

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 436 of 2015

Puniram Namdev S/o Brijlal Namdev Aged About 78 Years R/o
Ward . 05, Main Road, Tehsil-Janjgir, Distt. Janjgir Champa
Chhattisgarh

Appellant

Versus

1. Pawan Kumar S/o Late Shree Govind Prasad Agrawal Aged About 38 Years R/o Janjgir, Tehsil Janjgir, Distt. Janjgir-Champa Chhattisgarh
2. Mukesh S/o Late Shree Govind Prasad Agrawal Aged About 35 Years R/o Janjgir, Tehsil-Janjgir, Distt. - Janjgir Champa Chhattisgarh
3. Vinod S/o Late Shree Govind Prasad Agrawal Aged About 33 Years R/o Janjgir, Tehsil-Janjgir, Distt. - Janjgir Champa Chhattisgarh
4. Kiran W/o Shree Chiranjiv Prasad D/o Late Shree Govind Aged About 45 Years R/o Village Salka, Tehsil Surajpur Distt.- Sarguja Chhattisgarh
5. Meena W/o Ganesh Prasad Agrawal Aged About 43 Years D/o Late Shree Govind Prasad Agrawal R/o Village Salka, Tehsil - Surajpur, Distt.- Sarguja Chhattisgarh
6. Ranjana W/o Surendra Agrawal D/o Late Shree Govind Prasad Agrawal R/o Village Salka, Tehsil - Surajpur, Distt.- Sarguja Chhattisgarh
7. State of Chhattisgarh Through District Collector, Janjgir, Distt. - Janjgir Champa Chhattisgarh **--- Respondent**

For the applicant	:	Mr. Anish Tiwari, Advocate
For the Respondents 1 to 6	:	Mr. Manoj Paranjpe, Advocate
For the State/R-7	:	Mr. Sunita Jain, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

05.02.2016

1. The instant appeal is against the order dated 03.07.2015 passed in Civil Appeal No.23-A/2015 by the Second Additional District Judge, Janjgir whereby the judgment and decree dated 13.03.2015 passed by the Second Civil Judge, Class-II, Janjgir in Civil Suit No.69-A/2009 has been affirmed.

2. The tenant having lost in both the courts below, has filed the instant appeal. The suit was filed by the respondent landlord for ejectment of the landlord inter alia pleading that the appellant was inducted as a tenant in the suit house measuring 15 x 29 sqft in the year 1965, at the monthly rent of Rs.40/-. The ground of ejectment was pleaded that from 2006-2009 the appellant tenant has not paid the rent and he was in arrears of rent and without permission of the landlord, the appellant tenant has raised construction and constructed the toilets and bathrooms which is detrimental to the interest of the landlord and thereby the nature of suit premises was also changed. It is further contended by the landlord that the suit house is required for bona-fide need that is to establish the business of family members of the landlord and therefore, ultimately a notice was served on 30.06.2009 to get the premises vacated. It was further case of the landlord that according to the tenant, the construction along with electrical fittings was carried out by the tenant for which the tenant stated to have spent money and as such, the tenant had demanded an amount of Rs.30,950/-. On that count the tenant has not paid the arrears of rent and thereafter since the premises was not vacated, the suit was filed.

3. The appellant tenant denied the averments. It is stated that the suit premises was given on rent by the original landlord Govind Agrawal and denied the allegation that the defendant/tenant fell in arrears of rent. It is further stated that neither any construction was raised against the wish and will of the tenant nor the nature of suit premises was changed. It was stated that all the constructions and repairs were carried out with the consent of the landlord and with an

understanding that the expenses incurred on renovation shall be adjusted towards the rent. It is further stated that Govind Ram the original landlord has stopped to accept the rent from the tenant from the year 2006 and agreed to the fact that the rent shall be adjusted towards the expenses incurred and the suit was filed in conspiracy.

4. Both the courts below after evaluating the evidence on record came to a finding of fact and decreed the suit for ejectment on the ground of arrears of rent and on the ground that the suit premises is required bonafide by the family members of the landlord and further it was also held that the construction was being made without consent of the landlord which was detrimental to the interest of landlord.
5. Learned counsel for the tenant/appellant would submit that the construction so made by the tenant was not authorised since the same was allowed by the deceased landlord namely Govind Agrawal and according to the evidence adduced by the plaintiff land lord it is admitted that the entire terms of construction were settled in between the landlord Govind and the tenant, therefore, any evidence on this aspect would be an hearsay evidence which would not be admissible in evidence. It is further contended that so far as non-payment of rent is concerned, as per the agreement with the late Govind Agrawal the same was adjusted for the electrical fittings and repairs of the roof and stores and it was agreed that the rent would be adjusted in lieu of expenses incurred, therefore, this cannot be a case of non-payment of rent. With respect to bona-fide requirement, it is contended that the court below has failed to take notice of the fact that the plaintiffs/ landlords have failed to plead and prove that they do not have any other suitable alternative

accommodation in the area so as to decree the suit u/s 12(1) (f), therefore, both the courts below came to a perverse finding of fact and the decree as such needs to be set aside. He therefore submits that concurrent finding of fact arrived at by both the courts needs to be modified by this court in exercise of jurisdiction u/s 100 of CPC.

6. Perused the documents, evidence and judgment and decree of the courts below.
7. The defendant/appellant has contended that there are no arrears of rent and it was stated that the owner Govind Agrawal has stopped to accept the rent from 2006 for the reason that the amount of rent was adjusted towards expenses incurred. There is no evidence on record as to what were the terms of such settlement. Admittedly, the rent has not been paid from the year 2006 and no single document has been placed on record to substantiate the fact. Only bald statement have been made that an understanding was arrived at with the original landlord Govind Agrawal for adjustment of rent. The same set of facts in absence of any document cannot be appreciated. Consequently the finding of both the courts below that the defendant is in arrears of rent and he has not paid rent since 2006 cannot be faulted.
8. The evidence projected by the defendant/tenant that the owner/ landlord did not come to receive the rent since 2006, therefore, the rent was not paid appears to be implausible and cannot be appreciated. It cannot be accepted as plausible explanation in the teeth of evidence that the landlord has stated that the rent has not been paid. With respect to the construction, again the same facts have been stated that the construction was carried out as per the instructions of Govind Agrawal. The defendant had examined

himself. Except the oral statement that there has been expenses of Rs.22,754/-, nothing has been placed on record. On the contrary, the defendant has claimed an amount of Rs.30,915/- alongwith interest @ 12% per annum and has claimed to be paid to him by the owner.

9. As per the evidence on record, the construction has been carried out in the suit premises, which was not disputed by the tenant. It is pleaded in the plaint that the construction was made which has changed the nature of premises. In reply thereto, it is stated in written statement that the nature suit premises has not been changed, however, the construction which has been made has been admitted. It has further been admitted by the tenant that in respect of payment of rent, no document has been filed, thereby it can be inferred that the construction so made was not with the consent of the landlord. The defendant had stated in his statement that illegal construction of bath room and latrine has been made which has not been diluted in the cross examination. It is further contended that when the persons in family of the landlord-owner increased, then the suit house was required for the family members to establish business and as such the notice vide Ex.P-1 was issued. In reply to the averments of the plaint, the defendant had stated that the joint family has been further separated as such the requirement has come to an end. The said reply cannot be appreciated for the reason that the owner of the premises would be the sole judge to ask for the requirement of the premises for its family members. The evidence would show that no alternative accommodation is available with the plaintiff which has not been rebutted by the defendant/tenant. Consequently I do not find any reason to upset the

concurrent findings arrived at by the both the courts below
whereby the order of ejectment has been passed.

10. In the result, the appeal having no merit is dismissed.

No order as to cost.

Sd/-
GOUTAM BHADURI
JUDGE

Rao