

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 464 of 2007**

Mahendra Pratap Jaiswal, S/o Hiralal Jaiswal, aged about 52 years, Occupation Advocate Clerk, Civil Court Ramanujganj, Distt. Surguja (C.G.)

----Appellant/Defendant

Versus

1. Guljar Devi, Wd/o Late Ramdhani,

(a) Smt. Suraj Devi, Wd/o Hiralal Soni, aged about 65 years, legal representative of respondent No. 1.

(b) Smt. Sunita Soni, Wd/o Balram Soni, aged about 45 years,

(c) Shri Ravi Soni, S/o Late Balram Soni, aged about 24 years.

(d) Kumari Malti Soni, D/o Late Balram Soni, aged about 22 years.

(e) Kumari Poonam Soni, D/o Late Balram Soni, aged about 20 years.

(f) Kumari Anju Soni, D/o Late Balram Soni, aged about 18 years.

All caste- Soni, Occupation Domestic and Jewelry work, R/o Village Ramanujganj, Ward No. 13, Tahsil Pal, Distt. Surguja (C.G.), legal representative of respondent No. 2.

2. Balram Soni, S/o Hiralal Soni, aged about 40 years,

3. Dashrath Soni, S/o Hiralal Soni, aged about 35 years,

4. Mangal Soni, S/o Hiralal Soni, aged about 30 years,

All R/o Village Ramanujganj, Tahsil Pal, Distt. Surguja (C.G.)

5. State of Chhattisgarh : Through Collector Surguja Ambikapur (C.G.)

----Respondents/Plaintiffs

For Appellant : Mr. Sunil Tripathi, Advocate.
For Respondents No. 1(a) to 1(f), 3 and 4 :
: Mr. A.K. Prasad, Advocate.
For Respondent No. 5 : Mr. Anshuman Rabra, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/12/2019

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by appellant/defendant against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree of the trial court decreeing the suit.

2. Learned counsel appearing for the appellant/defendant would submit that both the courts below were absolutely unjustified in decreeing the suit filed by the plaintiffs under Section 12(1)(a) of M.P./C.G. Accommodation Control Act, 1961 (henceforth "Act, 1961") and in holding that defendant has caused substantial damage to the suit property, by recording a finding, which is perverse to the record, therefore, the appeal be admitted for hearing by formulating substantial question of law for determination.

3. The plaintiffs filed a suit for eviction and arrears of rent based on the ground under Section 12(1)(a) of the Act, 1961 and also on the ground that the defendant has caused substantial damage to the suit property by making encroachment over it and the defendant is his monthly tenant of Rs.25/-, as such, he is liable to be evicted from the suit

property, which was opposed by the defendant stating *inter alia* that the plaintiff is not entitled for the decree of eviction and arrears of rent.

4. The trial Court, after appreciation of oral & documentary evidence available on record, decreed the suit holding that defendant is tenant of the plaintiffs on a monthly rent of Rs.25/- and he is entitled to get the decree for eviction and arrears of rent as he has caused substantial damage to the suit property by making construction over it.

5. The defendant preferred first appeal thereaagainst. The First Appellate Court, after re-appreciation of oral & documentary evidence available on record, affirmed the judgment and decree of the trial Court by dismissing the appeal, against which instant second appeal has been preferred.

6. Both the courts below have concurrently recorded a finding that relationship of landlord and tenant is existed between the parties; and the ground under Section 12(1)(a) of the Act, 1961 is established; and the earlier suit filed by the defendant for declaration of title being Civil Suit No. 17-A/89 has already been dismissed. Thus, the concurrent finding recorded by both the courts below establishing the relationship of landlord and tenant between the parties and the ground under Section 12(1)(a) of the Act, 1961 is made out is a finding of fact based on material available on record and I do not find it either perverse or contrary to

record and no question of law much less substantial question of law is involved in this appeal.

7. Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

(1) Whether the first appellate Court was justified in granting decree in favour of the plaintiff ignoring the fact that erstwhile owner of the suit land Raja..... and his son..... has already executed a title deed / sale deed dated 28.08.2002 (Ex.D-1) in favour of defendants No. 2 & 3, by recording a finding, which is perverse and contrary to the record ?

(2) Whether the first appellate Court was justified in not remitting the matter after holding that the permission for review was granted without affording opportunity of hearing to the plaintiff by virtue of provisions contained in Section 51 of the C.G. Land Revenue Code,