

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 352 of 2015**

1. Mahabir Agrawal, S/o. Ramkumar Agrawal, R/o. Civil Line, Daroga Para, Raigarh, Tahsil and District-Raigarh (C.G.)

----Appellant**Versus**

1. Manoj Kumar Sawariya, S/o. Late Natwarlal, aged 44 years,
2. Smt. Mridula, W/o. Late Anil Sawariya, age 44 years,
Both are R/o. - Behind Gandhi Ganja, Near Laxminarayan Temple, Raigarh, Distt- Raigarh (C.G.)
3. Lalit Kumar Sawariya, S/o. Late Natwarlal, age 47 years, R/o. Civil Line, Darogapara, Raigarh, Tah. & Distt. Raigarh (C.G.)

----Respondents-----
For Appellant : Mr. Amit Sharma, AdvocateFor Respondents No.1 & 3 : Mr. Manoj Paranjpe, Advocate
-----**Hon'ble Shri Justice Goutam Bhaduri****Order On Board****11/04/2016**

Heard on admission.

1. This is an appeal against the judgment and decree dated 16.04.2015, passed by the Vth Additional District Judge, Raigarh, District - Raigarh, in Civil Appeal No.203/2012, whereby the judgment and decree dated 20.11.2012, passed in Civil Suit No.18-A/2006, passed by Civil Judge, Class-I, Raigarh, was 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 as pleaded by the plaintiffs are that a house bearing No.32/3, situated at Civil Line, Raigarh Ward No.14, which

was of three bedroom, kitchen and bathroom with other facilities, was given to defendant/appellant as a tenant. The suit was filed by Manoj Sawariya, the plaintiff No.1, Smt. Mridula Sawariya, the plaintiff No.2 and Lalit Kumar Sawariya, the plaintiff No.3. The husband of the plaintiff No.2, Anil Kumar Sawariya died on 09.12.2005. It was further pleaded that the plaintiff No.1 and the plaintiff No.2, used to reside behind Gandhiganj, near Laxminarayan Temple and the plaintiff No.3 used to reside at Civil Line, Darogapara, Raigarh. It was further stated that all the plaintiffs have children, who have grown up and presently the plaintiff No.1 and 2, wherein they are residing is in dilapidated condition, which is very small and inadequate for the family. Therefore, the plaintiffs requested the defendant to vacated the suit house as it was required bonafidely for the family members of the plaintiffs. The suit was therefore, filed claiming eviction on bonafide ground as also for the arrears of rent.

4. The appellant/defendant contended that tenancy was not inducted by the plaintiff No.1 and 3, Manoj Sawariya and Lalit Kumar Sawariya and tenancy was commenced at the behest of husband of the plaintiff No.2, the deceased Anil Kumar Sawariya. Therefore, the relation of landlord and tenant never existed in between plaintiff No.1 and 3 with the defendant. It was further stated that the plaintiffs are in possession of the alternate accommodation near Laxminarayan temple as they owned a chall, wherein the other tenants are also residing and a house is lying vacant beside the subject suit property, which belonged to the plaintiffs, therefore, the suit house is not required bonafidely.

5. After evaluating the pleadings and the evidence, the learned Trial Court decreed the suit on the ground of bonafide need. The said judgment and decree of eviction was subject of appeal before the Additional District Judge, Raigarh. The Court of Additional District Judge, Raigarh affirmed the judgment and decree granted on the ground of bonafide need as both the Courts below found that the plaintiffs have failed to prove that defendant was in arrears of rent. Against such judgment and decree of eviction, the instant second appeal is by the defendant/tenant.
6. Learned counsel for the appellant submits that specific plea was taken in written statement that the suit house belonged to the husband of the plaintiff No.2, and the appellant was inducted as a tenant in the suit house by late husband of the plaintiff No.2. Therefore, the plaintiff No.1 & 3 do not have any right or interest to get the suit house vacated. It is further contended that as per the statement of Lalit Kumar Sawariya (P.W.-2), it would clear that suit house was required bonafidely for plaintiff No.2, as would be evident from para 20 to 22 of statement of P.W.-2, Lalit Kumar Sawariya, but the plaintiff No.2, Smt. Mridula Sawariya was not examined, before the Court below. It was contended that it was necessary for the plaintiffs to examine, Smt. Mridula Sawariya before the Court below as for need of that plaintiff only suit was filed. It is further submitted that since the rent was being paid to the plaintiff No.2, as such, the other plaintiffs can not be treated as a landlord as per Section 2(b) of the C.G. Accommodation Control Act, 1961. He also placed his reliance in the case law reported in (2010) 10 SCC 512 and would submit that in absence of

examination of the plaintiff No.2, for whose need, the suit house was required, the judgment and decree passed by the Courts below are perverse and prayed that the case be admitted for hearing.

7. Heard the counsel for the appellant.
8. Perused the judgment and the decree of the Courts below, pleadings and the evidence.
9. Since the issue only touches about the decree of bonafide need and the prayer for arrears of rent has been negated, therefore, the entire survey of pleadings and the evidence is confined to the bonafide need. The records were examined as to whether the substantial question of law would arise for consideration.
10. P.W.-1, Manoj Sawariya in his evidence had stated that the plaintiffs owned the subject house, which was given on rent to the defendant and the terms of the tenancy was executed by his late brother, Anil Kumar Sawariya. At para-4 of the statement, this witness has stated that he also used to receive the rent and the rent receipt which was issued by this plaintiff was marked as Ex.P/2. The examination of Ex.P/2 would show that it bears the signatures, which is said to have been issued by the plaintiff and also signed by the defendant. The Ex.P/2 is admitted by the defendant that it bears the signature and the rent was paid for the month of July, 2006. Therefore, considering such admission of the defendant alongwith the statement of the PW-1, Manoj Sawariya, the argument which is advanced by the appellant/defendant that the plaintiff can not be termed as landlord can not be accepted.

The defendant further has not placed any documents on record to show the subject suit house exclusively belonged to late Anil Kumar Sawariya, therefore, if the defendant was so sanguine of the fact that the suit house belonged to Anil Kumar Sawariya exclusively for which the need is being projected, it was for the tenant/defendant to prove that other plaintiffs were not actual owner/landlord.

11. P.W-2, Lalit Kumar Sawariya had stated in his evidence at para-10 that he and his sister-in-law (Bhabhi), the plaintiff No.2, Mridula Sawariya used to reside behind Gandhiganj at Laxminarayan Temple but since family has grown and increased as the children have also attained their majority namely, Ankit Sawariya, Siddharth Sawariya. Further the family of Lalit Sawariya, the plaintiff No.3 has also grown as the children Ku. Mahima and one son, who is the student of Class-8th has having grown, therefore, in order to accommodate the plaintiffs and their family members, the suit house is bonafidely required. It is further stated that presently the plaintiffs are in occupation of house which is in dilapidated condition and therefore, family members suffers a lot due to paucity of space. The plaintiff further had stated that house was a joint family property, which is given to the tenant by one of the brother with the consent of other plaintiffs. Therefore, the submission of appellant tenant that suit house exclusively belonged to plaintiff No.2 is misplaced. The plaintiff No.1 and 2 have categorically stated that house is required bonafidely for the family members as the family has grown and inflated and the children have attained their majority, therefore, the house is required bonafidely, such

statement can not be sidelined. The plaintiffs have stated that apart from the suit accommodation, no other suitable accommodation is available to the plaintiffs and the availability of accommodation, wherein the plaintiffs reside have been shown to be inadequate, therefore, it is stated that the suit house is required bonafidely by the plaintiffs.

12. Considering such statement alongwith the finding given by both the Courts below, this Court is of the opinion that the finding of fact with respect to bonafide need of plaintiffs have been rightly arrived at by both the Courts below wherein it is held that suit house is required bonafidely for the family members of the plaintiffs. 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.
13. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE