

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.177 of 2006

Suresh Kumar Agrawal, aged about 54 years, S/o Late Rameshwar Lal Agrawal, Proprietor Abhilasha Traders Gurunanak Chowk, Raipur, Tahsil & Distt. Raipur (Chhattisgarh)

---- Appellant/Defendant

Versus

Anand Kumar Sao, Aged 29 years, S/o Atma Ram Sao, r/o Banjari Chowk, Raipur (Chhattisgarh)

---- Respondent/Plaintiff

For Appellant/Defendant :	Ms Savita Tiwari, Advocate
For Respondent/Plaintiff:	Ms Anuja Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

24/07/2019

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

“Whether the suit filed by a minor plaintiff on the grounds specified in Section 12 (1) (f) of the M.P. Accommodation Control Act was maintainable ?

And

In view of the above, whether the need of the plaintiff was bonafide ?”

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

2. Plaintiff-Anand Kumar Sao through his guardian mother Smt.Sudha Devi filed a suit for ejectment and vacant possession based on Section 12 (1) (f) of the M.P. Accommodation Control Act, 1961 (hereinafter called as “the Act of 1961”) stating inter-alia that the suit

accommodation is required *bonafide* for opening hotel as the suit accommodation is situated near the Railway Station, Raipur, he is owner thereof and he has no other alternative suitable accommodation in his possession. Therefore, decree for possession be granted in his favour.

3. The defendant filed his written statement denying the averments made in the plaint stating inter-alia that the suit accommodation is not required bonafide. The plaintiff has other alternative suitable accommodation in his possession in the township of Raipur and therefore, the suit be dismissed.
4. The trial Court decreed the suit finding that the suit accommodation is required bonafide for opening hotel by the plaintiff and he has no other alternative suitable accommodation in his possession in the township of Raipur, which was upheld by the first appellate Court, against the judgment and decree of the first appellate Court, this second appeal under Section 100 of the Code of Civil Procedure, 1908 has been filed by the appellant/defendant, in which, substantial questions of law have been formulated and set-out in the opening paragraph of this judgment.
5. Ms Savita Tiwari, learned counsel for the appellant/defendant, would submit that the plaintiff was admittedly minor on the date of institution of suit i.e. 21.4.89 and even finding recorded by the Courts below that the plaintiff has established *bonafide* need under Section 12(1)(f) of the Act of 1956 is perverse and contrary to record, as such, the judgment and decree passed by both the Courts below deserve to be set aside.
6. Ms Anuja Sharma, learned counsel for the respondent/plaintiff, would

support the impugned judgment and decree and submit that the concurrent finding recorded by two Courts below is neither perverse nor contrary to record and the plaintiff was duly represented through his guardian mother Smt.Sudha Devi.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and went through the records with utmost circumspection.
8. Admittedly, the suit was filed by minor plaintiff, but he was represented through his guardian mother Smt.Sudha Devi and during pendency of the suit, he become major, which is apparent from his statement which was recorded on 10.5.2002 and his age was shown as 29 years. The first appellate Court has held that since the plaintiff has become major during pendency of the suit, therefore, his alleged minority would not affect the decree granted in his favour. Since the suit was filed through his guardian mother and the plaintiff becomes major during the pendency of the suit, the first appellate Court is justified in rejecting the said plea and holding the suit to be maintainable.
9. Both the Courts below have held that the plaintiff has established bonafide need for starting business of hotel in the suit accommodation as he is owner thereof and he has no suitable non-residential accommodation of his own in his occupation in the township of Raipur.
10. The Supreme Court in the matter of **Shiv Sarup Gupta v. Dr.Mahesh Chand Gupta**¹ has held that the landlord is the best Judge of his requirement and the Courts have no concern to dictate the

1 AIR 1999 SC 2507

landlord as to how and in what manner he should live.

11. Likewise, in the matter of Ram Prasad Rajak v. Nand Kumar & Bros. and others² the Supreme Court has held that existence of substantial question of law is a sine-qua-non for the exercise of jurisdiction under Section 100 of the Code and further held that bonafide requirement of the appellant therein does not give rise to any sustainable question of law. It is entirely a matter to be decided on an appreciation of evidence, as such, the finding of fact should not be interfered with by the High Court. The aforesaid view has been followed by this Court in Om Engineering Works v. Indrabhushan Mudaliyar & others³.

12. Thus, the finding concurrently recorded by two Courts below that the suit accommodation is required bonafide for non-residential purpose of the plaintiff and he has no other reasonably suitable non-residential accommodation in his possession at Raipur is the finding of fact based on evidence available on record, which is neither perverse nor contrary to record. The substantial questions of law are answered accordingly. I do not find any merit in this second appeal. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

13. Decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-

² AIR 1998 SC 2730

³ 2014(3) C.G.L.J. 155