

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 134 of 2016

- Imran Malik S/o Late Soebuddeen Aged About 62 Years R/o College Road Jashpur Nagar; Tahsil, Post Office, Police Station & District Jashpur Chhattisgarh.(Defendant).
... **Appellant**

Versus

1. Masihujjama Khan (Dead) Through Lrs Fasihujama Khan S/o Late Masihujjama Khan Aged About 62 Years R/o Jashpur; Post Office, Tahsil, Police Station & District Jashpur Chhattisgarh.
2. Rafikhujama Khan S/o Late Masihujjama Khan Aged About 60 Years R/o Jashpur; Post Office, Tahsil, Police Station & District Jashpur Chhattisgarh.
3. Raishujama Khan S/o Late Masihujjama Khan Aged About 54 Years R/o Jashpur; Post Office, Tahsil, Police Station & District Jashpur Chhattisgarh.
4. Anisujaman Khan S/o Late Masihujjama Khan Aged About 50 Years R/o Jashpur; Post Office, Tahsil, Police Station & District Jashpur Chhattisgarh.
5. Israt Aara D/o Late Masihujjama Khan Aged About 50 Years W/o Mujjafar Khan; R/o Village/ Post - Murarpur; District Gaya (Bihar).
6. Musharrat Aara D/o Late Masihujjama Khan Aged About 46 Years W/o Shabbir Khan; R/o Kaji Mohalla Near Urdu Midium School, Aurangabad; Tahsil & District Aurangabad (Bihar).
7. Najahat Aara D/o Masihujjama Khan Aged About 41 Years W/o Ishtiyak Khan; R/o Village & Post - Near Khan Poultry Form Sohagpur, Sahdol; Tahsil & District Sahdol (M.P.).(Plaintiffs).
--- **Respondents**

For the appellants : Mr. R. N. Jha, Advocate

For the Respondents : Ms. Sharmila Singhai, Advocate.

Shri Justice Goutam Bhaduri

ORAL JUDGMENT

12.05.2016

1. Heard on admission.
2. The instant appeal is against the order dated 04.02.2016

passed by the Court of District Judge, Jashpur (C.G) in Civil Appeal No.12-A/2015 whereby the judgment and decree dated 31.03.2015 passed by Civil Judge, Class I, Jashpur in Civil Suit No.3-A/2012 has been reversed.

3. Briefly stated facts are that late Masihujjma filed a suit on 27.02.2000 for eviction on the ground that late Masihujjma used to stay in the old ancestral house along-with 4 sons who were already married and because of the marriage of his sons and consequent expansion of his family it was not possible to stay along-with all family members in the old ancestral house. It is stated that apart from the said old house, the plaintiff also owned a plot and house bearing Khasra No.363/10 admeasuring 08 decimals situated at ward No.6 wherein 4 shops and two residential quarters were constructed behind the said quarter which was numbered as House No.64 by the Nagar Panchayat Jashpur, out of which, one shop and one room with warandah, latrine & bathroom were given on rent to the appellant tenant @ of Rs.300/- per month. It was stated that the family members of plaintiff i.e., his sons namely Rafique and Rice were idle and jobless therefore the suit premises i.e., house and shop are required bonafide for staying/residing and starting business. It was further stated that when the defendant tenant was pressed for apprising him of need, he agreed to vacate the same. It was further pleaded that on 01.06.1999 when the deceased went to demand the rent, he saw the substantial portion of the accommodation was damaged by demolishing bath room and latrine and the drain was also closed. The plaintiff landlord demanded the arrears of rent which accumulated to Rs.10,000/- along-with damages and asked the tenant to

vacate the suit premises. The tenant appellant stated that he would vacate the premises within 2-3 days and on 09.06.1999 a written agreement was executed that till 10.01.2000 he would vacate the premises. However, instead of vacating the premises, the tenant filed a civil suit for declaration that the agreement dated 09.06.1999 is an outcome of fraud. Thereafter, the plaintiff served a legal notice on 29.04.2000 for arrears of rent and to get the premises vacated. After the notice period, it was pleaded that neither the arrears of rent was paid nor the premises was vacated, as such, the suit was filed for ejectment. It was further pleaded in the plaint that sons of plaintiff were married and two of sons are settled, however, remaining two sons namely Rafique and Rice though they are married, they used to stay jointly alongwith the plaintiff and the entire family cannot be accommodated in the old house, therefore, the suit premises was required both for residential and business purpose to settle the sons of the family.

4. The tenant denied the averments of the plaint and stated that the plaintiff used to stay separately along-with their family and the house of plaintiff is quite sufficient to adjust all the family members and they do not have any need. It was further stated that in the year 1975 with the consent of landlord, the defendant has made some construction and has become owner of premises in question by way of adverse possession. It was stated that since the relation of landlord and tenant never existed between the parties. It was further stated that the plaintiff landlord himself has admitted the defendant to be owner of the premises and therefore, the question of payment of rent never arose. It is also contended

that on 09.06.99 by exerting pressure and force, an agreement was got signed by the defendant and such agreement is an outcome of fraud and therefore, the plaintiff is not entitled for any relief.

5. The trial Court after evaluating the facts and evidence dismissed the suit for ejectment. Against such judgment and decree the appeal was preferred. The first appellate Court decreed the suit for ejectment in favour of landlord holding that the suit premises is required bonafide by the landlord to settle his sons both for residential and business purpose. Being aggrieved by such order, the defendant has filed the second appeal.
6. Learned counsel for the appellant/tenant would submit that the tenant had preferred a suit which was bearing Civil Suit No.134-A/1999 whereby the agreement dated 09.06.1999 was sought to be declared as void since it is an outcome of fraud and after filing of the suit, the instant suit for ejectment was filed by landlord on 27.7.2000. It was further stated that in any case the relationship of landlord and tenant was not proved by the plaintiff/landlord, consequently the suit filed on the basis of relationship of landlord and tenant would not be maintainable. Referring to the document Ex.P-20, it is stated that even such document would not show that relationship of landlord and tenant was established. The counsel placed his reliance in ***(2003) 11 SCC 759 Radha Devi Vs. Deep Narayan Mandal*** and would submit that in order to get a decree in case of landlord and tenant, the plaintiff has to establish the case that the relationship of landlord and tenant existed.
7. Perused the judgment and decrees and the records of both

the courts below.

8. A perusal of the statement of P.W.1 Masihujjma Khan (since deceased) would show that the plaintiff has stated that he is staying in his ancestral house at Ward No.1 Nawatoli along-with his four sons who are married. Since his sons are married as such the family has expanded and consequently it was not possible for him to accommodate all the family members in the old house and therefore, the suit house owned by the plaintiff is required bonafide. It is further stated that apart from the old ancestral house, he also owned the land bearing Khasra No.363/10 admeasuring 8 decimals in which four shops and two family quarters were built which was numbered as house No.64 by the Nagar Panchayat Jashpur. Out of the said premises, one room, Varandah, latrine and bath room were given on rent to the defendant @ Rs.300/- per month on 10.01.1997. It was further stated that when the plaintiff went to get the rent, he saw that bath-room was damaged and the drain was closed. Consequently, the defendant was asked to vacate the same but he did not vacate and ultimately on 09.06.1999 this fact was placed before the Panch wherein the defendant agreed to vacate the premises by 10.01.2000. It was further stated that along-with residential need in order to establish his two sons namely Rafique and Rice to settle them in business, the suit premises is required bonafide.
9. In the written statement, the defendant has denied the relationship of landlord and tenancy. It is stated in the written statement that the defendant is in occupation of premises since 1975. The document Ex.P-20 is an Agreement (Ekrarnama). Perusal of document would show that it was

signed by the landlord and tenant and the same is dated 09.06.1999. It also bears the signature of Panch. The document purports that the tenant promised to vacate the same by 10.01.2000. In the said agreement, the ownership of the landlord was admitted. This document is proved by P.W.3 Mohd. Akhtar Hussain. Examination of such document alongwith the statement of defendant i.e., D.W.1 Imran Malik (appellant herein) would reveal that at para 14 of the cross examination D.W.1 volunteered to depose that he is owner of house and he do not pay the rent. Subsequently it is admitted by him that he is paying the rent of shop. Therefore, two contradictory statements are made against the pleading. At one part it is said he is the owner of house whereas at another part it is said that he is paying rent for shop. In the written statement at paras 5 & 6 the tenant has completely disowned the ownership of landlord. In written statement, no splitting of tenancy is pleaded about residential or non-residential one instead suit premises has been stated to be one only. So there is severe contradiction of facts is on record which was created by the tenant itself. So the contention of the tenant that only for shop the rent was paid sans any logic.

10. Further statement of D.W.1 at para 18 would show that he admitted the suggestion that he started living in the suit house and shop with the consent of Masihujjama Khan, the landlord, because of the good relation with him. It is also stated by D.W.1 at para 12 that earlier he stayed in the house of Masihujjama Khan which was sold to one Rukhsana wherein he stayed for four years since 1975. It is further stated by D.W.1 in his examination-in-chief that in March

1997, he went to Bihar and the keys of premises were given to the owner and certain part of the premises was sold to Ruksana for which a civil suit was filed by him. Therefore, evaluating the entire statement of witness D.W.1 read with the document Ex.P.20 would show that the argument which is advanced by learned counsel for the appellant tenant that he was a licensee of the shop cannot be sustained. The admission of the defendant tenant that he is paying rent itself denotes the fact of relationship of the landlord and tenant. The statement of the plaintiff that the house is required for bonafide need of his two sons for their staying and business as the family has expanded has not been denied in the cross examination. Therefore, the finding of fact with respect to relationship of landlord and tenant in between the plaintiff/respondent and defendant/appellant as also the finding of fact that the premises is required bonafide by Landlord to settle his two sons for residence and business cannot be faulted.

11. In the result, no substantial question of law arises for consideration in this appeal. The appeal is dismissed at the motion stage itself.

Sd/-
GOUTAM BHADURI
JUDGE