

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 183 of 2015**

1. Gyanchand Jain, S/o. Balchand Jain, aged about 66 years, R/o. Sardar Patel Ward, Mungeli, Tehsil and District-Mungeli (C.G.)

----Appellant**Versus**

1. Narendrasingh Rajput, aged 44 years,
2. Ghanshyam Singh Rajput, aged 41 years

Both are S/o. Vrindavan Singh, both are R/o. Andrews Ward, Daupara, Mungeli, Tehsil and District-Mungeli (C.G.)

----Respondents

For Appellant	: Mr. Sanjay S. Agrawal, Advocate
For Respondents	: Mr. Shree Kumar Agrawal, Sr. Advocate with Mr. Anand Kumar Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****05/05/2016**

Heard on admission.

1. This is an appeal against the judgment and decree dated 27.02.2015, passed by the Additional District Judge, Mungeli, District - Mungeli, in Civil Appeal No.90-A/2011. By such judgment and decree, the decree of ejectment, passed by the Civil Judge Class-I, Mungeli, in Civil Suit No.65-A/2007, dated 29.03.2011 is affirmed.
2. The appeal is by the defendant/tenant against the concurrent finding of fact by both the Courts Below.
3. Brief facts of this case are that a suit was filed by Narendra Singh Rajput and Ghanshyam Singh Rajput stating that subject suit shop

was purchased by them by a registered sale deed dated 31.01.2006 from Shailendra and others. Thereafter, the appellant was informed about such purchase by registered notice dated 17.05.2006. By such notice, the arrears of rent of the suit shop @ Rs.1000/- per month was also demanded by the plaintiffs. It was further contended that even after such notice, defendant/tenant did not pay the arrears of rent and subsequently it was also contended that defendant had closed his shop and shifted his business elsewhere. It was further stated that suit house is 50 years old and in dilapidated condition, thereby the plaintiffs by demolishing the said shop wants to reconstruct the same in order to start their own business as they do not have any alternative accommodation in the city of Mungeli. It was further stated that the plaintiffs are running their medical shop in a rented premises, therefore, the suit house is required bonafidely. So the grounds were made of Section 12 (1) (a), 12 (1) (d) and 12 (1) (h) of the Accommodation Control Act.

4. The appellant/defendant in reply came out with a defence that the plaintiffs have not purchased the said suit property and the suit property remained with Jurius Stifan and Kamlesh Stifan the seller. It was further contended that the defendant is in possession of the suit shop since last 30 to 35 years. It was further stated that since the erstwhile owner of the shop was in need of money, therefore, an agreement of sale was executed between them and periodically the payment was also made for such purchase. Further it was stated that despite the agreement was executed for sale of said shop in favour of the tenant/appellant, the suit shop has been sold to present/plaintiffs. It was further stated that a civil suit was filed

bearing No.55-A/2006 for specific performance. The written statement would show subsequent, amendment was incorporated stating that the suit shop do not form a part of the sale deed, which was purchased and claimed by the plaintiff/landlord. Therefore, it was alleged that suit shop has not been purchased by the plaintiffs for which ejectment was claimed.

5. After evaluating the pleadings and the evidence, the learned Trial Court decreed the suit in favour of the plaintiff/landlord under Section 12(1) (a), 12 (1) (c) and 12 (1) (h). The said judgment and decree was further assailed before the appellate Court, the first appellate Court too, affirmed the finding of the learned trial Court for arrears of rent, bonafide need and denial of title thereby maintained the judgment and decree passed by the learned trial Court for ejectment. Hence, the instant second appeal.
6. Learned counsel for the appellant/tenant makes submission limited to the acquisition of ownership of shops only and not on other grounds. The counsel submits that the suit shops were alleged to be purchased by sale deed dated 31.01.2006, which is marked as Ex.P/9 and perusal of the map of the said sale deed Ex.P/9 would show that shops were not included as a subject of sale. Learned counsel instantaneously went through the map to demonstrate the fact that towards North, it is reflected that open plot situates, which is numbered as 1 admeasuring 11.60 x 120 sq.mt. adjacent to the road and thereafter description in the map serial number marked as -2 shows that it is a house, thereafter, marking 3 would show that again open plot and marking 4 would show that it is a kachha

house with tiles, therefore, the entire area was purchased that of 262 sq.mt. and shops were not included in such sale deed. Consequently, the plaintiffs/landlord have not purchased the suit property to maintain the cause for ejectment. It is contended that therefore, the finding of the both the Courts below are perverse.

7. Perused the record of the Court below. In para-2 of the plaint, the plaintiffs had stated that they had purchased the suit shop by sale deed dated 31.01.2006. The main contention of the appellant/tenant is that the sale deed dated 31.01.2006 do not take within its fold the subject shop. Perusal of the written statement would show at para-2 the averments have been denied as against plaint allegation wherein it was averred that suit shop were purchased by sale deed dated 31.01.2006. Further reading of the written statement, it is contended that the said shop belonged to Jurius Stifan and Kamlesh Stifan which devolved on Kanaklata, Shailendraram and Maushami Ram after their death. It was stated in written statement that the tenant had agreed to purchase the "said shop" for an amount of Rs.50,000/- and an earnest money of Rs.25,000/- was also paid and further in intervening periods Rs.15,000/- and Rs.5,000/- was also paid. Further it is stated that despite the agreement, the sale deed was not executed in favour of the tenant and in the meanwhile he came to know Shailendraram, Maushami Ram and Kanaklata had sold the "suit property" to the plaintiffs. Thereafter, the civil suit was filed by the tenant against the erstwhile owners of suit shop, which was bearing No.55A/2006. Subsequent reading of written statement would show that amendment was incorporated in it. By way of amendment it was

pleaded that subsequent sale made by Shailendraram, Maushami Ram, Kanaklata in respect of remaining part of the suit land except the shops, thereby pleaded that suit shops were not included in such sale deed. The proper appraisal of the written statement would indicate that initially admission was made that initially the tenant wanted to purchase the "suit shop" from the erstwhile owner and subsequently came to his notice that sale deed has been executed in respect of the suit shop in favour of the present landlord.

8. The sale deed is on record which is filed as Ex.P/9. In the sale deed, the description of the property with boundaries have been shown. It shows that total property admeasures 262 sq.mt. and in the same continuity it is also shown that in front and over 27.88 sq.mt., three shops exist. To the plaintiff in the cross-examination at para-15 it was suggested by defendant tenant that in purchased property, in front in the right side, which includes three shops. The document Ex.P/10 which is record of right of nazul shows that total 266 sq.mt nazul plot was available and was recorded in the name of Stiffan Ram, S/o. Ganga Ram, thereafter it devolved on to Shailendra Ram, Maushami Ram and Kanaklata. Thereafter, in respect of entire land, the name of the purchasers have been mutated. The document, Ex.P/10 do not show that apart from 262 sq.mt, another part of land was in the name of the sellers and the admission of the tenant would show that entire property was purchased by the landlord. The sale deed describes the boundaries i.e. in East bounded by West, North & South. The argument which is advanced by the learned counsel by going through the map

would not help to the appellant since in any case even if there are certain discrepancies in measurement in a conflict between statement of area, the boundaries will prevail over measurement as has been settled in the case reported in ***AIR (35) 1948 Privy Council 207, The Palestine Kupat Am Bank Co-operative Society Ltd. Vs. Government of Palestine and others*** and in the case reported in ***(2006) 5 Supreme Court Cases 466, Subhaga & Others Vs. Shobha & Others.***

9. Therefore, after entire examination of sale deed and boundaries alongwith the admission of defendant, the challenge to the part that landlord has not purchased the subject suit property, can not be appreciated. Accordingly, after due consideration of facts and evidence this Court is of the opinion that the ejectment decree so passed can not be faulted with. In a result no substantial question of law arises for consideration in this second appeal.
10. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE