

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 273 OF 2016**

Ramlakhan Prasad S/o Navneed aged about 48 years, R/o Ghosalapara Raigarh
Ward No.2 (New) House No.60/2 Tahsil & District Raigarh (Chhattisgarh)

---- Appellant**Versus**

1. Vinod Kumar Gupta S/o Late Shri Moolchand Gupta
 2. Ku. Sushila Gupta D/o Late Shri Moolchand Gupta
- Both are R/o Ghosalapara Raigarh Tahsil & District Raigarh (Chhattisgarh)

---- Respondents

For Appellant	: Mr. B. D. Guru and Mr. Rajendra Tripathi Advocate.
For Respondents	: Mr. Vineet Kumar Pandey, Advocate.

Hon'ble Shri Justice Sanjay Agrawal**Judgment On Board****11/10/2017**

1. This is an appeal filed by defendant/appellant Ramlakhan Prasad under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') against the judgment and decree dated 07/04/2016 passed by the 4th Additional District Judge, Raigarh (C.G.) in Civil Appeal No. 66/1979, by which, the lower appellate Court while reversing the finding of the trial Court dated 02/03/1979 passed in Civil Suit No. 4-A/1976 has decreed the plaintiffs' claim for eviction on the ground enumerated under Section 12(1)(c) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter referred to as 'the Act, 1961').

2. The undisputed facts of the case, are that, the plaintiffs namely Vinod Kumar Gupta and Vijay Kumar Gupta (since deceased represented by his legal representative Ku. Sushila Gupta) have instituted a suit for eviction, by submitting *inter alia* that the suit house was given to the defendant Ramlakhan

by their grandfather Ramlal Gupta on monthly rent of Rs. 10/-. It is pleaded further that said Ramlal Gupta was the erstwhile owner of the suit house and had executed a will dated 11/12/1964 (Ex. P-1) in their favour by bequeathing his properties, including the suit property and have thus, become the owner of the suit property. It is pleaded in the plaint that the suit house is in a dilapidated condition and the same cannot be repaired without the suit house being vacated, therefore, the plaintiffs are required the suit house for the said purpose. It is pleaded further that despite the issuance of demand-cum-quit notice dated 23/09/1975, the same was not paid by the defendant and instead has denied their derivative title by way of his reply to the said notice on 01/09/1975 giving rise to an instant action for eviction on the grounds enumerated under Sections 12(1)(a), 12(1)(c) and 12(1)(g) of the Act, 1961.

3. While denying the aforesaid claim of the plaintiffs, it was stated by the defendant that he was the tenant of plaintiffs' father Moolchand Gupta and, pleaded further that since the plaintiffs are not the owner of the suit property, therefore, they are not entitled to get the suit house evicted from him on the alleged grounds, as pleaded by the plaintiffs.

4. The trial Court after considering the evidence led by the parties, has come to the conclusion that though the alleged will deed dated 11/12/1964 (Ex. P-1) was executed by the plaintiffs' grandfather Ramlal Gupta in their favour, but the plaintiffs have failed to establish the fact that the defendant is their tenant and, in consequence the trial Court has held that relationship of landlord and tenant has not been established between the parties. It was held further by the trial Court that the condition of the suit house is not in dilapidated condition and no arrears of rent as alleged by the plaintiffs is remained. As a consequence, the trial Court has dismissed the suit.

5. Being aggrieved, the plaintiffs have preferred an appeal under Section 96 of the CPC. The lower appellate Court, in turn, while affirming the finding of the trial Court with regard to the grounds as made under Section 12(1)(a) and 12(1)(g) of the Act, 1961, has held that since the defendant has denied the derivative title of the plaintiffs, therefore, while reversing the finding of the trial Court, the lower appellate Court has granted the decree for eviction on the ground enumerated under Section 12(1)(c) of the Act, 1961.

6. Being aggrieved, the defendant has preferred this appeal. Mr. B.D. Guru, learned counsel for the appellant submits that the judgment and decree as passed by the lower appellate Court while reversing the finding of the trial Court is apparently contrary to the law. He submits further that relationship of landlord and tenant has not been established in the matter, therefore, the lower appellate Court ought not to have reversed the finding of the trial Court.

7. I have heard learned counsel for the appellant and perused the entire record carefully.

8. The plaintiffs' suit was essentially made on the grounds as provided under Sections 12(1)(a), (c) and (g) of the Act, 1961. According to the plaintiffs, the suit house was originally held by their grandfather Ramlal Gupta, who expired on 28/08/1969. The further contention of the plaintiffs was that the said Ramlal Gupta had executed a will deed on 11/12/1964 in their favour and based upon which, their names are recorded in Nazul record as per the order dated 28/12/1970 passed by the Assistant Superintendent of Land Records, Raigarh in Revenue Case No. 50/A-6/69-70. The plaintiffs have thus become the owner of the suit house. The plaintiffs have pleaded very specifically in their plaint that the suit house was given by their grandfather Ramlal Gupta to the defendant on monthly rent of Rs. 10/-. The said fact was not denied by the defendant specifically in his written statement. Instead, what was pleaded by him that he

was put in occupation of the suit house by the plaintiffs' father Moolchand Gupta at monthly rent of Rs. 10/-, therefore, the plaintiffs are not the owner of the suit property.

9. The lower appellate Court after considering the evidence of the parties, have come to the conclusion that the suit house was originally held by Ramlal Gupta and by virtue of will dated 11.12.1964, executed by him, the plaintiffs have become the owner of the suit house. Since the specific averment made in the plaint that the suit house was given by plaintiffs' grandfather to the defendant was not denied specifically by the defendant in his written statement, therefore, the lower appellate Court after considering the evidence of the parties has come to the conclusion that Ramlal Gupta was not only the owner of the suit house but was also the landlord and after his death, the plaintiffs have become the owner of the suit house. In such circumstances, the defendant who has not only denied the land lordship of the plaintiffs' grandfather Ramlal Gupta but has denied the derivative title of the plaintiffs. Therefore, under, such circumstances, the defendant is liable to be evicted from the suit house as per provisions prescribed under Section 12(1)(c) of the Act, 1961. The finding so recorded by the lower appellate Court in this regard is based on due and proper appreciation of the evidence led by the parties. Accordingly, the same deserves to be and is hereby affirmed.

10. In view of the foregoing discussions, I do not find any question of law, much less the substantial question of law which arise for determination in this appeal. Consequently, the appeal being devoid of merit is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge