

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 381 of 2012

1. Lalit Shukla S/o Gangasagar Shukla, aged about 66 years, R/o in front of Chotapara Masjid, Baijnath Para, Raipur, Tahsil & District Raipur C.G.

---- Appellant

Versus

1. Sonraj Golcha S/o Pukhraj Golcha, R/o A. Ahmedji Colony, Nalghar Chowk, Police Station City Kotwali, Raipur, Tahsil & District Raipur C.G.
2. Smt. Gunmala Golcha W/o Sonraj Golcha, R/o A. Ahmedji Colony, Nalghar Chowk, Police Station City Kotwali, Raipur, Tahsil & District Raipur C.G.

---- Respondents

For Appellant – Mr. H.B.Agrawal, Senior Advocate with Ms. Laxmin Tondey, Advocate.

For Respondents – Mr. B.P.Sharma and Mr. Raza Ali, Advocates.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

01/02/2016

1. Heard on admission.
2. The instant second appeal filed under Section 100 of the CPC is directed against the judgment and decree dated 27-09-2012 passed by the VIth Additional District Judge, Raipur, C.G., in Civil Appeal No.13A/2012 whereby and whereunder the defendant's/appellant's appeal has been dismissed affirming the judgment and decree dated 16-12-2011 passed by the IVth Civil Judge Class II, Raipur, C.G., in Civil Suit No.55A/2011 (Sonraj Golcha & Anr. Vs. Lalit Shukla).
3. Facts in brief necessary for disposal of this appeal are that the respondents/plaintiffs filed a civil suit before the trial Court for eviction of the appellant/defendant from the suit property, for recovery of arrears of rent and also for the recovery of cost.
4. The trial Court on close scrutiny of evidence led, submissions made and material placed on record, allowed the suit filed by the respondents/plaintiffs and directed that the appellant/defendant shall give vacant possession of the suit

property, i.e., house No.7/118 within two months. The trial Court also directed that arrears of rent and the amount under the head of compensation be also given. The trial Court further directed that from two months of the date of judgment and decree till getting vacant possession the plaintiffs/respondents are entitled for compensation to the tune of Rs.50/- per day.

5. Against the said judgment and decree passed by the trial Court, the appellant/defendant preferred first appeal. The first appellate Court after re-appreciating the entire evidence available on record, dismissed the appeal and affirmed the findings recorded by the trial Court.

6. Against the said judgment and decree passed by the first appellate Court, the defendant/present appellant has preferred this second appeal inter alia on the ground that the matter is required to be heard after admitting the instant second appeal as the substantial questions of law exist in the matter. It is submitted on behalf of the appellant that following substantial questions of law are required to be framed and the matter may be admitted for consideration.

1. In view of admission made by landlord herself in para 12 of Ex.-D/2 whether the findings of both the Courts below holding that relation between landlord and tenant exists, still good, is perverse in view of provisions of Order 12 Rule 6 of the CPC?

2. Whether the findings of both the Courts below are perverse as there is no continuation of relationship of landlord and tenant as the same has been discontinued as per the agreement Ex.-D/2?

7. Learned counsel for the appellant submits that on 15-10-1999 vide Ex.-D/2, son of appellant, i.e., Rahul Shukla and Sushila Bai, landlord, entered into an agreement. As per para 2 and para 12 of the unregistered agreement, relationship between the landlord and tenant, i.e., Sushila Bai and the present appellant are ceased. Thereafter the present appellant not continued under the relationship of landlord and tenant with the Sushila Bai. Learned counsel further submits that son of the present appellant, Rahul Deo Shukla had filed Civil Suit

No.32A/06 against Smt. Sushila Bai and two others. The IXth Additional District Judge, FTC, Raipur, C.G. vide the judgment and decree dated 30-07-2007 dismissed the aforesaid suit filed by Rahul Deo Shukla, son of the present appellant. He preferred First Appeal No.100/07 and the same is pending before this Court, admitted for hearing and pending for final hearing (Rahul Deo Shukla Vs. Smt. Sushila Bai and two others). Learned counsel further submits that Ex.-P/4 and Ex.-P/5 registered documents for the suit property are under challenge in the said first appeal. Learned counsel further submits that as per the provisions of Order 12 Rule 6 of the CPC admission of the Ex.-D/2 is proved though Sushila Bai has not been examined before the trial Court in Civil Suit No.55 A/11, but it is the plaintiffs who made admission for Ex.-D/2 in their para 5 of the plaint. The signature of Sushila Bai is admitted, it is not under dispute and as per respondents/plaintiffs, as they purchased the suit property from Sushila Bai and thereby they became the landlord, the present respondents have not initiated any proceeding or legal action against the said agreement. They not made any objection regarding execution of the said agreement and as by operation of the Ex.-D/2 agreement, relationship between Sushila Bai and present appellant discontinued, hence, there is no relationship between the respondents and the appellant as landlord/owner and tenant. It is submitted on behalf of the appellant that the present second appeal may be admitted for hearing and above substantial questions of law be framed and after due hearing, the appeal may be allowed and the judgment and decree of both the Courts below may be set aside.

8. I have heard the counsel appearing for the appellant on admission under Order 41 Rule 11 read with Order 42 Rule 1 of the CPC and perused the judgments and decree including records of the Courts below.

9. Learned counsel appearing for the appellants supported the grounds taken in the second appeal and submitted that substantial questions of law need

to be formulated along with admission of the appeal. He would further submit that as the substantial questions of law are involved as mentioned in the memo of appeal, the appeal may be admitted for hearing and be disposed of accordingly.

10. Provisions of Order 12 Rule 6 of the CPC are as under –

6. Judgment on admissions – (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

11. This is admitted position that Sushila Bai is not party in the present litigation. There is no any prayer for making the Sushila Bai as necessary party in the matter. Admittedly, it is not the case of anybody that Sushila Bai died before or during hearing of the civil suit. It is admitted position that Sushila Bai was not examined by any of the parties as witness thereby there is no any categorically admission of signature of Sushila Bai by Sushila Bai herself. There is no any admission on behalf of the respondents that they aware with the signature of Sushila Bai and they admitted that document D/2 is having signature of Sushila Bai. So far as becoming of tenant on the basis of registered sale-deed, Ex.-P/4 and Ex.-P/5, it may be a case of plaintiffs/respondents, but any of their pleadings may not take away the authority of Sushila Bai to plead for herself. During trial nobody plead before the trial Court that as per provisions of Order 12 Rule 6 of the CPC, the judgment and decree be passed. There is no any issue formulated by the Court below regarding admission of signature of Sushila Bai in Ex.-D/2. The trial Court after hearing both the parties, disposed of the matter as regular judgment and decree. The matter was not disposed of by the applicability of Order 12 Rule 6 of the CPC. As per settled law, no else can admit or deny the signature of Sushila Bai but for herself or with any admissible

scientific or other evidence. In the present case, handwriting to the Sushila Bai was not compared and no any specific oral or scientific evidence was adduced by any of the parties thereby to show that Ex.-D/2 is admitted document and as the same is behind the back of Sushila Bai, i.e., the alleged maker of document D/2, it cannot be held that it is a case covered under the provisions of Order 12 Rule 6 of the CPC. The insistence of the appellant is solely on the basis of Ex.-D/2 and as the same is not proved, it cannot be used as the admitted document signed allegedly by Sushila Bai.

12. With due consideration, this Court is of the view that proposed substantial questions of law are not available for consideration of the instant second appeal for admission as upon perusal of the entire evidence, there is no any substantial question of law requires to be formulated for hearing of this second appeal.

13. This Court cannot proceed to hear a second appeal without there being any substantial question of law involved in the appeal. Existence of substantial question of law is the *sine-qua-non* for the exercise of the jurisdiction under the amended Section 100 of the CPC. Learned counsel appearing for the appellants failed to point out any substantial question of law which may arise for determination in the case. In the absence of any substantial question of law arises for determination of this Court, this Court has no option but to dismiss the appeal.

14. In view of above, since no substantial question of law arises for determination in the instant case, this is not a fit case for admission. Consequently, the appeal is dismissed at motion stage itself under the provisions of Order 41 Rule 11 read with Order 42 Rule 1 of the CPC.

15. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
Judge