

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SECOND APPEAL No. 114 of 2004**

1. Kumari Shashi Bala Devid, aged about 39 years, D/o David Denial, R/o Mohalla Para, Tarbahar Naka Ke Pass, Near PGBT College, Bilaspur, Tahsil and District Bilaspur (C.G.)
2. Vijay Kumar Devid, aged about 36 years, S/o David Denial, R/o Mohalla Para, Tarbahar Naka Ke Pass, Near PGBT College, Bilaspur, Tahsil and District Bilaspur (C.G.)
3. Ajay Kumar Devid, aged about 33 years, S/o Devid Denial, R/o Mohalla Para, Tarbahar Naka Ke Pass, Near PGBT College, Bilaspur, Tahsil and District Bilaspur (C.G.)
4. Kumari Kiran Bala, aged about 29 years, D/o Devid Denial, R/o Mohalla Para, Tarbahar Naka Ke Pass, Near PGBT College, Bilaspur, Tahsil and District Bilaspur (C.G.)
5. Kumari Anjana Bala, aged about 30 years, D/o Devid Denial, R/o Mohalla Para, Tarbahar Naka Ke Pass, Near PGBT College, Bilaspur, Tahsil and District Bilaspur (C.G.)

---- Appellants/ Defendants

Versus

1. Taher Bhai (deceased) through LRs -
 - (I) Sakir Vanak, aged about 50 years, S/o Late Taher Bhai, R/o Mohalla Khaparganj, Bohra Line, Bilaspur, Tahsil and District Bilaspur (C.G.)
 - (ii) Kalimuddin, aged about 45 years, S/o Late Taher Bhai, R/o Mohalla Khaparganj, Bohra Line, Bilaspur, Tahsil and District Bilaspur (C.G.)

---- Respondents/Defendants

For Petitioners	:	Mr. Ahmed Hussain, Advocate.
For Respondents 1,2,3	:	None.
For Respondent No.4/State:	:	Mr. Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****28/11/18**

1. This is defendants'/tenants' second appeal under Section 100 of CPC questioning the judgment and decree of the First Appellate Court whereby the said Court allowed the appeal of plaintiff and decreed the suit for eviction in favour of the plaintiffs under Section 12(1)(e) and 12(1)(c) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter referred to as the 'Act of 1961') setting aside the judgment and decree of the trial Court dismissing the suit.

2. Learned counsel appearing for the appellants/defendants would submit that the learned lower appellate Court has wrongly appreciated the evidence and without any proof that defendants are the tenants of the plaintiff decreed the suit and as such, the finding recorded by the lower appellate Court is perverse and contrary to law and it involves substantial questions of law for determination.

3. I have heard learned counsel for the appellants on question of admission considered his submissions and went through the records with utmost circumspection.

4. The plaintiff filed a suit for eviction on the ground under Section 12(1)(e) and 12(1)(c) of the Act of 1961 which came to be dismissed by the trial Court holding that the relationship of landlord and tenant between the plaintiff and defendants has not been established. However, the said finding was reversed by the First Appellate Court holding that earlier in Civil Suit No. 30-A/91 (Ex. P/23) dated 24.09.1998 (Kumari Shashi Bala Devid and others v. Tahir Bhai and others), the defendants are held to be tenants of plaintiff and the said finding was affirmed by the Madhya Pradesh High Court in First Appeal No. 526/1998 decided on 30.06.2000 and SLP taken against that order was also dismissed vide Ex.P/25 therefore, the defendants are the tenants of the plaintiff and the ground under Section 12(1)(e) and 12(1)(c) of the Act of 1961 is made out for eviction of defendants from suit accommodation as the suit accommodation is bonafide required by the plaintiff for residential purpose and he has no other

reasonably suitable accommodation in township of Takhatpur.

5. The First Appellate Court has clearly recorded a finding that on the basis of the finding recorded by the trial Court as affirmed by the High Court and SLP was dismissed by the Supreme Court between the same parties in the earlier suit which has the effect of *resjudicata* in this suit between the parties and defendants are tenants of the plaintiff that cannot be over-turned by the trial Court. The first appellate Court has rightly reversed that finding and held that defendants are the tenants of the plaintiff and further held that bonafide need under Section 12(1)(e) of the Act of 1961 for the residential purpose is made out and since the defendants have denied the title of the plaintiff, ground under 12(1)(c) of the Act of 1961 is also made out. As such, the finding recorded by the First Appellate Court relying upon Ex. P/25 & P/26 that defendants are the tenants of the plaintiff and the grounds under Section 12(1)(e) and 12(1)(c) of the Act of 1961 are made out is purely a finding of fact which is based on material available on record which is neither perverse nor contrary to record. I do not find any illegality or perversity much less for determination of substantial question of law in this second appeal, which deserves to be dismissed.

6. It is stated at the bar that the suit premises has already been vacated and respondent/ plaintiff is in possession of suit land that has been recorded by the Court on 14.05.2004. The same is again placed on record.

7. Accordingly, the second appeal deserves to be and is hereby dismissed with no order as to cost(s).

SD/-
(Sanjay K. Agrawal)
Judge