

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 06-10-2018

Judgment delivered on 28-11-2018

SA No. 357 of 2014

- Sanjay Agrawal S/o Late Rajkumar Agrawal Aged About 45 Years R/o House No. 2, Handi Chowk, Raigarh C.G., Legal Representative Of Original Defendant Deceased Rajkumar Agrawal, Distt. Raigarh C.G..

---- Appellant

Versus

- Arund Gupta S/o Krishna Kumar Gupta Aged About 49 Years R/o Palace Road, Raigarh, Presently At A-7, Anupam Nagar, Raipur C.G., Chhattisgarh

---- Respondent

For Appellant	:	Mr. Y.C. Sharma, Mr. Manish Thakur and Ms. Trishna Das, Advocates.
For respondent	:	Mr. Malay Shrivastava, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
CAV Judgment

1. Application filed under Order 41 Rule Rule 27 of the Code of Civil Procedure for taking additional evidence/ documents on record, considered.
2. By this application the appellant seeks to file document which is related to some writ petition pending before this court and before the Court of 4th Civil Judge, Class-I, Raigarh, CG. As per the appellant, those cases are related to dispute regarding property in question.

3. To decide the the aforesaid application, Order 41 Rule 27 of the CPC may be read as under:

“The parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary, in the Appellate Court, But if-

(a)The Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) The Appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

4. It is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court. Hence, in the absence of satisfactory reasons for the non-preproduction of the evidence in the trial

Court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal.

5. The two tests for admissibility of additional evidence, is whether the appellate court is able to pronounce judgment on the material before it, without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examine the evidence, as it stands the court comes to the conclusion that some inherent lacuna or defects becomes apparent to the court. It is only for removing a lacuna in the evidence, that the appellate court is empower to admit additional evidence. When a party failed to discharge its onus before the trial Court, he is not entitled to a fresh opportunity to produce evidence.

6. In the case in hand, the trial Court and the First Appellate Court have given concurrent finding that the appellant is tenant of the respondent. Though the appellant has raised issue before the trial Court that Gauri Shanker Jee Deity installed in temple premises known as Seva Kunj, Raigarh,CG is the owner of the property in question, but both

the courts below (trial Court and the First Appellate Court) gave a concurrent finding that the said deity is not the owner of the property in question. In the light of concurrent finding, the evidence sought to be adduced is of no help in deciding the issues between the parties. It is not the case that the appellant is the owner of the property in question, but his version is always of tenancy. Therefore, documents sought to be produced are irrelevant for pronouncing the judgment by this court and when the document is irrelevant, no opportunity can be provided to the appellant. Accordingly, the application is rejected outrightly.

7. Considered the application filed by the appellant for amendment in the memo of appeal. By this amendment application, the appellant sought to mention particulars of case pending before this court and pending before the court of 4th Civil Judge, Class I, Raigarh. All the cases are related to determination of right regarding property.

8. Present is a case between landlord and tenant. The trial Court and the First Appellate Court have decided that the appellant is tenant of the respondent. The appellant has raised the issue before the trial Court that deity is the owner of the property, but both the courts below find that deity is not owner of the property in question. This court is very limited single substantial question of law and it is not for this

court to re-appreciate the evidence in second appeal. The particulars of the case which have been mentioned in the application are irrelevant to the facts and legal aspect of the present case, therefore, memo of appeal cannot be allowed to be amended for irrelevant facts. Accordingly, this application is also rejected outrightly.

9. This second appeal is preferred against the judgment dated 16-9-2014 passed by the Additional District Judge (FTC), Raigarh in Civil Appeal No. 1A/2013 wherein the said court dismissed the appeal filed by the appellant and affirmed the decree dated 6-5-2013 passed by the Civil Judge, Class-1 Raigarh in Civil Suit No. 10-A/2006 who passed the decree in favour of the respondent for eviction of the appellant from the suit premises.

10. The respondent/plaintiff filed a suit before the trial Court being landlord/owner of the house bearing No.84/च situated at Ward No. 15 and house No. 137/2 situated at Ward No.17 Seva Kunj Road, Raigarh that he purchased the said property from Shri Ganesh Gupta and the appellant is tenant of the said premises for monthly rent of Rs.1500/-. The trial Court after evaluating the evidence of both sides, opined that the appellant is tenant of the respondent and his tenancy was terminated vide notice dated 1-4-2005 and he was served notice for payment of arrears of rent from 1-4-2004 to 31-3-

2005, but no arrears were paid or tendered within two months of the date on which notice of demand for the arrears of rent has been served on him, therefore, he is liable to be evicted as per Section 12(1)(a) of the MP/CG Accommodation Control Act, 1961. The trial Court also opined that accommodation let for residential purposes is required *bona fide* by the landlord for occupation as a residence for himself or for any member of his family and other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned is not available. The decree passed by the trial Court is affirmed by the First Appellate Court.

11. This second appeal is preferred on various substantial questions of law but admitted for hearing on the following substantial question of law.

“Whether the defendant/appellant is well within its right to challenge derivative title of the plaintiff/respondent that the suit property belonged to idol of Gauri Shankar as it held in civil suit No. 1-A/1974 consequently whether the plaintiff was entitled to seek eviction as owner?’. ”

12. Record of the trial Court reveals that Guari Shankar Deity is known as Shri Gauri Shankar Jee Maharaj has filed the suit for declaration that property in question is in the owner ship of the said deity and same is not liable for

attachment and sale for recovery of the income tax and other dues against Hindu Undivided Family of late Paluram Dhananiya, but that suit was dismissed by the trial Court and the appeal filed before the High Court of Madhya Pradesh was dismissed vide judgment dated 12-10-1982 and from the judgment of the High Court, the issue is settled that said Gauri Shankar Jee deity is not the owner of property in question and it is the property of hindu undivided family of late Paluram Dhananiya. Shri Krishna Kumar Gupta was Karta of HUF and he sold the property in favour of respondent, therefore, respondent is owner of the property in question and he is the landlord. It is not the case of the appellant that he is the owner of the property. As per pleading of the appellant, he is tenant of Shri Gauri Shankar Jee Deity as mentioned above, but since it is settled by the judgment of High Court of Madhya Pradesh that Gauri Shankar Deity is not owner of the property in question, therefore, the trial Court and the First Appellate Court have decided the issue in favour of the respondent that he is the landlord of the premises in question and the appellant is his tenant. The evidence led by both sides goes to show that the witness of the appellant had admitted before the trial Court that some amount of rent was paid to the respondent,. Therefore, tenancy of the appellant is established as per

evidence led by both sides. Again, from the evidence it is established that the appellant did not pay the arrears of rent even after notice served to him in the month of April 2004 recoverable from him within two months of the date of serving of notice, therefore, he was liable for eviction under Section 12 (1)(a) of the Act, 1961. From the evidence it is also established that the said premise is required for *bona fide* by the respondent for occupation as a residence for himself and for any member of his family and there is no alternate accommodation of his own in the occupation of city of Raigarh. Therefore, appellant is liable to be evicted under Section 12(1)(e) of the Act, 1961.

13. The finding of the trial Court regarding *bona fide* requirement is based on proper appreciation of evidence and same is affirmed by the First Appellate Court. This court not to interfere concurrent finding of the trial Court and the First Appellate Court. The appellant knowingly raised the issue of ownership of Shri Gauri Shankar Jee Deity which was already settled that the said deity is not the owner of the property in question and after death of Paluram Dhananiya , Shri Krishna Kumar Gupta was Karta of Joint Hindu Family, which act is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation and which is likely to affect adversely and substantially the interest of the

landlord. Therefore, in view of the above, appellant was also liable to be evicted on the ground of Section 12 (1)(c) of the Act, 1961.

14. Looking to the entire record, it is clear that the appellant/tenant is not right to challenge the title of the suit belonging to Gauri Shankar Jee Deity and therefore, respondent is entitled for eviction of the appellant. Substantial question of law is answered in negative against the appellant.

15. Accordingly, this second appeal being devoid of merit is liable to be and is hereby dismissed.

**Sd/-
(Ram Prasanna Sharma)
Judge**

Raju