

PETITIONER:
SMT. MEHRUNNISA & ORS.

Vs.

RESPONDENT:
SMT. VISHAM KUMARI & ANR.

DATE OF JUDGMENT: 02/12/1997

BENCH:
A.S. ANAND, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

THE 2ND DAY OF DECEMBER, 1997

Present:

Hon'ble Dr. Justice A.S. Anand
Hon'ble Mr. Justice K. Venkataswami

D.D. Thakur, Sr. Adv. and Vivek Gambhir, Adv. with him for the appellants

Dr. Shankar Ghosh, Sr. Adv., S.S. Khanduja, B.K. Satija, Y.P. Dhingra, Adv. with him for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered;
K. Venkataswami. J.

This appeal by special leave is preferred by the legal representatives of the deceased tenant against whom an order of eviction from the suit premises was passed by the High Court.

The respondent-landlady became the owner of the suit premises under a registered sale deed dated 31.3.1975. On 12.7.1976, the respondent issued a notice to the tenant terminating the tenancy stating inter alia that the suit premises, a non-residential one, was required for using it as an office for her husband, a practising lawyer. It was also stated that the tenant has default in payment of rent and has sub-let the premises without written consent of the landlady. However, no action was taken pursuant to the notice dated 12.7.1976. The respondent issued a second notice through lawyer on 9.7.1977 stating that the suit premises was required for her cloth business which she intended to start. Even on the basis of the second notice, no action was taken by the respondent-landlady. A third notice was also issued by the respondent-landlady on 12.10.1979 repeating the same allegations contained in the second notice dated 9.7.1977. This time, the landlady filed a suit for eviction on the basis of the notice issued on 12.10.1979. The grounds for eviction as given in the plaint were that the landlady required the premises for starting a cloth business; that the tenant has defaulted in payment of rent for the period from 1.4.1979 to 30.11.1979 and that the tenant has sub-let the premises unauthorisedly.

The tenant resisted the suit for eviction denying the requirement of the landlady for her new business. It was

also denied by the tenant that there was default the payment of rent. The allegation of sub-tenancy was also denied.

The trial court on the basis of the pleadings framed live issues. The plaintiff (respondent herein) examined herself and three other witnesses in support of her pleadings. Likewise, the deceased defendant-tenant, apart from examining himself, examined six other witnesses in support of his pleadings.

The trial court in its detailed judgment found that the requirement of the landlady for starting cloth business was bona fide and that she was not in possession of any other vacant shop of her own for the said requirement: that the landlady failed to establish the case of sub-letting and also the case of default in payment of rent. In other words, out of three grounds put forward in support of the suit for eviction. The trial court deceased the suit only on the ground of bona fide requirement by the landlady for starting the cloth business. We are therefore, not concerned with the other grounds for eviction.

Aggrieved by the judgment of the trial court, the deceased tenant preferred an appeal to the appellate court. The lower appellate court, after re-appreciating the pleadings and evidence, came to a conclusion on the bona fide requirement of the landlady for starting a cloth business. According to the lower appellate court, the landlady failed to establish her case of the requirement of the suit premises for starting a cloth business. The lower appellate court reversed the Judgment and decree of the trial Court mainly on the ground that the landlady issued a first notice on 12.1.1976 giving out an entirely different ground for eviction, namely, that she required the premises for the use of her husband as lawyer's office. Subsequently, according to the first appellate court, in the light of the judgment of the High Court that such a claim cannot be the basis for eviction under Section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961 thereafter called the 'Act'). The landlady has changed her stand and put forward an entirely new ground for eviction, namely, that the premises was required for starting a cloth business. According to the lower appellate court, the change in the stand of the landlady exposed her intention to evict the tenant for some other motive. The lower appellate court dismissed the suit for eviction by allowing the appeal preferred by the tenant on the ground that the landlady failed to established her case viz. that required the premises bona fide for starting a cloth business.

Aggrieved by the reversing judgment and decree of the lower appellate court, the respondent-landlady preferred a Second Appeal under Section 100, CPC, before the Madhya Pradesh High Court. The High Court after going into the judgments of the courts below after going into the judgments of the courts below found that the lower appellate court, though entitled to re-appreciate the evidence and come to a different conclusion failed to read the whole evidence and all the documents exhibited in the trial court before reversing the finding of the trial court on the issue of bona fide requirement of the landlady for starting a cloth business. According to the High Court, the lower appellate court failed to appreciate the notices issued on 9.7.1977 and 12.10.1979 taking a consistent stand regarding the bona fide requirement for starting a cloth business. The High Court has taken note of a number of judgments to the effect that the notice issued and the circumstances which prevailed just before the institution of the suit are relevant for coming to conclusion regarding the bona fide requirement of

the landlady. By giving undue importance to the first notice and ignoring the subsequent notices. according the High Court, the conclusion reached by the lower appellate court is vitiated. On that ground and also accepting the appreciation of evidence by the trial court on the issue of bona fide requirement of the landlady, the High Court allowed the Second Appeal and decreed the suit for eviction.

It is under these circumstances, the present appeal by special leave has been preferred by the legal representative of the tenant who died pending the proceedings.

Mr. D.D.Thakur, learned Senior Counsel for the appellants, strenuously argued contending that the High Court exceeded its jurisdiction under Section 100, CPC, by going into the evidence and reversing the conclusion of the lower appellate court on a question of fact. On that ground, according to the learned Senior Counsel, the judgment of the High Court is liable to be set aside. He also submitted that the First Appellate Court was justified in commenting upon the ground for eviction as given in the first notice and the subsequent change in the stand taken by the landlady. Another words, the learned counsel justified the conclusion reached by the lower appellate court reversing the conclusion of the trial court. Mr. Thakur in support of his contention placed reliance on two judgments of this Court in Sarvate T.B. vs. Nemichand (1966 (MPLJ) 26 (SCC) and Mattulal vs. Radhe Lal (1974 (2) SCC 365).

Dr. Shankar Ghosh learned Senior Counsel appearing for the respondent-landlady contending contrary submitted that the High Court was fully justified in reversing the finding of the lower appellate court as the lower appellate court failed to read the entire evidence and all the documents before coming to a conclusion contrary to the one reached by the trial court. Learned Senior Counsel further submitted that this Court has consistently taken the view that if the first appellate court while reversing the finding of the trial court failed to take note of all the documents exhibited before the trial court and failed to read the entire evidence, the High Court can interfere with such finding while exercising jurisdiction under Section 100, CPC. He also laid stress on the fact that the lower appellate court ought not to have looked into the contents of first notice issued by the landlady when the relevant notice for the purpose was the last one issued just before the filing of the suit. The landlady having not taken any steps pursuant to first and second notices, the contents in those notices ought to have been ignored. Learned Senior Counsel submitted that the High Court was right observing that the circumstances prevailing before the filing of the suit are relevant and not be circumstances that prevailed long earlier to the filing of the suit.

We have considered the rival submission and carefully gone through the judgments of all the three courts. It is true that this Court in Nemi Chand's case (Supra) has, in unmistakable terms, held while deciding a case under the Madhya Pradesh Accommodation Control Act 23 of 1995 that the finding of the District Court based on appreciation of evidence was binding upon the High Court and the High Court had no power to reverse that finding. This Court further observed as follows:-

"The criticism made by the High Court that the District Court's finding was vitiated "due to very imperfect understanding of the meaning of the expression 'genuinely requires' occurring in

clauses (g) and (h) of Section 4 of the Act," and that the District Court and "arrived at a finding which is totally unrelated to the legal connotation of the phrase 'genuinely requires' and almost borders on perversity", does not appear to be merited. In our judgment, the District Court committed no error in the examination of the evidence in the light of the Full Bench judgment in Damodar's case."

Likewise in Mattulal's case (supra), this court after referring to Nemi Chand case held as follows:-

" Now it is obvious that the issues whether the respondent required the Lohia Bazar shop for the purpose of starting a 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 legal principles to the facts established in the evidence. The findings of the Additional District Judge on these issues were no doubt inferences from other basic facts, but that did not alter the character of these findings and they remained finding of fact. There is, therefore, no doubt that the conclusion of the Additional District Judge that the respondent did not bona fide require the Lohia Bazar shop for the purpose of starting business as a dealer in iron and steel materials represented a finding of fact and it 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 by the Additional District Judge or it was based on no evidence or was such as no reasonable man could reach. This was precisely the ground on which a Bench of four Judges of this Court in Sarvate T.B. vs. Nemichand set aside the judgment of the Madhya Pradesh High Court which had interfered with the decree passed by the District Court dismissing a suit for eviction filed by the landlord against the tenant. The District Court, sitting as a court of first appeal, had taken the view, on an appreciation of the evidence, that the requirement of the premises by the landlord for his residence was not genuine, but in second appeal the Madhya Pradesh High Court reversed this finding

and passed a decree for eviction against the tenant. This Court set aside the judgment of the Madhya Pradesh High Court on the ground that the finding reached by the District Court on an appreciation of the evidence that the landlord did not genuinely require the premises for his residence was a finding of fact and the Madhya Pradesh High Court had no jurisdiction in second appeal to disturb this finding".

In the case on hand unfortunately the lower appellate court before reversing the finding of the trial court on the issue of bona fide requirement of the landlady for starting a cloth business failed to read the entire evidence and take into consideration all the documents placed before the trial court. Therefore, it was rightly contended by Dr. Ghosh, learned Senior Counsel for the respondent, that the High Court was justified in interfering with the finding of the first appellate court. A reading of the judgment of the lower appellate court leaves no doubt that it has looked into the contents of the first notice whereunder the landlady has stated that she required the premises for her husband's office and ignored the notice issued just before the filing of the suit. The lower appellate court has also failed to give due importance to the fact that the landlady has not taken any steps to file suit for eviction pursuant to the notice issued on two earlier occasion and the ground stated in the notice preceding the suit are relevant for the purpose of deciding the issue.

The judgments cited by the learned Senior Counsel for the respondent on the scope of Section 100.CPC, are apposite in the circumstance of the this case. In J.B. Sharma vs State of Madhya Pradesh & Another (1988 (Supp.) SCC 451), this Court while considering the scope of Section 100, CPC, observed thus:-

" It will thus be seen that the first appellate court while recording the finding acted on an assumption not supported by any evidence and further failed to consider the entire document on the basis of which the finding was recorded. The High Court was, therefore, justified under Section 100 of the Code of Civil Procedure to set aside the finding."

In Dilbagrai Punjabi vs. Sharad Chandra (1988 (Supp.) SCC 710) again this Court while considering the scope Section 100, CPC, held as follows:-

"It is true that the High Court while hearing the appeal under Section 100 of the Code of Civil Procedure has no jurisdiction to reappraise the evidence and reverse the conclusion reached by the first appellate court, but at the same time its power to interfere with the finding cannot be denied if interfere with the finding cannot be denied if when the lower appellate court decides an when the lower appellate court decides an

issue of fact a substantial question of law arises. The Court is under a duty to examine the entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue and the error which arises is of a magnitude that it gives birth to a substantial question of law, the High Court is fully authorised to set aside the finding."

To the same effect, another judgment of this Court in *Sundra Naicka Vadiyar (Dead) by IRs. & Anr. vs. Ramaswami Ayyar (Dead) by His LRs.* (1995 Supp. (4) SCC 534), this Court observed as follows:-

"A Perusal of the impugned judgment of the High Court shows that there were good reasons for treating the finding on the question of possession recorded by the first two courts to be vitiated. Apart from the reasons given by the High Court, it appears to us that ignoring some of the documents which were vital for deciding the question of possession also vitiated the finding on the question of possession recorded by the trial court as well as the first appellate court."

Recently also in *Kochukakkada Aboobacker (Dead) by LRs. and Other vs. Attah Kasim and Other* (1996 (7) SCC 389), this Court again observed on the scope of Section 100, CPC, as follows:-

"The appellate court had not considered these documents in a proper perspective and the effect of those documents on the rights of the parties. Accordingly, the learned Judge reluctantly had reconsidered the evidence and, in our view, quite rightly since it is not a mere appreciation of evidence but drawing inferences from the admitted documents. Since proper construction of the documents and inferences have not legally been drawn by the appellate court, the High Court gone in detail and recorded the finding".

In the light of the pronouncements of this Court and for the reasons given by the High Court. namely, that the lower appellate court has failed to take into account document necessary for giving a finding on the issue of bona fide requirement, we are of the view that we cannot find fault with the High Court in interfering with the reversing judgment of the lower appellate court. Accordingly, the appeal fails and it is dismissed. However, there will be no order as to costs.