

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.135 of 2004

Rajesh Kumar Agrawal, S/o Dhannaram Agrawal, aged 36 years,
caste Agrawal, Occupation Business, R/o Jaistambh Chowk, Police
Station and Tahsil Ambikapur, District Surguja (C.G.)

(Defendant)
---- Appellant

Versus

1. Smt. Savita Mukharjee, widow of late Shrinath Mukharjee, aged 62 years, Occupation Housewife.
2. Shri Hariram Mukharjee, S/o late Shrinath Mukharjee, aged 45 years, Occupation Service.
3. Shri Gangadhar Mukharjee, S/o late Shrinath Mukharjee, aged 43 years, Occupation Service.
4. Shri Neelkanth Mukharjee, S/o late Shrinath Mukharjee, aged 41 years, Occupation Service.
5. Shri Harish Chandra Mukharjee, S/o late Shrinath Mukharjee, aged 35 years.

All above respondents/Plaintiffs R/o Mohalla Babuapara, Police
Station/Tahsil Ambikapur, District Surguja (C.G.)

(Plaintiffs)
---- Respondents

For Appellant: Mr. Ashish Shrivastava & Mr. Anurag Verma, Advocates.
For Respondents: Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

19/09/2018

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

(1) Whether the reversing findings in regard to the non-existence of relationship of landlord and tenant between the plaintiffs and the defendant is perverse?

(2) Whether the reversing finding in relation to the non-availability of reasonably suitable non-residential

accommodation of the plaintiffs in their occupation in the city or town concerned is perverse being based on no reasonable evidence on record?

(3) Whether the plaintiffs' suit on the ground of bonafide requirement was not maintainable in view of the bar created under section 45 of the M.P. (Chhattisgarh) Accommodation Control Act 1961?

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

2. The plaintiffs/landlords filed a suit for eviction and arrears of rent based on the grounds enumerated under Section 12(1)(a) & 12(1)(f) of the Chhattisgarh Accommodation Control Act, 1961 (for short, 'the Act of 1961') stating inter alia that they are the landlords of the suit house and the suit house is owned by them after death of Late Shri Shrinath Mukherjee. It was further pleaded that the suit accommodation was let out to Shri Jageram Agrawal for non-residential purpose on a monthly tenancy of ₹ 1,000/- and after death of Shri Shrinath Mukherjee, the plaintiffs continuously obtained rent from tenant Shri Jageram Agrawal and after death of Shri Jageram Agrawal, the plaintiffs could not get information of his death, but rent was being paid to them on behalf of Late Shri Jageram Agrawal by the defendant though he is not the legal heir of Late Shri Jageram Agrawal. It was also pleaded that plaintiff No.1, after death of her husband, has no means of livelihood and she wanted to start a business in the suit premises and she has no other reasonable alternative suitable accommodation in the township of Ambikapur and the suit house is required bona fide by her for starting the business which is a ground under Section 12(1)(f) of the Act of 1961 and since the defendant has not paid rent from July, 1999, she is also entitled for arrears of rent / damages to the

extent of ₹ 11,000/- and eviction under Section 12(1)(a) of the Act of 1961.

3. The defendant filed his written statement and admitted the ownership and landlord-ship of the plaintiffs, but denied the other plaintiff allegations stating inter alia that plaintiffs No.2 to 5, sons of plaintiff No.1, are already in Government job earning sufficient amount as such, there is no need to start new business at the old age of plaintiff No.1 and the family of the plaintiffs have other alternative accommodations at Jaistambh Chowk, Ambikapur and are getting huge rent and therefore accommodation is not required bona fide for non-residential purpose by plaintiff No.1 and she is not entitled to evict the defendant from the suit premises.
4. The trial Court struck as many as nine issues and partly decreed the suit to the extent of arrears of rent by recording a finding that the defendant is the tenant of the plaintiffs, but further held that the original tenant was Shri Jageram Agrawal as well as Shri Dhannaram Agrawal and negated the ground of bona fide need as enumerated under Section 12(1)(f) of the Act of 1961 on the ground that plaintiff No.1 is getting pension after death of her husband, her sons are in service and she has not obtained any loan from the Bank and the need claimed is not bona fide.
5. Feeling aggrieved against the judgment & decree of the trial Court, the plaintiffs preferred first appeal before the first appellate Court questioning the judgment & decree of the trial Court and claiming that they are also entitled for decree on the ground of bona fide need under Section 12(1)(f) of the Act of 1961, whereas the defendant preferred first appeal under Section 96 of the Code of

Civil Procedure, 1908 questioning the arrears of rent granted under Section 12(1)(a) of the Act of 1961. The first appellate Court by its impugned judgment dismissed the appeal of the defendant finding no merit, whereas allowed the appeal filed by the plaintiffs granting decree of eviction on the ground of Section 12(1)(f) of the Act of 1961, but did not grant any arrears of rent to the plaintiffs.

6. Feeling aggrieved against the judgment & decree passed by the first appellate Court granting decree on the ground of Section 12(1)(f) of the Act of 1961, this second appeal under Section 100 of the CPC has been preferred in which substantial questions of law have already been framed and set-out in the opening paragraph of the judgment.
7. Mr. Ashish Shrivastava, learned counsel appearing for the appellant / defendant, would submit that the first appellate Court is absolutely unjustified in granting decree under Section 12(1)(f) of the Act of 1961 ignoring the fact that plaintiff No.1 does not require the suit accommodation bona fide, as plaintiff No.1 is a woman aged about 70 years, she has no experience of any kind of business, her sons – plaintiffs No.2 to 5 are well-off and she is already getting pension as such, the need, in view of the aforesaid facts, cannot be said to be bona fide and the finding recorded by the first appellate Court upholding the bona fide need deserves to be set aside. He would further submit that the plaintiffs' suit is not maintainable in view of the bar created under Section 45 of the Act of 1961, as such, the impugned judgment be set aside and the suit be dismissed restoring the decree of the trial Court except the arrears of rent. Mr. Shrivastava relied upon decisions in the matter of

Deena Nath v. Pooran Lal¹, Raj Kumar Jain v. Smt. Usha Mukhariya², Ghasi Nayak v. Gyanchandra Jain³ and Girdhari Lal v. Shyam Sunder Bhatia⁴ to buttress his submissions.

8. Mr. Manoj Paranjpe, learned counsel appearing for the respondents / plaintiffs, would submit that merely because plaintiff No.1 is an aged woman having no experience of business and her sons are earning sufficiently, it cannot be made a ground to non-suit the plaintiffs, as plaintiff No.1 being a woman, though having no experience, yet, is entitled to start her own business and she has no other alternative suitable vacant accommodation in the township of Ambikapur in her possession for starting the said business and she is the best judge to select the accommodation for her need which cannot be dictated by the defendant as to which accommodation is suitable for her own use. He would further submit that though the relationship of landlord and tenant was found established by the trial Court and was not questioned either by the plaintiffs or by the defendant, yet the first appellate Court recorded the finding on the relationship. He would also submit that the question of bar under Section 45 of the Act of 1961 stands determined authoritatively by the Full Bench of the M.P. High Court in the matter of Ashok Kumar Shiv Prasad Verma v. Baboolal s/o Gorelal and another⁵. He finally submits that landlord has been given choice to select remedy to invoke either at civil court or at the special tribunal in shape of Rent Controlling Authority to move for eviction as such, that question also requires to be decided

1 (2001) 5 SCC 705

2 2009(1) MPLJ 343

3 2010(3) MPLJ 203

4 2014(2) CGLJ 290

5 1998(1) M.P.L.J. 461

in favour of the plaintiffs as such, the second appeal deserves to be dismissed.

9. I have heard learned counsel for the parties and considered their rival submissions and went through the record with utmost circumspection.
10. Since substantial question of law No.3 relates to maintainability of suit, it is being considered at the outset.

Answer to substantial question of law No.3: -

11. The question whether the plaintiffs' suit on the ground of bona fide requirement was not maintainable in view of the bar created under Section 45 of the Act of 1961 came to be considered by the Full Bench of the M.P. High Court in Ashok Kumar Shiv Prasad Verma (supra) in which the Full Bench has unanimously held that it is the choice of landlord defined under Section 23-J of the Act of 1961 whether he wants to avail a special forum created under Chapter III-A of the Act of 1961; if he is ready and willing to avail the benefit of Chapter III-A of the Act of 1961, then he can file an application for eviction of tenant before the Rent Controlling Authority on the ground of bona fide requirement or on any other grounds mentioned in Section 12 of the Act of 1961. Similarly, it will be open for the landlords defined in Section 23-J to maintain a suit before the civil court on the ground of reasonable bona fide requirement under Section 12(1)(f) of the Act of 1961. The forum is for the benefit of the landlords defined under Section 23-J and that does not exclude the jurisdiction of the Civil Court, if the landlords so choose. It is the choice of the landlord and it cannot be restricted that he can only avail the remedy for eviction on the

ground of reasonable bona fide requirement before that forum alone. It was held as under: -

“8. If the landlords defined in section 23-J, want to avail the benefit of Chapter III-A then they can maintain a suit for eviction of a tenant before the Rent Controlling Authority on the ground of bona fide requirement and in case, they do not want to avail the special forum created under the Chapter III-A and want to invoke the ordinary Civil Court remedy then that forum will be available to them and their suit will not be dismissed on the ground that they should invoke the remedy provided under Chapter III-A. It will be open for the landlords to file a civil suit before the Civil Court on the basis of the bona fide requirement or on any other grounds mentioned in section 12 of the Act. Similarly, it will be open for the landlords defined in section 23-J to maintain a suit before the Rent Controlling Authority on the ground of reasonable bona fide requirement. The forum is for the benefit of the landlords defined under section 23-J and that does not exclude the jurisdiction of the Civil Court, if the landlords so choose. It is the choice of the landlord and it cannot be restricted that he can only avail the remedy for eviction on the ground of reasonable bona fide requirement before that forum alone. ”

12. In view of the above, it cannot be held that the jurisdiction of the civil court is barred under Section 45 of the Act of 1961 by plaintiff No.1 who is also a landlady covered under Section 23-J of the Act of 1961, as the choice of plaintiff No.1 to invoke the remedy to file civil suit is to be respected by holding the suit to be maintainable. Substantial question of law No.3 is answered accordingly.

Answer to substantial question of law No.1: -

13. The trial Court returned a finding while deciding issue No.3 that the defendant is the tenant of the plaintiffs. The said finding was neither questioned by the defendant in appeal filed by the defendant nor it was questioned in the appeal filed by the plaintiffs, as stated at the Bar, yet, the first appellate Court has recorded a finding of non-existence of relationship of landlord and tenant

between the plaintiffs and the defendant. In that view of the matter, the first appellate Court has unnecessarily adjudicated the said issue, which was wholly uncalled for, as the finding of landlord and tenant relationship between the parties is found established by the trial Court and none of the parties is aggrieved against it. Therefore, the said substantial question of law is answered accordingly.

Answer to substantial question of law No.2: -

14. The question is, whether the first appellate Court is justified in holding that plaintiff No.1 requires the suit accommodation bona fide and she has no other alternative reasonable non-residential accommodation in her occupation in the city of Ambikapur?
15. In order to answer the plea, it would be appropriate to refer to the plaint averments. In paragraph 10 of the plaint, the plaintiffs have averred that plaintiff No.1 has no source of income; she is willing to start her own business in the suit accommodation; she can also get loan from bank; and in the township of Ambikapur, she has no other reasonable suitable vacant accommodation in her possession. In the written statement so filed by the defendant, in para 10, the only averment made by the defendant is that plaintiff No.1 is aged about 70 years, she is an aged woman; her sons – plaintiffs No.2 to 5 are already in service and highly placed; she has number of landed properties; and the family of plaintiff No.1 has many number of properties at Jaistambh Chowk, as such, the suit accommodation is not required bona fide by plaintiff No.1 and therefore the plaintiffs are not entitled to get the decree of eviction in their favour.
16. The trial Court after considering the evidence on record simply held

that since plaintiff No.1 is getting pension after death of her husband, her sons are in service, she has not obtained bank loan till this date and the plaintiffs have eight shops in Sadar Road and they had already let-out five other shops, therefore, she has no bona fide requirement of the suit accommodation for non-residential purpose and same is not established. The said finding on being challenged before the first appellate Court was reversed by the first appellate Court holding that it is for plaintiff No.1 to select the accommodation which is suitable for her business and it cannot be dictated by the defendant, and granted decree in favour of the plaintiffs finding that plaintiff No.1 has no other alternative reasonable suitable vacant accommodation in the township of Ambikapur.

17. It is the settled law that it is for the landlord to carry on his business and tenant cannot dictate which is the best place suitable for his business. The Supreme Court in the matter of Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta⁶ has analysed the concept of bona fide requirement and held that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself – whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide.

6 (1999) 6 SCC 222

18. In the matter of Ragavendra Kumar v. Firm Prem Machinery & Co.⁷, the Supreme Court has held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter.
19. In the matter of Prativa Devi v. T.V. Krishnan⁸, it was held by the Supreme Court that the landlord is the best judge of his requirement and courts have no concern to dictate the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not be normally interfered with.
20. The Supreme Court in the matter of Anil Bajaj and another v. Vinod Ahuja⁹ repelling the argument with regard to availability of reasonably alternative remedy Their Lordships held that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilised by him for the purpose of his business. It was observed as under: -

“6. ... What the tenant contends is that the landlord has several other shop houses from which he is carrying on different businesses and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilised by him for the purpose of his business. ...”

21. Similarly, in the matter of Faruk Ilahi Tamboli and another v. B.S. Shankarrao Kokate (dead) By Legal Representatives and others¹⁰ the Supreme Court has considered its earlier decision in

7 (2000) 1 SCC 679

8 (1996) 5 SCC 353

9 (2014) 15 SCC 610

10 (2016) 15 SCC 431

the matter of Mattulal v. Radhe Lal¹¹ and declined to interfere with the finding of fact regarding bona fide need.

22. Likewise, in the matter of Raghunath G. Panhale (dead) by LRs. v. Chaganlal Sundarji and Co.¹², the Supreme Court repelling the plea of no experience relying upon the decisions rendered in the matter of Bega Begum v. Abdul Ahad Khan¹³ and Mattulal (supra) held that it is difficult to imagine how the respondent could be expected to make preparations for starting the new business without there being any reasonable prospect of getting possession of the suit premises, finally observed as under: -

“8. This Court took judicial notice of long delays in courts and observed: (SCC pp. 374 & 375, para 13)

"It is a common but unfortunate failing of our judicial system that a litigation takes an inordinately long time in reaching a final conclusion and then also it is uncertain as to how it will end and with what result"

and that, therefore,

"it would be too much to expect from him (landlord) that he should make preparations for starting the new business. Indeed, from a commercial and practical point of view, it would be foolish on his part to make arrangements for investment of capital, obtaining of permits and receipt of stocks of iron and steel materials when he would not know whether he would at all be able to get possession of the Lohia Bazar shop, and if so, when and after how many years".

23. Reverting to the facts of the present case in light of the principles of law laid down by Their Lordships of the Supreme Court in the above-stated judgments, it is quite vivid that plaintiff No.1, aged about 70 years, claimed the suit accommodation for bona fide need for starting a business clearly stating that she is owner thereof and

11 (1974) 2 SCC 365

12 (1999) 8 SCC 1

13 (1979) 1 SCC 273

she has no other reasonably alternative suitable vacant accommodation in her possession in the township of Ambikapur in which the trial Court clearly recorded a finding that the defendant is the tenant, but did not grant any decree for bona fide need under Section 12(1)(f) of the Act of 1961. On first appeal being preferred, the first appellate Court has granted the decree of bona fide need in favour of the plaintiffs, though plaintiff No.1 is an aged woman and has no experience of selling sarees, but, yet, merely on the ground that she is an aged woman and she has no experience, her need cannot be said to be non-existing and not bona fide particularly, when she has lost her husband and only getting a meagre amount in the shape of pension for her livelihood. Further, the defendant has come with a defence raising a plea that plaintiff No.1 has reasonable alternative accommodation in the township of Ambikapur, but in the pleading in para 10 of written statement, the pleading in that regard is as vague as it can be by stating that the members of the family of plaintiff No.1 have series of accommodations, even those accommodations which the family members of plaintiff No.1 had, have not been particularised, even it has not been stated as to which accommodations are vacant and owned by plaintiff No.1 and further that those are reasonably suitable accommodations in comparison with the present suit accommodation and are lying vacant. The defendant failed to even plead the above pleadings in the written statement which was imperative for him to not only plead but also to further establish by leading evidence of clinching nature which he has miserably failed. The first appellate Court has recorded a clear and categorical

finding that the suit accommodation is required bona fide for opening of business by plaintiff No.1 and she has no alternative suitable vacant accommodation in the township of Ambikapur for starting of business which is a pure and simple finding of fact based on the evidence on record and is binding on this Court and is not open for interference under Section 100 of the CPC. I do not find any illegality or perversity in the said finding. Substantial question of law No.2 is answered accordingly.

24. In view of the above, the substantial questions are answered accordingly. The judgment & decree of the first appellate Court is affirmed and the second appeal is dismissed leaving the parties to bear their own cost(s).

25. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge