

CASE NO.:
Appeal (civil) 6769 of 2001

PETITIONER:
M/s Jagannath Kasturchand Yarn Merchants

RESPONDENT:
Raj Kumar & Anr

DATE OF JUDGMENT: 10/12/2007

BENCH:
A.K.MATHUR & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO.6769 OF 2001

A.K.MATHUR, J.

1. This appeal is directed against the order dated 13.2.2001 passed by the learned single Judge in Second Appeal No. 514/90 whereby the learned Single Judge has allowed the appeal and passed a decree of eviction of the suit premises under Section 12(1)(b) of the M.P. Accommodation Control Act 1961 (hereinafter referred to as "the Act"). Aggrieved against the said order the present appeal has been filed by the respondent (appellant herein).

2. Brief facts which are necessary for the disposal of this appeal are as under:

3. The suit was initially instituted by Smt.Bhuri Bai who died during the pendency of the appeal and therefore her name was deleted from the array of the appellants and her son continued as an appellant/plaintiff. The deceased plaintiff was the owner of the suit premises house No. 739 Lordganj, Jabalpur. The suit premises was purchased by her son and deceased Smt. Bhuri Bai from the original owner. When the suit premises was purchased the defendant (appellant herein) was a tenant therein. Along with him other defendant was also residing in suit premises. The tenancy was for residential as well as for non-residential purposes. The plaintiff (respondent herein) filed a suit for eviction on the ground that the suit premises is required bona fide for his /her residence as well as for starting business. Learned counsel for the respondent (herein) did not press the ground for eviction under Section 12(1)(e) and (f) of the Act. The only ground was taken that the suit premises was illegally sub-let to the appellant(herein) and, therefore, the decree for eviction was sought on the ground of sub-letting. The suit was dismissed by the trial court. The first appellant court also dismissed the appeal and aggrieved against that order the second appeal was preferred. The following substantial question of law was formulated which reads as under:

"Whether in the facts and circumstances of the case the courts below erred in law in finding that the plaintiffs were not entitled to evict the defendants respondents from the suit accommodation on the ground specified in clauses (b) (e) and (f) of sub-section (1) of Section 12 of the M.P. Accommodation Control Act."

4. The respondent/plaintiff only pressed the ground of Clause (b) of sub-Section (1) of Section 12 of the Act. It was admitted position that the appellant/defendant was sub-tenant in the suit premises. The tenant claimed that he was sub-tenant since 1928. However, sub-tenancy was created 60 years back i.e. somewhere in 1947. The present act came into force in 1961. Though the plaintiff admitted that the sub-tenancy was lawfully created as it was permissible to create sub-tenancy under section 108(j) of the Transfer of Property Act. But it was contended that by virtue of Sections 14, 15 and 16 of the Act, sub-tenancy became unlawful entailing a decree for eviction under Section 12(1)(b) of the act. Learned single Judge after considering the matter, with reference to the various decisions of the apex Court came to the conclusion that the tenant did not comply with the provisions of the Act as no notice was given regarding the creation of sub-tenancy within six months of the commencement of the Act which came into force on 30.12.1961. Learned single Judge took the view that there was nothing in Section 15 of the Act which restricted the period for the word "before" and therefore, the word "before" should be construed on any time before 30.12.1961. Then, it was held that sub-tenancy was created before 30.12.1961 but was not complied with Section 15 of the Act, therefore, the plaintiff/respondent (herein) was entitled to a decree for eviction under Section 12(1)(b) of the Act. Accordingly, the appeal was allowed & decree of eviction was passed. Hence, the appeal by the defendant.

5. We have heard learned counsel for the parties and perused the record.

6. In fact learned single Judge did not discuss the Section 15 of the Act in detail specially with reference to the earlier sub-tenancy that whether the earlier sub-tenancy was valid or not. Learned counsel for the appellant has stressed that as per Section 15 of the Act the sub-tenants are protected. He invited our attention to Section 15 of the Act & submitted that sub-tenancy was lawful either in whole or in part by the tenant and even if notice was not given to the landlord for creation of sub-tenancy still he is protected under Section 16 of the Act.

7. He submitted that Section 16 of the Act contemplates that once the notice of sub-tenancy has been given to the landlord, the sub-tenant shall with effect from the date of the order be deemed to become a tenant holding directly under the landlord in respect of the accommodation in his occupation on the same terms and conditions on which the tenant would have held from the landlord, if the tenancy had continued.

8. As against this learned counsel for the respondent submitted that before the Act, 1961 came into force there was an earlier Act of M.P. Accommodation Control Act 1955 (Act No. 23 of 1955) and prior to 1955 Act the Central Province and Berar Regulation of Letting of Accommodation Act, 1946 read with C.P. and Berar Letting of Houses and Rent Control Order, 1949. Learned counsel submitted that sub-tenancy was illegal, with reference to above enactment, therefore, the tenant cannot seek any protection under Section 16 of the Act. Be that, as it may, we do not want to express any opinion but the impact of Section 15 was not properly considered by the learned single Judge and he came to the abrupt conclusion. Therefore, it would not be proper to discuss more on this question here and we think it proper that this case be remanded back to the High Court for

reconsideration of Sections 14,15 and 16 of the Act in respect of this case.

9. Consequently, we set aside the impugned order and remit this case back to the High Court to consider the question again with reference to the earlier Acts of the M.P. Accommodation Control Act relating to question of sub-tenancy and what is the effect of Sections 15 and 16 of the present Act. Hence the case is remitted back to the High Court for considering the matter afresh. Since the matter is old one, therefore, we request the High Court to dispose of the matter as expeditiously as possible. Appeal is allowed. No order as to costs.

JUDIS