

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 169 of 2007**

1. Ram Kumar, S/o Late Puru, Aged about 23 years.
 2. Sharad Kumar (since deceased) through LRs.:
 - a. Savita Bai, widow of Late Sharad Kumar Dewangan, aged 38 years,
 - b. Yogeshwari Dewangan, daughter of Late Sharad Kumar Dewangan, aged 19 years,
 - c. Seema Dewangan, daughter of Late Sharad Kumar Dewangan, aged 17 years,
 - d. Bharti Dewangan, daughter of late Sharad Kumar Dewangan, aged 16 years,
 - e. Rakhi Dewangan, daughter of Late Sharad Kumar Dewangan, aged 14 years,
- No. C to E are minors through their legal guardian Savita Bai, widow of Late Sharad Kumar Dewangan"
3. Mongara Bai, D/o Late Puru, Aged about 26 years,
 4. Punni Bai, D/o Late Puru, Aged about 25 years,
 5. Mamta, D/o Late Puru Aged about 22 years,
- All are residents of Kosthapara, Durg, Tahsil & District Durg (C.G.)

-----Appellants/Defendants**Versus**

1. Leelam Kumar, S/o Bheekham Dewangan, Aged about 35 years,
 2. Jitendra Kumar, S/o Bheekham Dewangan, Aged about 30 years.
- Both are residents of Bhahmanpara, Durg, Tehsil & District : Durg (C.G.)

-----Respondents/Plaintiffs

For Appellants : Mr. Rajeev Shrivastava & Mr.
Malay Shrivastava, Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/12/2019

(1) Heard on the question of admission and formulation of substantial question of law of this second appeal preferred by defendants under Section 100 of the Code of Civil Procedure, 1908 questioning the impugned judgment & decree dated 10th January, 2007 passed in Civil Appeal No. 23-A/2005 by 11th Additional District Judge (F.T.C.), Durg affirming the judgment & decree of 4th Civil Judge, Class-II, Durg dated 14.12.1993 passed in Civil Suit No. 23-A/1982, decreeing the suit for eviction and arrears of rent.

(2) Learned counsel appearing for the appellants/defendants would submit that concurrent findings recorded by both the courts below holding defendants are the tenant and plaintiffs are the landlord of the suit accommodation; and the plaintiffs have made out a ground under Section 12(1)(a) & 12(1)(c) of the M.P./C.G. Accommodation Control Act, 1961 (henceforth "Act, 1961"), are based on perverse ground and, therefore, the appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

(3) The plaintiffs filed a suit for eviction against the defendants stating *inter alia* that they have purchased the suit accommodation by registered sale deed dated 22.05.1967 from the defendants but let out the same to the defendants. It has further been averred that the defendants are not

paying the arrears of rent and despite notice dated 9.8.1978 they have not vacated the suit premises and denied their title.

(4) The defendants, by filing written statement, set up a plea that sale deed dated 22.05.1967 is nominal sale deed and the same has been executed for security of loan by defendants in favour of plaintiffs, therefore, relationship of landlord and tenant is not established between the parties and no ground is made out under Sections 12(1)(a) & 12(1)(c) of the Act, 1961 in favour of the plaintiffs.

(5) Trial Court, upon appreciation of oral and documentary evidence available on record, decreed the suit holding that the defendants have earlier filed a suit being civil Suit No. 17-A/87 in which the trial Court by its judgment & decree dated 26.02.1991 has held that the sale deed dated 22.05.1967 is the real sale deed and not a nominal sale deed and it was sold by Purulal and Ghasnin Bai, predecessor in title of the defendants for legal necessity and negatived the aforesaid plea. It was further held by the trial Court that the defendants are the tenants of the plaintiffs and the ground under Section 12(1)(a) and 12(1)(c) is made out in favour of the plaintiffs.

(6) Defendants preferred first appeal thereagainst. The first appellate Court, after re-appreciation of evidence available on record, affirmed the judgment & decree of the trial Court by dismissing the appeal preferred by the defendants.

(7) The core issue whether the sale deed dated 22.5.1967 is real sale deed or nominal sale deed has already been settled between the same party by the trial Court in Civil Suit No. 17-A/87 decided on 26.02.1991 and, therefore, both the courts below have rightly come to the conclusion that such an issue cannot be re-opened. However, both the courts below have concurrently recorded a finding that there is relationship of landlord and tenant between the parties and the grounds under Section 12(1)(a) & 12(1)(c) is made out by the plaintiffs. The said finding is a finding of fact based on material available on record. 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.

(8) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without notice to the other side. No costs.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

