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HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 631 of 2016**

1. Bardi Bai Urf Bareti Bai W/o Late Mr. Radheshyam Sharma, Aged About 55 Years R/o Purohit Gali, Shankar Ward, Bhatapara, Tehsil Bhatapara, District Baloda Bazar-Bhatapara, Chhattisgarh
2. Damodar Sharma S/o Late Mr. Radheshyam Sharma, Aged About 31 Years R/o Purohit Gali, Shankar Ward, Bhatapara, Tehsil Bhatapara, District Baloda Bazar-Bhatapara, Chhattisgarh
3. Mukesh Sharma S/o Late Mr. Radheshyam Sharma, Aged About 30 Years R/o Purohit Gali, Shankar Ward, Bhatapara, Tehsil Bhatapara, District Baloda Bazar-Bhatapara, Chhattisgarh(Defendants)

---- Appellants**Versus**

1. Santosh Kumar Jain S/o Jasraj Kotadiya, Aged About 40 Years R/o Shankar Ward, Bhatapara, Tehsil- Bhatapara, District Baloda Bazar, Chhattisgarh
2. Chandrakant Jain S/o Jasraj Kotadiya, Aged About 47 Years R/o Shankar Ward, Bhatapara, Tehsil- Bhatapara, District Baloda Bazar, Chhattisgarh(Plaintiffs)

---- Respondents

For Appellants	:	Shri Achyut Tiwari, Advocate.
For Respondents	:	Shri Aditya Bharadwaj, Advocate

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****20/04/2017**

1. Heard on admission.
2. This is the defendants' second appeal while invoking the powers enumerated under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code of 1908' in short) against the judgment and decree dated 14.10.2016 passed by the Additional District Judge, Bhatapara in Civil Appeal No.H-11A/2015, by which the appellate Court, while affirming the judgment dated

08.07.2015 and decree dated 13.07.2015 passed by the trial Court in Civil Suit No.58-A/14, has dismissed the appeal.

3. The undisputed facts of the case are that the plaintiffs have instituted a suit for eviction on the grounds enumerated under Section 12(1)(a), (c), (e), (g) and (h) of the Chhattisgarh Accommodation Control Act, 1961 (for brevity 'the Act of 1961'). It is pleaded in the plaint that on 01.01.2007 they purchased the suit house from one Smt. Kamla Devi and have thus become the owner of the suit house where the defendants are in occupation at a monthly rent of Rs.750/-. It is pleaded further that they required the suit house bona fide for their residence and for the said purpose sufficient and reasonable accommodation is not available in the concerned city. It is also put forth that the condition of the suit house is in dilapidated condition, and therefore, the suit house required to be repaired, which cannot be carried out without the same being vacated by the defendants. It is pleaded further that despite the issuance of demand-cum-quit notice on 25.08.2007, the defendants have failed to vacate the suit house, therefore, the plaintiffs have been constrained in filing the suit in the instant nature for eviction on the grounds enumerated under Section 12(1) of the Act of 1961.

4. The defendants have contested the aforesaid claim by submitting, inter alia, that though they are the tenants of the plaintiffs, but, they are not occupying the same at a monthly rent of Rs.750/-. It is contested further on the ground that the rate of rent of the suit premises is Rs.400/- per month and denied that the suit house is required by the plaintiffs bona fide as they wanted to get the vacant possession of the suit house forcefully and illegally. They pleaded further that none of the grounds are available to the plaintiffs to get their eviction from the suit house.

5. The trial Court, after considering the entire evidence led by both the

parties, has come to the conclusion that the plaintiffs require the suit house bonafidely for their residence which is occupied by the defendants at monthly rent of Rs.750/-. It held further that reasonable and suitable accommodation for the alleged need is not available to the plaintiffs in the town concerned. The trial Court held further that a sum of Rs.21,000/- is due against the defendants and since the suit house is more than 100 years old, therefore, its condition is dilapidated. The plaintiffs, thus, require the same for its reconstruction and the same could not be done without the same being vacated by the defendants. Consequently, the trial Court decreed the plaintiff's claim.

6. The aforesaid findings of the trial Court have been affirmed further by the lower appellate Court in an appeal preferred by the defendants under Section 96 of the Code of 1908.

7. Shri Achyut Tiwari, counsel for the appellants/defendants submits that the judgment and decree, as passed by both the Courts below, are not at all sustainable as sufficient accommodations are available to the plaintiffs, as evidenced by the statement of Chandra Kant Jain (P.W.1) and para 29 of his statement would reveal very specifically that sufficient and reasonable accommodations are available for the plaintiffs, and therefore, without considering the same, the Courts below have erred in granting the decree of eviction in favour of the plaintiffs.

8. I have heard learned counsel for the appellants and perused the entire records carefully.

9. Undisputedly, the plaintiffs have purchased the suit property on 01.01.2007 from one Smt. Kamla Devi. It is also not in dispute that the defendants are occupying the suit house as tenants. What is disputed apart from the grounds mentioned in the plaint, is with regard to the rate of rent. According to the defendants, they are occupying the suit house at a monthly rent

of Rs.400/-. Be that as it may, the defendants are undisputedly the tenants of the plaintiffs. The trial Court as well as the lower appellate Court, while due and proper appreciation of the statements of the parties, have come to the conclusion that the suit house is required bona fide by the plaintiffs and for the alleged need, suitable and reasonable accommodations are not available in the concerned city. This is the pure findings of fact based upon proper appreciation of the evidence of the parties and, therefore, cannot be held to be a perverse one. It is evident further from perusal of the record that neither the statements of the parties were misinterpreted nor any of the documentary evidence was misread while arriving at such a conclusion. Consequently, I do not find any infirmity in the findings so recorded by the Courts below. It, therefore, deserves to be and are hereby affirmed.

10. In view of foregoing discussions, I do not find any question of law, much less, the substantial questions of law involved in this appeal. Accordingly, this appeal, being devoid of merit, is liable to be and is hereby dismissed at the admission stage itself. At this stage, Shri Tiwari submits that some reasonable time may kindly be granted for vacating the suit house.

11. On due consideration of his submission, one month's time is hereby granted to the defendants to vacate the suit house subject to furnishing proper undertaking/affidavit in this regard before the Executing Court.

12. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge