

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 867 of 1998**

Sardar Harvansh Singh, son of Karam Singh (dead) by LRs:-

1. Smt. Satwant Kaur, Kathoor, wife of Late Harvansh Singh, aged about 40 years, Occupation – Household.
2. Surendra Singh Kathoor, son of Late Harvansh Singh, aged about 24 years, Occupation -Nil
3. Surendra Pal Singh Kathoor, son of Late Harvansh Singh, aged about 22 years, Occupation -Nil.
4. Arjun Singh Kathoor, son of Late Harvansh Singh, aged about 21 years, Occupation – Nil

All r/o village Ramanujganj Road, Boripara, (Mahaveer Ward), Near Hanuman Mandir, Ambikapur, P.S. & Tah. Ambikapur, Distt. Sarguja (C.G.)

---- Appellants/defendants.

Versus

Om Prakash Agrawal (died)

- 1(a) Sushil Kumar, S/o Om Prakash, aged about 48 years, R/o Near Jaystambh, Bindu Saree Centre, Ambikapur (C.G.)
- 1(b) Brijmohan Agrawal, S/o Om Prakash Agrawal, aged about 55 years, R/o Near Jaystambh, Bindu Saree Centre, Ambikapur (C.G.)
- 1(c) Bajrang Agrawal, S/o Om Prakash Agrawal, aged about 53 years, R/o Near Jaystambh, Bindu Saree Centre, Ambikapur (C.G.)

---- Respondent/plaintiff.

For Appellants	:	Mrs. Anju Ahuja, Advocate.
For Respondents	:	Mr. Pramod Verma, Senior Advocate with Mr. A.K. Yadav, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/10/2018

(1) The substantial question of law involved, formulated and to be answered in this defendants' second appeal is as under:

“Whether both the Courts below were justified in holding that the respondent was landlord of the suit premises and entitled to file suit for eviction ?”

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court).

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) Original plaintiff – Om Prakash Agrawal filed a suit for eviction of the defendants from the suit accommodation on the ground of arrears of rent and inconsistent user stating inter alia that in capacity of Manager of the suit accommodation, he let out the same to original defendant Harvansh Singh on a monthly rent of Rs.65/- and agreement was executed to that effect on 1.12.1976 vide Ex.P-4 and since the defendant stopped paying monthly rent with effect from 1.1.1981, the tenancy was terminated vide Ex. P-1 with effect from 30.06.1982 and civil suit was instituted for arrears of rent and eviction against the defendant.

(2.2) Defendant filed written statement before the trial Court and opposed the averments made in the plaint stating inter alia that there is no relationship of landlord and tenant between the parties; plaintiff has never entered into agreement with the defendant with regard to suit accommodation; and the defendant has perfected his title over the suit accommodation by way of adverse possession.

(3) The trial Court, after appreciating the oral and documentary evidence available on record, came to the conclusion that relationship of landlord and tenant between the parties is established and the defendant is liable to be evicted from the suit

accommodation and decreed the plaintiff's suit. First appeal preferred there-against was also dismissed vide judgment and decree impugned. Questioning that judgment and decree passed by the first appellate Court, this second appeal has been preferred in which the substantial question of law formulated for consideration and which has been set out in the opening paragraph of the judgment. .

(4) Learned counsel appearing for the appellants/defendants would submit that relationship of landlord and tenant between the parties is not at all established and even the plaintiff himself has not proved the existence of agreement (Ex.P-4) to be executed between the parties and, therefore, both the courts below were unjustified in decreeing the suit in plaintiff's favour and since the entire rent has already been deposited, the defendants are not liable to be evicted and substantial question of law be answered in favour of defendant.

(5) Per Contra, learned Senior Counsel appearing for the respondents/plaintiffs would submit that both the courts below have concurrently recorded a finding that the defendants are the tenant of the plaintiff and agreement to this effect was executed on 1.12.1976 vide Ex.P-4 and the said agreement (Ex.P-4) has been proved by the plaintiff by examining himself as PW -1 as well as attesting witness to the document Ex.P-4 i.e. Ramniwas (PW-3), as such, the concurrent findings recorded by both the courts below are well reasoned findings based on evidence available on record, which do not call for any interference in the instant second appeal and accordingly the substantial question of law may be answered in favour of the plaintiff and against the defendants.

(6) I have heard learned counsel appearing for the parties and perused the record of both the courts below including judgment and decree impugned with utmost

circumspection.

(7) It is the case of the plaintiff that the plaintiff in the capacity of Manager let out the suit accommodation to the defendants vide Ex.P-4; and in order to prove the lease agreement (Ex.P-4) dated 1.12.1976, the plaintiff examined himself as PW-1 as well as one attesting witness to the lease agreement i.e. Ramniwas (PW-3).

(8) After appreciating the oral and documentary evidence available on record, the trial Court has recorded a finding that the plaintiff in the capacity of Manager of the suit accommodation, let out the same to the defendants on a monthly rent of Rs.65/- and the agreement was executed to that effect on 1.12.1976 vide Ex.P-4 and since the defendant has stopped making payment of rent with effect from 1.1.1981, which the plaintiff is entitled, tenancy was terminated vide Ex. P-1 with effect from 30.06.1982. On appeal being preferred by the defendant, the First Appellate Court has affirmed the said finding holding that the fact of relationship of landlord & tenant between the parties recorded by the trial Court is a well reasoned finding based on evidence available on record.

(9) The execution of agreement to let out the suit accommodation to defendants (Ex.P-4) has duly established between the plaintiff and defendant. The plaintiff also served legal notice (Ex.P-1) for vacating the suit accommodation to defendants, as such, relationship of landlord and tenant is duly established between the parties.

(10) The concurrent findings recorded by both the courts below holding that relationship of landlord and tenant between the parties is established is a finding of fact based on material available on record; and further recorded a finding that plaintiff has let out the suit accommodation to the defendant vide Ex.P-4 and the legal notice

(Ex.P-1) was also served to the defendants for vacating the suit accommodation, as such, finding recorded by both the courts below with regard to relationship is pure and simple finding based on material available on record and I do not find it either perverse or contrary to the record. It is held that relationship of landlord and tenant between the parties is fully established.

(11) The next plea raised by the petitioners/defendant is that entire rent has already been deposited, therefore, decree for eviction is liable to be set aside.

(12) Be that as it may, since no substantial question of law has been framed with regard to arrears of rent, this Court is not inclined to entertain the arguments, for which the substantial question of law has not been framed.

(13) Accordingly, the substantial question of law is answered against the defendants and in favour of the plaintiff and consequently, the second appeal is dismissed affirming the decree passed by the first appellate court leaving the parties to bear their own cost (s).

(14) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

