

HIGH COURT OF MADHYA PRADESH; BENCH
INDORE
SINGLE BENCH ; HON'BLE SHRI N.K.MODY,J.

S.A.No.497/2007

Jainuddin S/o Mohd.Hussain Bohra and others

Vs.

Ajit Singh S/o Daulat Singh Chaudhary and others

XXXXXXXXXXXXXX

Appellant by Shri M.L.Agrawal, senior Advocate with Shri
Ravi Shukla, Advocate.

Respondents by Miss Vandana Kasrekar, Advocate.

J U D G M E N T

(Delivered on this 30th day of March,2012)

This appeal was admitted for hearing vide order dated
20.4.2009 on the following substantial questions of law :-

“(i) Whether the lower appellate Court was
justified in holding that the ground under Section
12(1)(b) of the M.P.Accommodation Control Act is
made out when admittedly the defendants were real
brothers ?

(ii) Whether the lower appellate Court was
justified in confirming the decree passed under
section 12(1)(b) of the M.P.Accommodation
Control Act when it was admitted by the plaintiff
Ajit Singh that the accommodation was let out by
Dhanraj Singh for its use by Badruddin ?”

Being aggrieved by the judgment dated 19.4.2007 passed by 1st
Addl.District Judge, Dewas in Civil Appeal No.31-A/2006, whereby
decree dated 31.7.2006 passed by 1st Civil Judge Class II, Dewas in
Civil Suit No.39-A/2006, whereby suit filed by the respondents for
eviction was decreed under section 12(1)(b) of the M.P.Accommodation

Control Act (which shall be referred as the Act), was maintained, present appeal has been filed.

02. Short facts of the case are that respondent No.1 and deceased Dhanraj filed a suit for eviction against appellant No.1 and deceased Badruddin, whose Legal Representatives are on record on 13.5.2004 alleging that respondents are owner of the house bearing municipal house No.101 situated at M.G.Road, Dewas. It was alleged that appellant No.1 is in occupation of a shop as tenant measuring 11' x 12' @ Rs.100/- per month. It was alleged that appellant No.1 has inducted the appellant No.2 as sub-tenant and has parted with possession. It was prayed that decree of eviction be passed in favour of respondents. The suit was contested by the appellants on various grounds included on the ground that suit property was taken by the appellant No.1 for appellant No.2. It was prayed that suit be dismissed. After framing of issues and recording of evidence learned trial Court decreed the suit against which an appeal was filed, which was also dismissed, hence this appeal.

03. Learned counsel for appellants argued at length and submits that impugned judgments passed by learned Courts below are illegal, incorrect and deserve to be dismissed. Learned counsel submits that from the evidence it is clear that from inception appellant No.2 is carrying business in the suit premises as member of family of appellant No.1. It is submitted that in the facts and circumstances of the case learned Courts below committed error in decreeing the suit filed by the respondents on the ground of sub-tenancy. It is submitted that appeal be allowed and the impugned judgment passed by learned Courts below be set aside.

04. Miss Vandana Kasrekar, learned counsel for respondents, submits that findings recorded by both the Courts below are based on due appreciation of evidence, which requires no interference. It is submitted that appeal be dismissed.

05. After hearing arguments of both the parties, this Court is of the view that learned Courts below were justified in holding that ground under Section 12(1)(b) was made out inspite of the fact that appellants are the real brothers as the tenancy was in writing and the rent receipts are in favour of the appellant No.1. This Court is also of the view that appellate Court was justified in confirming the decree under Section 12(1)(b) of the Act as the statement of the respondent No.1 cannot be treated as admission so far as it relates to sub-tenancy. In view of this appeal filed by the appellants has no merits and the same stands dismissed. The substantial questions of law are answered in favour of the respondents.

06. However, to save the appellants from the peril of eviction after going through all the facts and circumstances of the case, it is directed that in case the appellants submit an undertaking on affidavit within a period of four weeks to the effect that appellants shall vacate the suit accommodation peacefully on or before 31.3.2014 and shall deposit the rent @ Rs.250/- per month regularly which includes arrears, if any, and cost of litigation, operation of the judgment and decree shall remain stayed till 31.3.2014. In case appellants fail to furnish undertaking within the stipulated time or commit default in vacating the accommodation or payment of rent as directed above, the respondents shall be at liberty to execute the decree for obtaining the possession forthwith.

07. With the aforesaid observations, petition stands disposed of. No order as to costs.

(N. K. MODY)
J U D G E

SP