

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 467 of 2015

Abida B W/o Late Fakir Mohammad Aged About 46 Years R/o Banjinpali,
Raigarh, Tahsil And District Raigarh, Civil And Revenue District Raigarh,
Chhattisgarh (Plaintiff)

---- Appellant

Versus

Ali Hussain S/o Fate Mohammad Aged About 33 Years R/o Banjinpali,
Raigarh, Tahsil And District Raigarh, Civil And Revenue District Raigarh,
Chhattisgarh (Defendant))

---- Respondent

Shri CJK Rao, counsel for the appellant/s.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

13/01/2016

Heard on admission.

This appeal is directed against impugned judgment and decree dated 19/03/15 passed by the learned lower Appellate Court by which, the judgment decree passed by the Trial Court has been affirmed and appeal dismissed.

2. Learned counsel for the appellant argued that both the Courts below committed gross illegality and perversity in recording concurrent finding of fact that there exists no relationship of land lord and tenant between the appellant and the respondent. It is argued that the learned Courts below did not dispute that Ex.P/1 to Ex.P/4 clearly prove that the appellant / plaintiff is the owner of the land in dispute. Merely because the name of the appellant was recorded jointly with other co-owners in revenue records, it could not be made a basis to hold that there was no relationship of land lord and tenant between the parties. There are categoric averments of having let out the disputed premises on monthly rent of Rs.100/- to the defendant. As the tenancy was oral, merely because there was no document in writing, the Courts below were not justified in rejecting and

disbelieving the clinching evidence of oral tenancy. On the basis of a very cryptic and suspicious document of agreement of sale, the Courts below jumped to the conclusion that the defendant is in possession of the disputed property on the basis of an agreement of sale.

3. Both the Courts below have recorded concurrent finding of fact that there exists no relationship of owner and tenant between the parties. The Courts below have scrutinized the oral evidence and in particular have taken into consideration that there exists no document of tenancy. The Courts below have also noticed that there is no rent receipt in possession of the plaintiff. It has also been noticed by the Courts below that the amount of rent has been differently mentioned by the appellant in various proceedings. While in the plaint, the rent has been stated to be Rs.100/- per month, in the complaint made to police states rent as Rs.150/- per month, in the notice, it has been recorded as Rs.500/- and in the statement made by Hamid Khan, Power of Attorney Holder of the plaintiff in proceedings before the Tahsildar, the rent has been stated as Rs.300/-. The Courts below have also taken into consideration that contradictory statement has been made with regard to the period for which the rent is alleged to have been in default. The evidence of Nagina Khatun that the land in dispute is the one which has been described in the agreement to sell has also been taken into consideration. Non-examination of plaintiff is also one of the reason why the Courts below have disbelieved plaintiff's story of there being a tenancy between the parties.

4. The findings are thus concurrent finding of fact which do not suffer either from patent illegality or perversity much less contrary to any admissible evidence on record, oral or documentary in nature. In the result, the appeal has no merit and is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge