

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 457 /2015**

1. Heeralal, S/o. Lalmohan Pangrah, Aged About 63 Years, Occupation- Retirement Railway Servant, R/o. House No. 25 Ward Number 35 Station- Khalhe Sonkharpara, Raigarh, Civil & Revenue Distt. Raigarh, Chhattisgarh.

2. A. Sunita, Wd/o. Late Dilwar Pangrah, Aged About 41 Years.
B. Sudha, D/o. Late Dilwar Pangrah, Aged about 18 Years.

Appellant No.2(A) & (B) are R/o. H House No. 25 Ward Number 35 Station- Khalhe Sonkharpara, Raigarh Civil & Revenue Distt. Raigarh, Chhattisgarh

3. Mu. Rakhi, D/o. Lungi Pangrah, Aged About 33 Years, R/o. House No. 25 Ward Number 35 Station- Khalhe Sonkharpara, Raigarh, Civil & Revenue Distt. Raigarh Chhattisgarh

---- Appellants

Versus

1. Chandra Prakash, S/o. Malik Sidak Ilyajar (Died) Through LRs :

A. Ami Kushal, Wd/o. Chandraprakash Ilyajar Aged About 62 Years.

B. Rajkumar Kushal, S/o. Late Chandraprakash Ilyajar.

Respondent No.1(A) & 1(B) R/o. Station Khalhe Sonkharpara, Raigarh, Tahsil & Distt. Raigarh, Chhattisgarh.

2. State Of Chhattisgarh, Through the Collector, Raigarh, Distt. Raigarh, Chhattisgarh.

---- Respondents

For Appellants : Mr. Vivek Tripathi, Advocate.

For Respondent No.1- : Mr. S.S.Rajput with Ms. Renu Singh,
A & B Advocate

For Respondent No.2 : Mr. Sangharsh Pandey, Dy. Govt.
Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

04/04/2016

Heard on admission.

- The instant appeal is preferred against the judgment & decree dated 17.04.2015 passed in Civil Appeal No.92-A/2012 by the Court of Fourth Additional District Judge, Raigarh, whereby the

judgment & decree dated 27.08.2011 passed in Civil Suit No.117-A/1998 by the Court of Civil Judge Class-I, Raigarh, has been affirmed.

2. The appeal is by the defendants tenants against the ejectment decree passed by both the Courts below i.e. Trial Court & Appellate Court.
3. The brief facts are that, the suit was filed by the plaintiff since deceased namely Chandra Prakash that he is the owner of the land bearing Khasra No.388/4Ka, 388/4D & 488/4Ch, which is situated at the Municipal Ward No.35 Mohalla Station Khalhe Sonkharpara, Raigarh. It was stated that over such land on 15x20 sq. ft., five rooms were constructed and out of that room No.3 was granted on rent to appellant/defendant Heeralal. The room No.5 was in dilapidated condition whereas the other two rooms i.e. room No.2 & 4 were adjacent to the room given to the defendant. It was pleaded that tenant Heeralal had further parted with possession of room No.2 & 4 to other defendant Dilawar and Mu. Rakhi by creating sub-tenancy. It was stated that the defendant No.1 Heeralal paid the rent up till year 1995, thereafter, stopped payment of rent and consequently, a notice was served to the said defendant for vacating the suit premises. It was pleaded that in reply to such legal notice, it was contended by the defendant No.1 that the rented house was repaired and an expenditure of Rs.3000/- was incurred however the creation of sub-tenancy in favour of defendant No.2 & 3 i.e. Dilawar & Mu. Rakhi were denied by the defendant. After such reply of notice by the defendant No.1, the plaintiff again served the notice to the original defendant No.2 i.e. Dilawar and defendant No.3 Mu. Rakhi and arrears of rent was demanded,

however, the said arrears of rent was not paid; consequently the suit was filed for ejectment against the defendant tenant all.

4. The defendants in their reply jointly filed their written statement and denied the entire averments of the plaint. It was stated that along with the room No.3 which was given to Heeralal, room No.2 & 4 were also granted to the defendants on monthly rent and the original defendant No.2 & 4 were not inducted as sub-tenant by the defendant No.1. It was further stated that the defendants have paid the entire rent and they were not in arrears and further stated that necessary repair which was carried out to the extent of Rs.3000/- the amount was set off against the rent. Therefore, the defendants were not in arrears and the suit was filed with all mala fide object only to eject the defendants.
5. The trial Court after evaluating the pleadings and evidence decreed the suit for ejectment against the defendants which was subject of appeal before the first appellate Court and the first appellate Court too affirmed the finding arrived at by the trial Court. It was held by both the Courts below that the defendants are in arrears of rent and further affirmed the fact that during the pendency of the suit, the defendants have failed to deposit the rent as per Section 13 of the Chhattisgarh Accommodation Control Act, 1961. Thereby right to defence was struck off by holding that the tenant has failed to deposit the rent in Court too as required by Section 13 of the Chhattisgarh Accommodation Control Act, 1961. Against all such finding, the instant second appeal before this Court.
6. Learned counsel for the appellants would submit that the plaintiff himself has admitted the fact that the original defendant No.2 & 3 were not sub-tenant and he further submits that the appellants also stated that before filing of the suit, the amount of rent was being

tendered which would lead to infer that the tenants were not in arrears and therefore the decree is completely illegal.

7. I have heard learned counsel for the appellant and perused the record.
8. Perusal of the judgment, record and evidence would show that the written statement was filed by the defendants jointly. It was stated by the defendants that the room No.2 & 4 were granted by the plaintiff to the defendants as tenants and further general denial was made in the written statement. The notice demanding arrears of rent is marked as Ex.P-1. The said notice is dated 20.07.1998 and reply to it is dated 04.08.1998, which is marked as Ex.P-9. In reply, it was stated that in respect of the room No.2 & 4 the persons who are in occupation have not been inducted as sub-tenant and notice reply by defendants contains that they are the tenants and it was given to them by the plaintiff. Thereafter, a notice was served to the defendant Dilawar and Mu. Rakhi by Ex.P-3 and P-4 on 18.08.1998 wherein the arrears of rent was demanded from the said defendant and it was stated that if the defendants failed to pay the rent, the suit would be filed for ejectment. The evidence would show that the said notices were served to the defendants, however, no reply was filed.
9. Perusal of the order sheet of the trial Court would show that after service of notice, the defendants took the stand that the plaintiff is not the owner and therefore they are not required to deposit the rent as required under Section 13 of the Chhattisgarh Accommodation Control Act, 1961. Pursuant thereto, the trial Court after consideration of documents initially by an order dated 03.12.2003 directed the defendants to deposit the rent in the Court, however, the same having not been deposited, by an order dated

03.01.2004 the defence was struck off in exercise of provisions under Section 13(6) of the Chhattisgarh Accommodation Control Act, 1961.

10. Perusal of the statement of the plaintiff would show that the statements have been made on oath by the plaintiff that the defendants have not paid the arrears of rent and reading the reply of the tenant Ex.P-9, it was stated that the arrears of rent was set off against the expenses incurred in repair and therefore, he was not required to pay the rent. Considering the pleading and documents such plea cannot be sustained specially in view of the examination in chief and cross-examination of the plaintiff. The defendant No.1 examined himself before the Court and at para 13 the defendant in the cross examination has stated that he used to pay the rent of all the three rooms to the plaintiff, therefore, the statement of the defendants was contradictory itself with the reply and the defence availed. Since at one point of time, it was stated that defendant No. 2 & 3 are independently in occupation of room No.2 & 4 whereas in the cross examination he admitted the fact that he used to pay the rent for room No.2 & 4 also alongwith room No.3. It was specific case of the plaintiff that the room No.3 was rented out to the defendant Dilawar. The records suggest that when the notice was served to the other defendants to pay the arrears of rent that notice also remained un-replied and no evidence has been adduced by the defendant No.2 & 3. Resulting to prove the fact that rent for all the rooms remained unpaid. Further when right to defence was struck off by the trial Court under Section 13(6) of the Chhattisgarh Accommodation Control Act, 1961, the same remained un-challenged.

11. Taking into facts and pleadings together, I am of the opinion that the finding of fact arrived at by the learned both the Courts below that the defendants have failed to pay the arrears of rent cannot be faulted with. Therefore, on the facts which are existing on record, no substantial question of law arises for consideration in this second appeal.
12. Accordingly, the appeal is dismissed at the motion stage itself.

Ashok

Sd/-
(Goutam Bhaduri)
Judge