

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.310 of 2010

Sumati Lal Sawariya, S/o Varjang Bhai Sawariya, aged about 67 years,
Proprietor Swastik Trading, In front of Raja Hotel, Bus Stand to Agrasen
Chowk Road, Bilaspur, Tahsil and Distt. Bilaspur (C.G.)

---- Appellant/
(Defendant)

Versus

Ram Kumar Kashyap, aged about 45 years, S/o Late Shambhu Prasad, R/o
In front of Raja Hotel, Bus Stand to Agrasen Chowk Road, Tahsil and Distt.
Bilaspur (C.G.)

---- Respondent/
(Plaintiff)

For Appellant: Mr. Pushkar Sinha, Advocate.
For Respondent: Mr. B.P. Gupta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

24/08/2018

1. This is defendant's second appeal. The respondent / plaintiff filed a suit for eviction stating inter alia that though the suit shop was let out to the appellant / defendant for non-residential purpose, but on account of subsequent event, the suit shop is required for constructing way to the open plot held by the plaintiff, bona fidely. Civil suit was dismissed by the trial Court holding that though the suit shop was required bona fidely by the plaintiff, but the accommodation let out for non-residential purpose cannot be got vacated for residential purpose. Being aggrieved against the judgment & decree of the trial Court, the plaintiff / respondent preferred first appeal before the first appellate Court and the said Court reversed the decree of the trial Court holding that though the accommodation was let out for non-residential purpose, but it can be got evicted for the purpose set out by the

plaintiff in the plaint, relying upon the decision of the M.P. High Court in the matter of **Onprakash and others v. Ramnarayan**¹.

2. Mr. Pushkar Sinha, learned counsel appearing for the appellant / defendant, would submit that the first appellate Court has committed legal error in reversing the well reasoned judgment & decree of the trial Court wherein the trial Court has held that the accommodation let out for non-residential purpose cannot be got evicted for residential purpose and this second appeal involves substantial question of law for determination.
3. I have heard learned counsel for the appellant on the question of admission of appeal.
4. It is correct to say that the suit accommodation was admittedly let out for non-residential purpose by the plaintiff to the appellant / defendant, but it has not been pleaded in the plaint that the accommodation is required for residential purpose, rather the plaintiff has made it clear in the plaint that open plot has been allotted to him on partition on which he wishes to construct a house for which there is no road and by demolishing the part of the suit shop, he wishes to construct a house for him. The trial Court has also held that the suit shop is bona fide required by the plaintiff, but dismissed the suit that it cannot be got vacated for residential purpose.
5. In the matter of **Smt. Nai Bahu v. Lala Ramnarayan and others**², the Supreme Court had observed as under: -

“21. There is nothing in the M.P. Act to bar an eviction from a building if a non-residential accommodation is genuinely required not only for non-residential use but also a portion of it bona fide for personal residence. We are clearly of opinion that the compromise decree in this case

1 2003(1) M.P.L.J. 109

2 AIR 1978 SC 22

is a lawful decree of eviction founded on permissible statutory ground and there are sufficient materials to show that the trial Court applied its mind and was satisfied that a valid decree under the [M.P. Act](#) could be passed.”

6. In the matter of Jagtkumar v. Jagdeeshchandra³ also, it was held by the High Court of Madhya Pradesh as under: -

“9. It is thus clear that even though it is established that a landlord requires a part of an accommodation let out and that requirement is for the purpose for which the accommodation was let out, a landlord becomes entitled to seek eviction from the entire accommodation, provided the other conditions specified in cl. (e) or (f) of S. 12(1) of the Act are satisfied.”

7. The law laid down by the Supreme Court in Smt. Nai Bahu (supra) and by the High Court of M.P. in Jagtkumar (supra) applies with full force in the present case. The respondent / plaintiff has averred and proved that he required the suit accommodation bona fide and both the Courts have also concurrently held so. It is not the case that the suit house is required for residential purpose. Merely because the respondent / plaintiff has pleaded that the portion of suit accommodation would be required for constructing a way to his open land, it would not create a bar for granting decree of eviction for bona fide need as claimed by the respondent / plaintiff. Thus, the first appellate Court has rightly granted decree in favour of the plaintiff for his eviction under Section 12(1)(e) of the Chhattisgarh Accommodation Control Act, 1961. I do not find any substantial question of law involved in this second appeal for determination and the appeal deserves to be and is accordingly dismissed in *limine* leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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