

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 182 of 2015

Phulchand Kothari S/o Late Lafchand Kothari Aged 73 years Proprietor
Anurag Katpees, Gurakhu Line Rajnandgaon, (Since Dead) Through Legal
Representatives,

1. Leelabai Kothari W/O Late Phulchand Kothari Aged About 72 Years, R/O
Aajad Chowk, Rajnandgaon (C.G.)
2. Gautam Chand Kothari, aged about 52 years, S/O Late Phulchand Kothari
R/O Aajad Chowk Rajnandgaon P.S. Civil Lines Rajnandgaon District
Rajnandgaon (C.G.)
3. Smt. Kiram Lodha, aged about 57 years, W/O Tarachand Lodha, Cloth
Marchant Tahsil Daundi Lohara District Balod (C.G.)
4. Smt. Manju Sethiya, W/O Abhay Sethiya Aged About 51 Years, Aaditya
Finance Gujari Chowk Balaghat (M.P.)
5. Smt. Suraj Jhabak W/O Suresh Jhabak Aged About 49 Years Suresh
Taxtiles Matvi Road, Raipur (C.G.)
6. Smt Tara Kotadiya W/O Uttamchand Kotadiya Aged About 45 Years B.N.K.
Colony Kondagaon, District Kondagaon (Bastar) (C.G.)

Petitioner Nos. 1, 3-6 Through Their Power Of Attorney Holder Gautam
Chand Kothari/ Petitioner No. 2

---- Petitioners

Versus

- Manoj Kumar Shukla S/o Late Chandrashekhar Shukla Aged 68 Years R/O
Kamptee Line Rajnandgaon, P.S. Civil Lines Rajnandgaon District
Rajnandgaon (C.G.)

---- Respondent

For Petitioners : Shri A.K. Prasad, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

13/03/2015

1. Trial Court has dismissed petitioners/defendants' application for framing
additional issues under Order 14 Rule 5 of Code of Civil Procedure (for short,
'CPC').

2. The plaintiff/landlord has filed the suit for eviction on the ground of bonafide need and arrears of rent. The trial Court has framed issue No.1 with respect to the rate of rent and relationship of landlord and tenant. issue No. 2 is about denial of title and issue No.3 is about *bonafide* need whereas issue No. 4 is about arrears of rent and issue No. 5 is about entitlement of the plaintiff to recover possession.

3. In his application under Order 14 Rule 5 of CPC petitioners proposed four issues. The first one to the effect that plaintiff being a retired government servant, in view of Section 23 (J) of the Chhattisgrh Accommodation Control Act, 1961 (for short, '*the Act*') the suit is not maintainable in the civil Court. The second proposed issue is whether plaintiff cannot seek eviction on the ground of bonafide need from Civil Court and the third issue is as to whether the suit is maintainable for non-joinder of all the co-owners. The fourth issue is to the effect that since one Poonam Shukla is receiving rent from the petitioners/defendants, the present suit for arrears of rent is not maintainable.

4. For first proposed issue, it is to be seen that the plaintiff has not sought eviction on the ground that since he is a retired government servant he is entitled for possession under Section 23(J) of the Act. Similarly, there is no dispute that Civil Court can entertain the suit for eviction based on the ground of *bonafide* need and that one of the co-owner can maintain a suit for eviction.

5. With respect to payment of rent to one Poonam Shukla if the petitioner is paying rent to some other person treating him/her as his landlord, in substance he is raising a plea that the present plaintiff is not his landlord. Therefore, this proposed issue is covered under issue No. 1 with respect to the existence relationship of landlord and tenant.

6. In the considered opinion of this Court, the trial Court has not committed any mistake in dismissing the application. The writ petition has no substance. It is accordingly dismissed.

JUDGE