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HIGH COURT OF CHHATTISGARH, BILASPUR

S.A. No. 506 of 2015

Navendar Singh, S/o. Late Banta Singh, aged about 50 years, R/o. In front of Raja Hotel, Bus Stand to Agrasen Chowk Road, Bilaspur, Tehsil and District – Bilaspur (C.G.)

----Appellant

Versus

Ram Kumar Kashyap, S/o. Late Shambhoo Prasad Kashyap, age 45 years, R/o. In front of Raja Hotel, Bus Stand Agrasen Chowk Road, Bilaspur, Tehsil & District – Bilaspur (C.G.)

----Respondent.

For Appellant : Mr. Rajeev Bharat, Advocate

For Respondent : Mr. B.P. Gupta, Advocate with Mrs. Richa Jain, Advocate

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Hon'ble Shri Justice Goutam Bhaduri

Order On Board

03/03/2016

Heard on admission.

1. This is an appeal against the judgment and decree dated 25.08.2015, passed by Additional District Judge, Bilaspur, District Bilaspur, in Civil Appeal No.6-A/2008, whereby the judgment and decree dated 15.07.2008, passed in Civil Suit No.13A/2008, passed by IVth Civil Judge, Class-II, Bilaspur, was affirmed.

2. The appeal is by the tenant against the concurrent finding of fact of bonafide need.

3. Brief facts of this case are that the landlord/respondent filed a civil suit for ejectment and possession in respect of a shop admeasuring 158 sq.ft., situated at opposite Raja Hotel, Agrasen Chowk, Bilaspur, which will be referred to be a suit property. It was pleaded that the defendant is the tenant of the suit shop at the monthly rent of Rs.950/- and he is paying rent to the plaintiff since December, 2005. At para-5 of the plaint, it was pleaded by the landlord/plaintiff that he has no other suitable accommodation of his own to start his business and he was constraint to continue his business in front of the house of his father temporarily and is engaged in sale of vegetable, however, it was being objected by municipal personnel and the police officers. Consequently, he requires, the suit shop to start his own business. Further it was also pleaded that his son, who is becoming major for his business too, he needs the suit shop and. It was further pleaded that the plaintiff, wherein he was carrying his business belong to his father and it is to be partitioned. Consequently, there would be a need for the place to start the business, since other share holders are also there in such property. It was further stated that the request made by the plaintiff/landlord to defendant to vacate the suit shop was turned down, consequently, civil suit was filed.

4. The defendant in his written statement contended that the suit house was obtained from the father of the plaintiff namely Shambhoo Prasad Kashyap, in the year 1986 and at the time of the induction of tenancy, a security amount of Rs.10,000/- was paid, which was agreed to be returned at the time of vacating the suit shop. It was further contended that entire rent of the suit shop was

being paid to the father of the landlord namely Shambhoo Prasad Kashyap. It was further contended that behind the suit shop, the father of the plaintiff owns 60 shops, which was named as Chhattisgarh Complex. It was further contended that suit shop was not obtained from the plaintiff and the plaintiff was not the owner of the shop. The defendant further pleaded that he is not in know of any partition, affected between the erstwhile landlord, Shambhoo Prasad and his son and the plaintiff is not in bonafide need of the suit shop to start his business.

5. After evaluating the pleadings and the evidence, the Trial Court came to a finding that the appellant/tenant has paid the rent to the landlord, therefore, the plea of defendant that the plaintiff was not the landlord was negated. It was further held that the suit property is required bonafidely by the plaintiff to start his business and that of his son, therefore, the decree for ejectment was passed. The said findings were further subject of appeal before the First Appellate Court and the First Appellate Court too affirmed the finding of fact by the judgment and decree dated 25.08.2015. Therefore, this second appeal.

6. Learned counsel for the appellant would submit that need was projected on the ground that son of the plaintiff is becoming major and it was not on the ground that he has become major. Consequently, according to Section 12(1) (f) of the C.G. Accommodation Control Act, 1961 the need can not be for the minor son or for future need. He would further submit that the plaintiff, however, pleaded that the house wherein he is carrying his

business belonged to his father and there would be a partition in future, thereby, for future need, this can not be allowed in view of Section 12 (1) (f) of the C.G. Accommodation Control Act. He would further submit that as per statements of Ramkumar (PW-1) and Ramgopal Kashyap (PW-3), the facts are on record that the plaintiff is in possession of alternative accommodation, therefore, the finding of both the Courts below are perverse as they do not satisfy the ingredients of Section 12 (1) (f) of the C.G. Accommodation Control Act.

7. Perused the judgments and the decree, pleadings and the evidence.

8. At para-2 of the plaint, the plaintiff has specifically pleaded that suit property fell into his share according to oral partition affected between the father and the brothers. Further at para-5, it is stated that the suit property is required for his own business because of the fact that presently he is carrying business, in front of the residential house of his father temporarily and used to sale vegetable, which is being objected by the municipal and the police personnel. It is further pleaded that he has no alternative suitable accommodation of his own to start his business in the city. At para-6 of the plaint it is further stated that the plaintiff's son Rahul is becoming major and also needs the suit shop. This part of the averments that the suit shop fell into the share of the plaintiff/landlord by oral partition which is supported by the statement has not been negated. As against this, it is on record that the defendant has paid rent of the suit shop to the plaintiff. The

plaintiff in his statement has supported the averments of pleadings with the specific statement that he do not have any alternative suitable accommodation of his own to start the business and the suit house has fallen into his share. He has further stated that he was compelled to continue the business of selling vegetables in front of the residential house of his father, which is being objected by the municipal and the police at different point of time.

9. In the cross-examination of the plaintiff though one line has come that beside the suit property, Shambhoo Prasad, i.e. the father of the plaintiff/landlord has a complex named as Chhattisgarh Complex, but by such statement this fact and evidence has not been negated that the plaintiff do not have a separate accommodation of his own specially in the light of the fact that when it was stated that suit property was fallen to his share. Though the defendant has stated that the plaintiff has alternative accommodation available, which has not been pleaded and proved but these fact do not find support on the face of the record by the evidence of the defendant. The defendant has also not produced any documents or evidence to prove that the plaintiff is in possession of separate alternate accommodation, which is lying vacant and is not suitable.

10. The other arguments which has been raised that notice was given to Punjab Aluminium Works, but the suit is filed against the Navendar Singh is also do not support the case of the appellant/defendant. Since except such evidence nothing has been averred in the written statement and no issues were framed on this,

therefore, after evaluating the fact and the evidence I am of the view that the finding of fact arrived at by both the Courts below that the suit accommodation is required bonafidely by the plaintiff to start the business of his son, requires no interference. In a result no substantial question of law arises for consideration in this second appeal.

11. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE

Balram