

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 303 of 2015**

1. Bhuvan Srivas, S/o. Lakhan Lal Srivas, aged about 47 years, R/o. Bhuvan Hair Dresser, Daupara, Lormi Road, Mungeli, Tehsil-Mungeli, District-Mungeli (C.G.)

----Appellant**Versus**

1. Narendra Singh Rajput, S/o. Virindaban Singh, aged 40 years,
 2. Ghanshyam Singh Rajput, S/o. Virindaban Singh, aged 37 years,
- Both are R/o. Anduj Ward, Daupara, Mungeli, Tehsil and District-Mungeli (C.G.)

----Respondents

1.

For Appellant	: Mr. P.P. Sahu, 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.43-A/2011. By such judgment and decree, the decree of ejectment, passed by the Civil Judge Class-I, Mungeli, in Civil Suit No.66-A/2007, dated 21.01.2010 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. 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 27 years. It was further stated that since the erstwhile owner of the shop had executed an agreement of sale in respect of suit property for Rs.40,000/- and part payment of sale

consideration 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 was sold to present/plaintiffs, which came to the notice of defendant/tenant in the year 2007 and claimed to file suit for specific performance for such purchase. The other averments of plaint was also denied.

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/1 and perusal of the map of the said sale deed Ex.P/1 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. At 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. The written statement would show that admission of fact that the tenants are in possession of suit shop has been admitted. The tenant/appellant has stated an agreement of sale was executed by Julius Stephan and Kamlesh Stephan with consent of Kanaklata for sale consideration of Rs.40,000/-. Further it was stated instead of making a sale in favour of tenant the erstwhile sellers have executed sale in favour of plaintiffs in respect of same suit shop. Therefore, in written statement admission was made to the effect that sale of the suit shop was made and it was also contended that tenant would file suit for specific performance in future. So by such admission no doubt exists in respect of identity of suit shop for which the ejectment was filed. The proper appraisal of the written statement would indicate that admission was made that 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/1. 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. The document Ex.P/9 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/9 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

Balram