

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 16-1-2019

Judgment delivered on 30-01-2019

FA No. 111 of 2004

1. Sanjay Sharma s/o. Late Bajranglal Sharma aged about 33 years, occupation business.
2. Veerendra Sharma s/o. Late Bajranglal Sharma, aged 22 years, occupation service.
3. Praveen Sharma, s/o. Late Bajranglal Sharma, aged 20 years, occupation student.
4. Kumari Kusumlata Sharma, d/o. Late Bajranglal Sharma, aged 17 years (minor) occupation student through brother Sanjay Sharma.
5. Amrit Sharma s/o. Late Bajranglal Sharma, aged about 15 years(minor) occupation student through brother Sanjay Sharma.
6. Smt. Satya Bhama Sharma, wd/o. Late Bajranglal Sharma, aged 50 years.

All r/o. Jute Mills quarters, Mohan Jute Mills Compound, Sarangarh road, Raigarh, Tahsil & District Raigarh (CG).

---- Appellants.

Versus

- Mohan Jute Mills Ltd. Through Managing Director Shri P.K. Agrawal s/o. Shri Tuliram Agrawal, occupation r/o. Clive Road, Calcultta -1.

---- Respondent

For appellants	:	Dr (Mr) N.K. Shukla, Sr. Advocate with Mr. Vikram Sharma, Advocate.
For respondent	:	Mr. Ashish Shrivastava and Mr. Anurag Verma, Advocates.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellants have preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 12-4-2004 passed by IV Additional District Judge, (FTC), Raigarh in Civil Suit No. 4-A/2002 wherein the said court granted a decree of eviction and compensation in favour of the respondent/landlord and against the appellants/possessors of the suit premise allotted to one Bajranglal Sharma who is ancestor of the appellants, situated at Raigarh as mentioned in the schedule of plaint.
2. Admittedly, suit premise was allotted to Bajranglal Sharma who was an employee of Raigarh Jute Mill. Later on Raigarh Jute Mill transferred the property to the respondent. The said Bajranglal Sharma died on 22-10-1999 during his employment and the appellants were residing in the said premise as members of his family. As per respondent, they granted six months' time to the appellants to vacate the premise, but they did not vacate, that is why suit was filed.
3. Learned counsel for the appellants would submit that late Bajranglal Sharma was not the licensee of the said premise, but he was tenant @ Rs.60/- per month and after his death,

appellants are occupying the said premise as tenant @ Rs. 90/- per month. Further case of the appellants is that the respondent namely Pawan Kumar Agrawal is not entitled to bring the present suit and as respondent is not owner of the suit accommodation, a decree cannot be passed in his favour. It is further case of the appellants that employment benefits arising out of death of late Bajranglal Shama are not paid to them and the appellants No.4 and 5 are minors, therefore, decree passed by the trial Court is not sustainable.

4. On the other hand, learned counsel for the respondent supporting the judgment and decree passed by the trial Court would submit that the finding of the trial Court is based on factual and legal aspect of the matter and same is not liable to be interfered with while invoking jurisdiction of the appeal.
5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
6. The first question for consideration of this court is whether the respondent is competent to file present suit. Ex.D/1 is proved before the trial Court and as per the said document earlier owner of the premise namely Raigarh Jute & Textile Mills Ltd., has transferred its interest to Mohan Jute Mills,

Raigarh. Respondent Pawan Kumar Agrawal is the Managing Director of the Mohan Jute Mill and looking to the document Ex.D/1 dated 11-1-1981 he has right to file suit on behalf of Mohan Jute Mill. The premise in question was allotted to late Bajranglal Sharma due to his employment in Raigarh Jute Mill and he is in possession from day one due to his employment, therefore, the appellants cannot deny the factum of possession on the ground of employment. There is nothing on record to show that the appellants have ever entered into agreement of tenancy with the respondent. From their pleading it is not clear as to what is the date of tenancy and agreement of tenancy is entered into between how-much stake-holders. It is also not clear that separate tenancy of the appellant is initiated from which date, therefore, argument advanced on behalf of the appellants regarding tenancy on the basis of some fraction of evidence is not sustainable.

7. It is settled principles of law that no amount of evidence could be looked into apart from pleading. There is nothing in the pleading of the appellants regarding date of agreement of tenancy between the appellants and the respondent, therefore, ground of tenancy is not available to the present appellants. It is contended on behalf of the appellants that

they are having licence to remain in premise as per Section 57 of the Indian Easement Act, 1982. There is nothing on record that the appellants have been granted any right to continue with the premise by the respondent. It is only allotted to late Bajranglal Sharma on account of his employment. After termination of employment, the employee and other occupier of the premise at the behest of such employee has no right to remain in possession and they are under obligation to surrender the said occupation to his employer. Possession became illegal on the date i.e., 22-10-1999 when employee died. Wife and children of the employee have also no right to remain in occupation. None of the appellants was in the employment of the company, therefore, they are liable to be evicted.

8. Learned counsel for the appellants would further submit that as per Ex.D/1, sale of the premise is not completed because Raigarh Jute Mill has not executed the sale deed in favour of Mohan Jute Mill, therefore, suit filed by Mohan Jute Mill is not sustainable.
9. In view of this court, argument is without substance. As per said document, the property is handed over to Mohan Jute Mill on account of agreement to sell and after they are taking property as owner, they are employer of the

company. Employee and his family members have no right to challenge the right of the employer because their right is limited to remain in property till employment of the person who had been allotted the quarter. The trial Court has elaborately discussed the entire evidence and granted decree of eviction and also granted compensation @ Rs. 150/- per month and regarding payment of electric dues which cannot be termed as based on irrelevant or extraneous material.

10. After re-assessing the evidence, this court has no reason to record contrary finding. It is not a case where the trial Court has come to conclusion with any irrelevant or extraneous matter. Finding of the trial Court is based on relevant facts placed on record and same is not liable to be interfered with while invoking jurisdiction of the appeal.

11. Accordingly, decree is passed against the appellants and in favour of respondent as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellants to bear the cost of respondent through out.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE