this case is a lawful decree of eviction founded on permissible statutory ground and there are sufficient materials to show that the trial court applied its mind and was satisfied that a valid decree under the M.P. Act could be passed. In the result the judgment and order of the High Court are set aside and the orders of the lower courts are restored. The appeal is allowed with costs.

ORDER

GOSWAMI, J. We have pronounced the judgment and order in this appeal. On the undertaking given by counsel on behalf of the respondents that they will voluntarily and peacefully vacate the portion of the premises in dispute in this appeal on or before 31st January, 1978 and hand over vacant and peaceful possession to the appellant, the execution of the decree will be stayed till then. Meanwhile, the respondents also undertake to pay Rs. 170/- p.m. as mesne profits to the appellant within the first week of the month due. Failure to pay mesne profits as aforesaid will enable the decree-holder to execute the decree without reference to this Court and the stay of the decree will automatically stand vacated. P.H.P. Appeal allowed.

10-951SCI/77

732