Chimanlal vs Mishrilal on 12 November, 1984

Equivalent citations: 1985 AIR 136, 1985 SCR (2) 39, AIR 1985 SUPREME COURT 136, 1985 (1) SCC 14, 1985 UJ (SC) 301, 1985 JABLJ 784, (1985) JAB LJ 74, (1985) 1 APLJ 21.1, 1985 HRR 229, 1985 MPRCJ 1, 1985 SCFBRC 38, (1985) 2 SCR 39 (SC), 1985 2 SCR 39, (1985) 1 RENCR 170, (1985) 1 RENTLR 155, (1985) 1 ALL RENTCAS 90, (1985) MPLJ 1, (1985) GUJ LH 203, (1984) 2 RENCR 643

Author: R.S. Pathak

Bench: R.S. Pathak, D.P. Madon, M.P. Thakkar

PETITIONER:
CHIMANLAL

Vs.

RESPONDENT:
MISHRILAL

DATE OF JUDGMENT12/11/1984

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
MADON, D.P.
THAKKAR, M.P. (J)

CITATION:
1985 AIR 136 1985 SCR (2) 39
1985 SCC (1) 14 1984 SCALE (2)725
CITATOR INFO :
D 1988 SC 976 (18)

ACT:
"Madhya Pradesh Accommodation Control Act 1961 section (1)(a). scope of-Notice of demand referred to in section 12(1 1(a) to be valid must inter-alia relate to the accommodation actually rented to the tenant and not any other accommodation-A defective notice vitiates the entire trial as the suit itself is not maintainable-Distinction between notice and the plaint explained-Amending the plaint with the permission of the Court does not cure the defective notice.

HEADNOTE:

The respondent landlord issued a notice dated October 21, 1969 to the appellant demanding arrears of rent in respect of accommodation, which according to the respondent, consisted of a portion of a shop and a verandah and terminated the tenancy; and he filed a suit for eviction under section 12(1)(a) of the Madhya Pradesh Accommodation Act, 1961 and for payment of arrears of rent totaling Rs. 2550. The appellant after depositing the entire arrears as required under section 13(1) of the Act contested the suit disputing the area and portion of accommodation tenanted and claimed expenditure incurred by him for repairs. The trial court dismissed the suit accepting the contention of the appellant that since the respondent has not correctly described the extent of the premises in the notice terminating the tenancy, the tenancy had not been validly terminated. An appeal having been dismissed the respondent filed a second appeal before the High Court. The High Court granted permission to the respondent for an amendment of the plaint and relying on the decision of the Supreme Court in V. Dhanapal Chettair v. Yesodai Ammal [1980] 1 S C.R. 334 that no notice under section 106 of the Transfer of Property Act was necessary, allowed the second appeal. Hence the tenant's appeal after obtaining Special Leave of the Court.

Allowing the Appeal, the Court

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HELD: 1. The notice referred to in section 12(1)(a) of the Madhya Pradesh Accommodation Control Act, 1961 must be a notice demanding the rental arrears in respect of accommodation actually let to the tenant. It must be a notice (a) demanding the arrears of rent in respect of the accommodation let to the tenant and (b) the arrears of rent must be legally recoverable from the tenant. There can be no admission by a tenant that arrears of rent are due unless they relate to the accommodation let to him. A valid notice demanding arrears of rent relatable to the accommodation let to the tenant from which he .

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is sought to be evicted is a vital ingredient of the conditions which govern the maintainability of the suit, for unless a valid demand is made no complaint can be laid of non-compliance with it, and consequently no suit for rejectment of the tenant in respect of the accommodation will lie on that ground. [13 F-H; 44 A]

1: 2. It is true that amendment of the plaint in the suit in order to relate to the accommodation asserted by the appellant does relate back to the institution of the suit, but it cannot amend an invalid notice earlier issued terminating the tenancy. The notice of demand is an act independent of the institution of the suit. 44 A-B, D]

The notice and the plaint are two distinct matters,

different by nature, designed for different purposes and located in two different points of time. They operate in two different planes, and are relate(l insofar only that one is a condition for maintaining the other. [44 B-C]

1: 3. The notice of demand dated October 21, 1969 served by the respondent on the appellant was invalid and, therefore, the suit was not maintainable. It is clear that there is a substantial difference between the accommodation mentioned in the notice and the accommodation let to the appellant. It must be taken that the notice relates to accommodation which cannot be effectively identified with the accommodation constituting the tenancy. This is not a case of a mere misdescription or the accommodation where both parties knew perfectly well that the notice referred to accommodation let to the tenant. Nor is it a case where the discrepancy between the accommodation alleged by the landlord and that actually let to the tenant is marginal or insubstantial. the proceedings show that there was a serious dispute between the parties as to the material extent of the accommodation let be the one to the other. No congruency between the two versions was possible. Not at least until the respondent was compelled to seek an amendment of his plaint in the high Court at the stage of second appeal. [43 B-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3356 of 1979. Appeal by special leave from the Judgment and order dated the 12th October, 1979 of the Madhya Pradesh High Court (Indore Bench) in Second Appeal No. 148 of 1976.

R.K. Garg, S.K. Gambhir, Mrs. Ashok Mahajan and Mrs. Sunita Kirplani for the Appellant.

V.K. Jain, B.P. Singh and Anjeet Kumar for the Respondent.

The Judgment of the Court was delivered by PATHAK, J. This is a tenant's appeal, by special leave, against a decree of the High Court of Madhya Pradesh allowing the landlord's second appeal in a suit for eviction.

The respondent, as landlord, filed a suit for the eviction of the appellant tenant on the ground that the appellant had neither paid nor tendered the arrears of rent legally recoverable from him. The plaint A recited that the appellant had taken a portion of a shop and a verandah on the ground floor on rent at Rs. l SO per month for the purpose of his cloth business, that the appellant had not paid the arrears of rent totaling Rs. 2,550 for the period June 26, 1968 to October 11, 1969, and that he was, therefore, liable to eviction on the ground set forth in section 12(1)(a) of the Madhya Pradesh Accommodation Control Act, 1961.

In his written statement the appellant pleaded that the respondent had described the tenanted premises incorrectly, that in fact the premises consisted of an entire shop, a kotha behind the shop and a verandah in front of the shop, that the expenditure on repairs to the premises undertaken by the appellant had to be adjusted against the arrears of rent and that the notice dated October 21,1969 terminating the tenancy was invalid.

On receiving the writ of summons in the suit, the appellant deposited the arrears of rent in compliance with s. 13(1) of the Act, but further compliance with s. 13(1) was not effected in as much as the rent which should have been deposited regularly from month to month was not deposited for several months.

The trial court found that the expenditure claimed by the appellant on repairing the premises had not been proved. It found further that the appellant was not entitled to the benefit of s. 13(1) of the Act as he had failed to deposit the monthly rent regularly during the pendency of the suit. But it agreed with the appellant that the respondent had not correctly described the extent of the premises in the notice terminating the tenancy, and holding that the tenancy had not been validly terminated it dismissed the suit. The respondent filed an appeal, and that appeal was dismissed. The respondent then preferred a second appeal, and during the pendency of the appeal the High Court permitted the respondent to amend the plaint so that references to the tenanted premises now included the entire accommodation claimed by the appellant In consequence, the suit now related to that accommodation. Thereafter, the High Court, by its judgment and decree dated October 12, 1979 allowed the second appeal. It held that no notice under section 106 of the Transfer of Property Act terminating the tenancy was required in view of the decision of this Court in V. Dhanapal Chettiar v. Yeshodai Ammal,(l) and it affirmed the finding of the subordinate courts that the appellant had failed to prove payment for repairing the premises.

(1) [1980] 1 S.C.R. 334 On a conspectus of the entire proceeding it would appear that the only ground on which the subordinate courts dismissed the suit is that the notice dated October 21, 1969 did not validly terminate the tenancy as it referred to a part only of the tenanted premises, while the High Court, in second appeal, proceeded on the view that no notice terminating the tenancy was required at all and, therefore, after permitting the respondent to amend his plaint in order to bring the entire tenanted premises within the purview of the suit, it decreed the suit.

S. 12(1)(a) of the Madhya Pradesh Accommodation Control Act, 1961 provides:

> " 12. Restriction on eviction of tenants,-(l) Not with standing anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:
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> (a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of DEMAND for the arrears of rent has been served on him by the landlord in the prescribed manner."

S. 12(3) prohibits the court from making an order of eviction on the ground specified in s. 12(1)(a) if the tenant makes payment or deposit as required by s. 13. And s. 13 provides:

> "13. When tenant can get benefit of protection against eviction-(1) on a suit or proceeding being instituted by the landlord on any of the grounds referred to in section 12, the tenant shall, within one month of the service of writ of summons on him or within such further time as the Court may, on an application made to it, allow in this behalf, deposit in the Court or pay to the landlord an amount calculated at the rate of rent at which it was paid for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is . made, and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate."

It is urged by the appellant that an essential condition of the A maintainability of the suit IS non-compliance by the tenant with a valid notice demanding the rental arrears, and the notice to be valid must inter alia, relate to the accommodation rented to the tenant and not any other accommodation. [t is pointed out that in the present case the notice dated October 21, 1969 did not relate to the entire accommodation let to the appellant but only to a lesser part of it. There is substance in the contention. The notice dated October 21, B 1969 is a notice demanding the arrears of rent in respect of accommodation which, according to the respondent, consisted of a portion of a shop and a verandah. The appellant, on the other hand, pleaded that he had been let the entire shop, the verandah and also a kotha. The subordinate courts held, on the evidence, that the appellant was right. It is apparent, therefore, that there is a substantial difference between the accommodation mentioned in the notice and the accommodation actually let to the appellant. It must be taken that the notice relates to accommodation which cannot be electively identified with the accommodation constituting the tenancy. l his is not a case of a mere misdescriptlon of the accommodation where both parties knew perfectly well that the notice referred to accommodation let to the tenant. Nor is it a case where the discrepancy between the accommodation alleged by the landlord and that actually let to the tenant is marginal or insubstantial. The proceedings show that there was a serious dispute between the parties as to the material extent of the accommodation let by the one to the other. No congruency between the two versions was possible. Not at least until the respondent was compelled to seek an amendment of his plaint in the High Court at the stage of second appeal. Learned counsel for the respondent points out that there was no dispute that the rent for the accommodation was Rs. 150 per month, and urges that is the amount of the arrears of rent is admitted between the parties that is all that matters. To our mind, that is not sufficient. The notice referred to in s. 12(1)(a) must be a notice demanding the rental arrears in respect of accommodation actually let to the tenant. It must be a notice (a) demanding the arrears of rent in respect of the accommodation let to the tenant and

(b) the arrears of rent must be legally recoverable from the tenant. There can be no admission by a tenant that arrears of rent are due unless they relate to the accommodation let to him. A valid notice demanding arrears of rent relatable to the accommodation let to the tenant from which he is sought to be evicted is a vital ingredient of the conditions which govern the maintainability of the suit, for

unless a valid demand is made no complaint can be laid of non- compliance with it. and consequently no Suit for ejectment of the tenant in respect of the accommodation will lie on that ground.

It is contended by learned counsel for the respondent that the plaint in the suit was amended in order to relate to the accommodation asserted by the appellant and that the amendment relates back to the institution of the suit. The submission can be of no assistance to the respondent. We are concerned here not with the subject matter of the suit but with the validity of the notice which is a prior condition of the maintainability of the suit. The notice of demand is an act independent of the institution of the suit. The notice and the plaint are two distinct matters, different by nature, designed for different purposes and located in two different points of time. They operate in two different planes, and are related insofar only that one is a condition for maintaining the other.

Accordingly, we hold that the notice of demand dated October 21, 1969 served by the respondent on the appellant was invalid and therefore the suit was not maintainable. In the circumstances, we consider it unnecessary to enter upon the other points raised before us on behalf of the appellant.

In the result, we allow the appeal, set aside the judgment and order of the High Court and dismiss the suit. In the circumstances of the case. there is no order as to costs.

S.R. Appeal allowed.