

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.374 of 2009**

Salma Begam, wife of Moijuddin, aged about 50 years, R/o. Sadar, North Ward, behind the Mosque, Dhamtari, District Dhamtari (CG)

---- Appellant/Defendant

Versus

1. Saiyed Zafar Ali, Son of Mustaque Ali, aged about 62 years,
2. Saiyed Akhlas Ali, Son of Mustaque Ali, aged about 43 years,
3. Saiyed Majhhar Ali, Son of Mustaque Ali, aged about 55 years,
4. Saiyed Asfaq Ali, Son of Mustaque Ali, aged about 38 years,
5. Saiyed Ishaque Ali, Son of Mustaque Ali, aged about 35 years,
6. Hafizunnisa wife of Mustaque Ali, aged about 80 years,

All are r/o. Amapara, Dhamtari, District Dhamtari (CG)

---- Respondents/Plaintiffs

For Appellant	:	Mr.V.K.Sharma, Advocate
For Respondents	:	Mr.Shobhit Koshta, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

01/12/2018

1. The substantial question of law involved, formulated and to be answered by this Court in this defendant's second appeal is as under:-

“Whether the Courts below were not justified in holding that the present appellant is tenant ?”

2. The imperative facts required for determination of above-stated substantial question of law are as under:-

[For the sake of convenience, the parties would be referred

hereinafter as per their status shown in the suit before the trial Court]

(2.1) The plaintiff brought in action for eviction of the defendant based on the ground under Section 12 (1) (a), (b) and (e) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as “the Act of 1961”) stating inter-alia that the defendant has not properly paid rent to the plaintiff and has also sublet the suit accommodation to sub-tenant without consent of the plaintiff. The suit accommodation is required bona fide for his residential purpose. It was further pleaded that the defendant is his tenant, which was let out by the plaintiff's father to the defendant's father for a monthly tenancy of ₹ 10/-, which was latter on increased to ₹ 75/- per month, as such, the defendant is liable to be evicted.

(2.2) The defendant filed his written statement controverted the plaint allegation stating inter-alia that he is title-holder of the suit accommodation and sale deed executed by the defendant's father in favour of the plaintiff's father was only a nominal sale, therefore, he is not entitled for eviction.

(2.3) The trial Court decreed the suit finding that the defendant is tenant of the plaintiff and the plaintiff has a ground under Section 12 (1) (a), (b) and (e) of the Act of 1961 thereof, the suit accommodation is required bona fide by the plaintiff as the plaintiff has no other reasonable alternative suitable accommodation for bona fide need in his possession in the township of Dhamtari.

(2.4) On appeal being preferred by the defendant, the First Appellate

Court substantially agreed with the finding of the trial Court and dismissed the appeal.

(2.5) Being aggrieved and dissatisfied with the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant, in which substantial question of law has been framed by this Court, which has been set-out in opening paragraph of this judgment.

3. Mr.V.K.Sharma, learned counsel for the appellant/defendant, would submit that both the Courts below are concurrently unjustified in holding the defendant to be tenant of the plaintiff as the defendant is owner of the suit accommodation, which has been admitted by Saiyyad Jafar Ali (PW-1) in his statement and he has filed the document showing the grant of lease (Ex.D/13) in his favour, as such, the appeal deserves to be allowed and the suit is liable to be dismissed.

4. Mr.Shobhit Koshta, learned counsel for the respondents/plaintiff, would submit that concurrent finding recorded by two Courts below is the finding of fact based on evidence available on record that the defendant is tenant of the plaintiff, as such, no exception can be taken to the concurrent finding recorded by two Courts below holding the defendant to be tenant of the plaintiff, therefore, the second appeal deserves to be dismissed.

5 I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

6. The question for consideration is whether both the Courts below are unjustified in holding that the defendant is tenant of the plaintiff ?

7. The plaintiff in his plaint pleaded that the suit accommodation was purchased by his father from the defendant's father on 19.10.57 (Ex.P/2) and his father came into possession and since the defendant's father has no accommodation for his residence, it was let out to him on a monthly tenancy of ₹ 10/-, which was latter on increased to ₹ 75/- per month. The fact so pleaded by the plaintiff in his plaint was not specifically denied by the defendant in his written statement except stating that sale deed dated 19.10.57 (Ex.P/2) executed by his father was a nominal sale. No counter-claim was filed for declaring Ex.P/2 by which the plaintiff's father purchased the suit accommodation from the defendant's father as nominal sale deed, it has been duly placed on record and has been proved by the plaintiff. The plaintiff's father purchased the suit accommodation from the defendant's father and became owner thereof. Not only this, the suit house was attached in execution of money decree in which the defendant's father stood as guarantor, the plaintiff's father appeared in that proceeding in MJC No.7 of 1962 (Ex.P/3) and the Executing Court held that the suit house is owned by the plaintiff's father and the plaintiff's father has made statement vide Ex.P/4 dated 24.9.64 before the said Court. Not only this, vide Ex.P/8, which is a copy of municipal tax record, the plaintiff's name has been recorded as landlord and tenant name has been recorded as Muniruddin who is defendant's father. Similar is the position in Exs.P/9 and Ex.P/10. Even on the basis of oral evidence available on record, it is

apparent that the suit house was let out by the plaintiff's father to the defendant's father after purchase of the suit house vide Ex.P/2. No document of lease having been granted in favour of the defendant has either been produced before the trial Court or before the First Appellate Court in the shape of Order 41 Rule 27 of the CPC. Both the Courts below have concurrently held that the defendant is tenant of the plaintiff and granted decree in favour of the plaintiff, which is based on evidence available on record. I do not find any illegality or perversity in the said finding. The substantial question of law is answered in favour of the plaintiff and against the defendant.

8. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

9. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-