

## Shyam Charan vs Sheoji Bhai & Another on 12 October, 1977

**Equivalent citations:** 1977 AIR 2270, 1978 SCR (1) 710, AIR 1977 SUPREME COURT 2270, 1977 4 SCC 393, 1977 BB CJ 285, 1978 (1) RENCJ 30, 1978 (1) RENTLR 45, 1978 JABLJ 72, 1978 (1) SCR 710, 1978 (1) RENCJ 37, 1977 U J (SC) 692

**Author:** N.L. Untwalia

**Bench:** N.L. Untwalia, Jaswant Singh

PETITIONER:

SHYAM CHARAN

Vs.

RESPONDENT:

SHEOJI BHAI & ANOTHER

DATE OF JUDGMENT 12/10/1977

BENCH:

UNTWALIA, N.L.

BENCH:

UNTWALIA, N.L.

SINGH, JASWANT

CITATION:

1977 AIR 2270

1978 SCR (1) 710

1977 SCC (4) 393

ACT:

Madhya Pradesh Accommodation Control Act, 1961, s. 2(1)(d) read with s. 51(1)(2) of 1955 Act-Places of entertainment were excluded from the definition of s. 2(i) under the 1955 Act but made applicable under the Act of 1961 which came into force on 30th December 1961-Whether the benefit under the Act of 1961 will apply to earlier suit initiated under the Transfer of Property Act.

HEADNOTE:

The appellant was the lessee of the premises "Jairam Theatre" in the town of Raipur and his lease expired on May 21, 1960. Since the appellant did not vacate the premises on the expiry of the lease by efflux of time u/s. 111 (a) of the Transfer of Property Act, the respondent-landlord filed

a suit against the appellant on June 25, 1960 for eviction, rent and mesne profits. The trial court passed the decree for eviction on November 3, 1962. The High Court dismissed the appeal on February 26, 1964 which was affirmed by this Court on September 25, 1964. The appellant vacated the suit premises on October 4, 1964. In the proceedings for fixation of mesne profits, the trial court awarded a final decree for mesne profits at Rs. 4,000/- per month from the date of determination of the lease, i.e., from May 22, 1960 to October 4, 1964. The High Court affirmed the decree. In appeal by certificate the appellant contended, (i) that according to the definition of the "tenant" in cl. (1) of s. 2 of the Madhya Pradesh Control Act, 1961, the appellant, even after the termination of the lease, continued in possession of the accommodation as a "tenant" under the Act which is conveniently called a statutory tenant. The occupation of the accommodation by the appellant became unauthorised and wrongful on and from November 3, 1962 when a decree, for eviction was passed by the Trial Court and not before that. Mesne profits could be awarded only from the said date; and (ii) that the courts below were not justified in awarding damages at Rs. 4,000/- per month when the agreed rent as per the lease was only Rs. 1600/per month.

Dismissing the appeal, the Court,

HELD : (1) The definition of the term "tenant" in s. 2(1) of the Madhya Pradesh Accommodation Control Act, 1961 is retroactive in the sense that it embraces within its ambit even a person who continued in possession of the accommodation after the termination of his tenancy, whether the said termination was before or after the commencement of the Act. It would apply and was meant to cover a case where the contractual tenancy terminated before the commencement of the 1961 Act, but the suit was filed after the commencement.

In the instant case, the suit in question was not filed under the Act of 1955 because the accommodation was exempt from the operation of that Act. The suit filed in accordance with the Transfer of Property Act continued to govern the rights and liabilities even after the coming into force of the Act. The retroactivity or retrospectivity of the definition of the term "tenant" was not sufficient to make the appellant a tenant within the meaning of the Madhya Pradesh Accommodation Control Act, 1961. His continuance in occupation of the accommodation on and from 22nd May 1960 was unauthorised and wrongful and a decree for damages or mesne profits has rightly been awarded. [712 G-H, 713 A-D] Smt. Chander Kali Bai & Ors. v. Shri Jagdish Singh Thakur, [1978] (1) SCR 625, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 704 of 1971. From the Judgment and Decree dated 4-11-1970 of the Madhya Pradesh High Court in First Appeal No. 37 of 1967.

M. M. Phadke, I. N. Shroff and H. S. Parihar for the Appellant.

M. C. Bhandare and K. J. John for Respondent No. 1. The Judgment of the Court was delivered by-UNTWALIA, J.-This is an appeal by certificate from the decision of the Madhya Pradesh High Court affirming the final decree of mesne profits made by the Trial Court in favour of respondent no. 1 (hereinafter called the respondent) against the appellant. Only a few facts are necessary to be stated. The respondent was the landlord of the premises known as Jairam Theatre in the town of Raipur. The appellant was given a lease of the said property by the respondent in the year 1940 for a period of 10 years. On the expiry of the said period, the lease was renewed by a Registered Deed dated August 18, 1951 w.e.f. May 22, 1950 for a further period of 10 years. In this lease the agreed rent payable was fixed at Rs. 1,600/- per month. The lease expired on May 21, 1960. Since the appellant did not vacate the premises on expiry of the lease by efflux of time under section 111(a) of the Transfer of Property Act, the respondent filed a suit against him on June 25, 1960 for eviction, rent and mesne profits. The Trial Court passed a decree of eviction on November 3, 1962. The appellant filed an appeal in the High Court which was dismissed on February 26, 1964. The decision of the High Court was affirmed by this Court on September 25, 1964. Thereafter the appellant vacated the suit premises on October 4, 1964. In the proceeding for fixation of mesne profits, various pleas were taken by the appellant. The Trial Court awarded a final decree for mesne profits @ Rs. 4,000/- per month as against the respondent's claim of Rs. 6,000/- per month from the date of determination of the lease i.e. from May 22, 1960 upto the delivery of vacant possession by the appellant i.e. October 4, 1964. The High Court has affirmed this decree both in regard to the period and the rate of damages. Hence this appeal.

Mr. M. N. Phadke, learned counsel for the appellant made only two submissions in this appeal :

(1) That according to the definition of the tenant in clause (1) of section 2 of the Madhya Pradesh Accommodation Control Act, 1961-(hereinafter called the Act) the appellant even after the termination of the lease continued in possession of the accommodation as a tenant under the Act, which is conveniently called a statutory tenant.

The occupation of the accommodation by the appellant became unauthorised and wrongful on and from November 3, 1962 when a decree for eviction was passed by the Trial Court and not before that. Mesne profits could be awarded only from the said date.

(2) That the Courts below were not justified in awarding damages at Rs. 4,000/- per month when the agreed rent as per the lease was only Rs. 1,600/- per month.

In Smt. Chander Kali Bai & Ors. v. Shri Jagdish Singh Thakur<sup>(1)</sup> the judgment of which was delivered by us on 6.10.1977 we have dealt with a similar, almost identical point as the one urged by Mr. Phadke. On the facts on that case we held that no damages or mesne profits could be awarded

for the period between the termination of the contractual tenancy and the passing of the eviction decree. But the ratio of that case is not applicable in the present appeal. Under the Madhya Pradesh Control Act, 1955-places of entertainment like the one in question were excluded from the operation of that Act as provided for in section 2(1)

(d). The lease of the accommodation was, therefore, not governed by the 1955 Act. The 'suit was filed on 25.6.1960 and the rights and liabilities of the parties in the suit were governed simply by the Transfer of property Act. The 1961 Act came into force on December 30 1961 and became applicable in the town of Raipur even to the places of entertainment. In other words, if the provisions of the Act or the definition of the term tenant therein could be applied for determining the rights and liabilities of the parties in the pending suit which had been instituted prior to the coming into force of the Act then perhaps there would have been no difficulty in accepting the first contention put forward on behalf of the appellant. But the very basis of this argument is erroneous and it has to legs to stand upon.

Sub-section (1) of section 51 of the Act repealed the 1955 Act. Sub-section (2) further provided :

"Notwithstanding such repeal, all suits and other proceedings under the said Act, pending, at the commencement of this Act, before any court or other authority shall be, continued and disposed of in accordance with the provisions of the said Act as if the said Act had continued in force and this Act had not been passed and the provisions for appeal under the said Act shall continue in force in respect of suit and proceedings disposed of thereunder."

As we have indicated in our judgment referred to above the appellant, perhaps, would not have succeeded in making his point good even if the suit could be taken to have been filed under the 1955 Act. The definition of the tenant in that Act and in the Act of 1961 is vitally different. But we need not dilate upon this aspect of the matter any further, as, it is manifest that the suit in question was not filed under the Act of 1955 because the accommodation was exempt from the operation of that Act. That being so, the suit filed in accordance with the Transfer of Property Act could not attract any provision of the Act as there is nothing in it to make it applicable to a pending suit of that kind. The Act being not applicable to the pending suit the rights and liabilities of the parties were governed by the provisions of the Transfer of Property Act. That continued to be so even after coming, into force of the Act. It is no doubt true as strenuously urged by Mr. Phadke that the definition of the term "tenant" in section 2(1) of the Act is retroactive in the sense that it embraces within its ambit even a person who continued in possession of the accommodation after the termination of his tenancy (1) [1978] 1 S.C.R. 625.

whether the said termination was before or after the commencement of the Act, yet the retroactivity or retrospectivity of the definition of the term "tenant" was not sufficient to make the appellant a tenant within the meaning of the Act unless it could be held that the provisions of the Act applied to the pending suit in question. As usual, the definition section 2 starts with the phrase "In this Act, unless the context otherwise requires," clearly indicating that the definition of the term "tenant" will apply if the Act would apply. Otherwise not. Mr. Phadke, however, contemplated that such an

interpretation would make the retroactive operation of the definition otiose. Obviously not. It would apply and was meant to cover a case where the contractual tenancy terminated before the commencement of the Act, but the suit was filed after its commencement. Such a suit had to be filed in accordance with section 12 of the Act and attracted the other provisions also. Suppose in this case after the termination of the tenancy in the year 1960 the suit for eviction would have been filed in 1962 the appellant could come under the definition of the term "tenant" even though the termination of the contractual tenancy was before the commencement of the Act But we are unable to accept the argument that the mere fact that the definition of tenant is retrospective will make the appellant a tenant within the meaning of the Act. That being so, it is plain that his continuing in occupation of the accommodation on and from 22.5.1960 was unauthorised and wrongful and a decree for damages or mesne profits has rightly been awarded for the period commencing on that date and ending on 4.10.1964 when the appellant gave up vacant possession to the respondent. It will suffice to dispose of the second point urged by the appellant only in a few words. On appreciation of the evidence adduced in the Trial Court it fixed the monthly rate of damages at Rs. 4,000/- as against the respondent's claim of Rs. 6,000/-. The High Court has also discussed the evidence on this question in detail and affirmed the finding of the Trial Court. Having appreciated all that was urged on behalf of the appellant in this regard with reference to the relevant pieces of evidence, we find no justifiable ground to enable us to reduce the quantum of damages and to fix a lesser rate than the one concurrently determined by the Courts below.

In the result, we dismiss this appeal but in the circumstances make no order as to costs in this Court.  
S. R. Appeal dismissed.