

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 565 of 2003**

- Sri Ram Janki Mandir Trust Narmada Kund Station Road Raipur, Through Mahant Hari Das, Guru Girwar Das Sarwarkar Narmada Kund Station Road Raipur, Chhattisgarh

---- Appellant**Versus**

- Jyoti Jasbir Wd/o Govind Banjari Aged About 48 Years R/o Station Road, Raipur, Tahsil And District- Raipur, Chhattisgarh

---- Respondent

For Appellant : Mr. Manoj Paranjpe, Advocate with
Mr. Shubhank Tiwari, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****19/09/2019**

1. This appeal is directed against impugned judgment and decree dated 21.06.2003 passed by 3rd Additional District Judge, Raipur in Civil Appeal No. 17-A of 2002, by which, plaintiff's appeal against impugned judgment and decree of the trial Court partly decreeing suit, affirming judgment of the trial Court.
2. Plaintiff, a trust filed a suit seeking eviction of respondent tenant from the tenanted premises on the pleadings that the shop in dispute was given on rent of Rs. 500/- per month to defendant in which, the defendant is running a shop. It was pleaded that the plaintiff trust requires the said shop for carrying religious activities and even though, defendant was requested, he did not vacate which led to giving a notice of eviction. As defendants did not vacate the accommodation, suit had to be filed. The plaintiff also claimed arrears of rent.
3. Defendants, denying plaintiff's claim, stated that the suit could not be

brought by the plaintiff in the name of the trust as he does not have the legal authority to bring suit on behalf of and in the name of the trust. It was further pleaded that defendant has been paying rent regularly. Further, bona fide need was denied by stating that suit has been filed because number of complaints were made against Mahant Hari Das alleging that such persons were involved in clandestine activities. It is not in the interest of the trust and the plaintiff has mala fide instituted suit only to seek eviction.

4. After framing of issues, plaintiff led his evidence but defendant did not lead any evidence. The learned trial Court, however, found that plaintiff failed to prove bona fide requirement, as required under Section 12 (1) (f) of MP Accommodation Control Act. However, the learned trial Court found that the plaintiff is entitled to receive rent @ Rs. 350/- with effect from 01.02.1992 till the date of judgment.
5. Aggrieved by judgment and decree, plaintiff filed appeal which has also been dismissed.
6. This appeal was admitted on following substantial question of law:-

“Whether both the courts below were justified in dismissing the suit of the plaintiff holding that plaintiff has failed to establish the ground under Section 12(1) (f) of the C. G. Accommodation Control Act, 1961 by recording findings which are perverse to the record?”

7. Learned counsel for the appellant argued that the learned Courts below committed gross perversity and patent illegality in dismissing plaintiff claims for eviction by misleading the evidence on record. It is argued that plaintiff clearly pleaded the need and in the evidence of plaintiff's witness, it has clearly come that in connection with the religious activities, saints keep on visiting the trust temple and proper space is required to be provided for their stay. Despite this emphatic bona fide requirement, the learned Courts below have dismissed the suit on irrelevant consideration that the plaintiff has not stated that as to how the present accommodation is more suitable as compared to other shops which have been let on rent by the plaintiff and the plaintiff has also not given specific description of the property of the shop, its measurement etc. He would

submit that once a bona fide need is established, even if, alternative accommodation are available, it has to be left to the landlord who is the best judge to decide whether alternative accommodation suits his requirement or not. In support of this contention, reliance has been placed on the judgment in the case of **Akhileshwar Kumar and others vs. Mustaqim and others, (2003) 1 SCC 462** and **Prakash vs. Devendra Kumar, (2018) 3 MPLJ 68**.

8. None appeared for the respondent.
9. In the plaint, all that has been pleaded by the plaintiff is that the plaintiff needs the disputed shop for religious works of the trust. Except one line statement, no specific pleadings regarding bona fide requirement have been made by the plaintiff. This pleading of bona fide requirement is utterly vague. Not only this, in the evidence, the plaintiff has come out with different requirements which is in variance with what has been pleaded in the Para-5 of the plaint. Haridas (PW-1) has stated in para 2 of his evidence that the shop is required for the purpose of providing stay of saints who visit the trust temple. In para-11 of his cross-examination, he has admitted that this requirement, as deposed in the Court that the shop is required for stay of saints, is not pleaded by him in the plaint.
10. Savitri (PW-2), the second plaintiff witness, in her cross-examination, has admitted that now the devotees of the temple are less in number and earlier when Girwar Das was alive, 40 to 45 devotee used to come during festive occasion but these witnesses further admitted that during lifetime of Girwar Das, religious practices used to take place in the temple but now it has stopped and as there are no religious practices, because number of temples have been constructed at other places. This witness has clearly stated that no religious activities are carried out in the temple.
11. Except the aforesaid evidence, no other evidence has been led by the plaintiff. True, it is that the defendant has not led his evidence but plaintiff has required to prove his case by leading appropriate evidence of bona fide need.
12. It is not a case where the plaintiff's suit has been dismissed only on the ground that he has more than one suitable alternative vacant accommodation in his possession. The learned trial Court seems to have observed in its

judgment that the plaintiff has not come out with any specific case that he has no other suitable alternative vacant accommodation in his possession. Whether or not plaintiff has any other suitable alternative accommodation would arise for consideration only when it is found that there is a bona fide need as required under Section 12-f of the Accommodation Control Act. It is not necessary to go into that question because the plaintiff has failed to lead and prove bona fide requirement. For that reason, it is not necessary to go into that aspect further, in the light of two decisions cited at the bar.

13. While in the plaint, it has been pleaded in two lines that the shop is needed for religious activities, in the evidence all that has been stated is that the shop is needed for stay of saints. Plaintiff's own witness has stated that religious activities are no longer carried on. It has also been admitted in the evidence that the present shop and another shop created only for the purpose of letting out and to provide source of income for the trust.
14. Viewed from any angle, the finding recorded by learned Courts below does not appear to be perverse, so as to call for interference in the second appeal. This appeal is, therefore, dismissed. Parties to bear their respective costs.
15. Let appellate decree be accordingly drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge