

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.233 of 2011****Judgment reserved on : 18.10.2019****Judgment delivered on: 24.10.2019**

1. Rajnarayan S/o. Late Munnalal Soni, aged about 46 years,
 2. Balbhadra Prasad S/o. Late Munnalal Soni, aged about 49 years,
 3. Smt. Ramkali Bai Wd/o. Late Munnalal Soni, aged about 75 years,
- All above R/o. Lakher Ooli, Chudi Line Raipur,
Tahsil & District Raipur (CG)
4. Smt. Chanda Bai, Wd/o. Late Vimal Chand Baid, aged about 40 years, R/o. Natthani Building, Budhapara, Raipur, Tahsil & District Raipur (CG)

----- Appellants/Plaintiffs**Versus**

1. Smt. Paras Bai Baid, Wd/o. Late Shikharchand Baid,
 2. Prakash Chand Bai, S/o. Late Nemichand Baid,
- Both above R/o. House No.481/23, Nayapara, Sadar West, Raipur, Tahsil & District Raipur (CG)
3. Narendra Kumar Nirmalkar, R/o. Village Tokaro, Tahsil Manikchauri, Abhanpur, District Raipur (CG)

----- Respondents/Defendants

For Appellants/Plaintiffs : Mr. Manoj Paranjape and Mr. Anurag Singh, Advocates
 For Respondents/Defendants : Mr. B.P. Sharma and Ms Anuja Sharma, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1. The substantial questions of law involved, formulated and to be answered in second appeal

preferred by the plaintiffs are as under:-

"1. Whether the learned lower Appellate Court has erred in law in reversing the well reasoned judgment and decree of the Trial Court without meeting the reasonings assigned therein ?

2. Whether the finding of the learned lower Appellate Court with regard to the issue pertaining to ownership of the suit in question is proper in a case where the dispute is between the landlord and tenant ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and nomenclature in the suit before the trial Court].

2. Three plaintiffs filed a suit for eviction of the defendants/tenants on the ground enumerated under Section 12(1) (a), (c), (e) and (h) of the Chhattisgarh Accommodation Control Act, 1961 stating inter-alia that the suit accommodation was earlier held by Maikulal Nigam and they have purchased the same from Maikulal Nigam by three registered sale deeds dated 24.9.1985 vide Exs.P-1, P-16 and P-17 and thereafter notices Exs.P-5, P-10, P-11, P-12 and P-13 were served to defendants No.1 to 3/tenants intimating them that they have purchased the suit

accommodation and came in possession of the suit accommodation and they have become landlord/owner, but despite service of notice they have not paid arrears of rent and they have let-out the suit accommodation to defendant No.4 unauthorizedly and without prior consent of the plaintiffs and they (defendants) have created nuisance. The suit accommodation is required bona fide by the plaintiffs for residential purpose as they have no reasonably suitable alternative accommodation of their own in the township of Raipur, as such, decree for eviction be passed in their favour.

3. The defendants filed their written statement and denied the title of the plaintiffs stating inter-alia that Maikulal Nigam had no right and title over the suit accommodation and the defendants are in possession as owner of the suit accommodation and they have also pleaded the plea of adverse possession over the suit accommodation and as such, the suit deserves to be dismissed.

4. The trial Court framed as many as 17 issues in order to decide the suit and upon consideration of oral and documentary evidence granted decree holding that the plaintiffs are landlords and owners of the suit accommodation and they are entitled for decree under

Section 12(1)(c), (e) and (h) of the Act of 1961. On appeal being preferred by defendants No.1 to 3, the first appellate Court reversed the judgment and decree of the trial Court on the ground that the plaintiffs have failed to establish the relationship of landlord and tenant between them and defendants No.1 to 3, therefore, they are not entitled for decree of eviction. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been preferred by the appellants/plaintiffs, in which substantial questions of law have been formulated by this Court, which have been set out in the opening paragraph of this judgment.

5. Mr. Manoj Paranjape, learned counsel for the appellants/plaintiffs, would submit as under:-

(i) That, both the Courts below have held that Maikulal Nigam was original landlord and owner of the respondents/defendants.

(ii) That, Maikulal Nigam sold the suit accommodation (three floors) to the plaintiffs on 24.9.1985 vide Exs.P-1, P-16 and P-17.

(iii) That, finding of the first appellate Court that relationship of landlord and tenant between the plaintiffs and the defendants is not established

recorded by the first appellate Court is perverse in view of documents Ex.P-21 to Ex.P-31, duly proved by Arjun (PW-2), son of Maikulal, erstwhile owner/landlord of the suit accommodation.

(iv) He would further submit that by virtue of the provisions contained in Section 109 of the Transfer of Property Act, 1882 (hereinafter called as "TP Act") once it has been held that the plaintiffs have purchased the suit accommodation from Maikulal Nigam, erstwhile owner/landlord, by virtue of Section 109 of the TP Act, which creates statutory attornment by operation of law and therefore, the plaintiffs have become landlords of the defendants/tenants. Even otherwise, notices have already been served to them, so it cannot be held that the plaintiffs are not landlords and the defendants are not tenants of them, as such, the judgment and decree of the first appellate Court deserves to be set aside and that of the trial Court deserves to be restored. Mr.Paranjape relied upon paras-8 to 12 of statement of Arjun (PW-2) that the plaintiffs have proved the relationship of Maikulal Nigam with defendants No.1 to 3.

6. Mr.B.P.Sharma, learned counsel for the respondents/defendants would submit that the first

appellate Court has recorded finding that there is no relationship of landlord and tenant between the plaintiffs and the defendants is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. He would further submit that there is serious cloud on title of the plaintiffs, therefore, they ought to have filed a suit for declaration of their title as liberty has already been granted by the first appellate Court and that is correct finding recorded by the first appellate Court in view of the judgment rendered by the Supreme Court in the matter of **Anthula Sudhakar v. P. Buchi Reddy (Dead) by LRS. and others**¹.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

8. Three plaintiffs/appellants herein purchased the suit accommodation from erstwhile owner Maikulal Nigam vide registered sale deeds dated 24.9.1985 vide Ex.P-1, Ex.P-16 and Ex.P-17 respectively and it is their case that since the defendants were already continuing as tenants and they served legal notice

¹ (2008) 4 SCC 594

on 26.12.86 (Ex.P-5) to the defendants informing the transfer of property in their favour by erstwhile owner Maikulal Nigam, to which the defendants were tenants, therefore, by operation of law, they have become landlord and the defendants have become their tenants of the suit accommodation. The trial Court framed specific issue No.1 of ownership and recorded finding in para-5 of the judgment holding that the plaintiffs have purchased the suit accommodation from Maikulal Nigam vide three registered sale deeds dated 24.9.1985 (Ex.P-1, Ex.P-16 and Ex.P-17 respectively) and held that on the basis of testimony of plaintiff No.1-Rajnarayan Soni and particularly statement of Arjun (PW-2), son of Maikulal Nigam that the plaintiffs have purchased the suit property from Maikulal Nigam and also taken into consideration the statement of Prakash Chand Baid (DW-1), who has admitted that erstwhile owner Maikulal Nigam sold the suit property to the plaintiffs.

9. The first appellate Court in para-14 of the judgment recorded a categorical finding that the plaintiffs have proved the execution of sale deeds by Maikulal Nigam in their favour vide Ex.P-1, Ex.P-16 and Ex.P-17 respectively and further held that the suit

accommodation belonged to the plaintiffs and the plaintiffs are owners of the suit accommodation, as such, both the Courts below have concurrently recorded finding that Maikulal Nigam was erstwhile owner of the suit accommodation and the plaintiffs/appellants have purchased the suit accommodation from Maikulal Nigam and became owner of the suit accommodation. Not only this, the trial Court has further recorded finding while considering the statement of the parties that the plaintiffs have also proved the landlord-tenant relationship between Maikulal Nigam, erstwhile owner of the suit accommodation and defendants No.1 to 3 relying upon Exs.P-20 to Ex.P-31. The first appellate Court after having held that the plaintiffs have purchased the suit property from erstwhile owner Maikulal Nigam vide Ex.P-1, P-16 and P-17 respectively and are purchasers of the suit accommodation and held that relationship of landlord and tenant between Maikulal Nigam and the defendants and thereafter relationship of landlord and tenant between the plaintiffs and the defendants are not established, set aside the judgment and decree of the trial Court and dismissed the suit.

10. The question for consideration is whether the

first appellate Court is justified in holding that between Maikulal Nigam, erstwhile owner and defendants there is no relationship of landlord and tenant ?

11. In the instant case, the trial Court has clearly held that there is relationship of landlord and tenant between the plaintiffs and the defendants, which is duly established by the documents (Exs.P-20 to P-31) and thereafter erstwhile owner and landlord transferred the suit accommodation in favour of the plaintiffs by three registered sale deeds dated 24.9.1985 (Exs.P-1, P-16 and P-17 respectively), but the first appellate Court has reversed that finding though after having held that the plaintiffs have purchased the suit accommodation from erstwhile owner Maikulal Nigam. Relationship of landlord Maikulal Nigam and defendants No.1 to 3 is established from Exs.P-20 to P-31 which are the documents remitting the rent by the defendants to Maikulal Nigam, which is duly established by the statement of Arjun (PW-2), son of Maikulal Nigam.

12. A careful perusal of statement of Arjun (PW-2) would show that though he has clearly proved the contents of documents (Exs.P-20 to P-31) indicating

that by the aforesaid documents rents were remitted by the defendants to his father, but in cross-examination, nothing has been put to the said witness to elicit that rents were not remitted by the defendants to his father Maikulal Nigam as rent of the suit accommodation. Likewise, paras-8 and 9, Arjun (PW-2) has clearly stated that the defendants were tenants of his father and used to pay rent by cash as well as by sending money order on the address of his father and he also identified the receipts (Exs.P-20 to P-31). On the suggestion by learned counsel for the defendants, on instructions, Arjun (PW-2) has clearly admitted that in the year 1995 the defendants were occupying the said premises as tenant, as such, relationship of landlord Maikulal Nigam and the defendants is clearly established and the first appellate Court totally erred in reversing those findings holding that relationship of landlord and tenant is not established between erstwhile owner Maikulal Nigam and defendants.

13. Now, the question for consideration would be, whether the first appellate Court is justified in holding that there is no relationship of landlord and tenant between the plaintiffs and the defendants

herein ?

14. At this stage, it would be appropriate to notice Section 109 of the TP Act which states as under:-

"109. Rights of lessor's transferee.—If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased."

A careful perusal of the aforesaid provision would show that when the right, title and interest in immovable property stands transferred by operation of law, Section 109 of the Act of 1882 would apply and successor in interest would be entitled to

right of his predecessor.

- 15.** The Supreme Court in the matter of **Taraknath and another v. Sushil Chandra Dey by LRS. and others**² has held that since the purchaser gets valid title to the property and the respondent was continuing as tenant, he is bound by title since the suit has been laid for eviction of the respondents and held as under:-

"4.....The sale deed is a registered conveyance for valid consideration. Under those circumstances, by operation of Section 17 of the Registration Act, 1908, the appellant gets valid title to the property....."

- 16.** The Division Bench of the Madhya Pradesh High Court in the matter of **B.P. Pathak v. Dr.Riyazuddin Haji Mohammad Ali and others**³ held that Section 109 creates statutory attornment and applies in three cases where (i) lessor transfers the property leased, (ii) where lessor transfers the property leased or any part thereof or (iii) where the lessor transfers the property leased or any part of his interest thereof and held as under:-

"19. All these problems are solved by section 109. In our opinion, that section creates what may be called statutory attornment, which substitutes, and has the same effect, as contractual attornment, so that because of a transfer of the leased property, or a part thereof, the transferee

2 (1996) 4 SCC 697

3 1976 M.P.L.J. 9

ipso facto acquires "all the rights" of the lessor, and a new relationship is created between the transferee and the lessee. Letter of the attornment is not necessary to complete title to the assignee of the reversion under section 109. Title of the assignee is complete on the execution of the deed of assignment and is not postponed till the notice of assignment. See *Pulin Bihary V. Miss Lila Dev*⁴. This relationship is statutory. It is not dependent on the consent of the lessee (liabilities of the lessor apart). This is by force of the statute....."

- 17.** Section 109 of the TP Act was considered by the Supreme Court in the matter of **Ambica Prasad v. Mohd. Alam and another**⁵ and it was held that upon transfer of interest by lessor during subsistence of lease, immediately rights are acquired by the transferee thereupon and attornment by lessee to new lessor is not required. It was observed as under:-

"15.....From perusal of the aforesaid Section, it is manifest that after the transfer of lessor's right in favour of the transferee, the latter gets all rights and liabilities of the lessor in respect of subsisting tenancy. The Section does not insist that transfer will take effect only when the tenant attorns. It is well settled that a transferee of the landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The section does not require that the transfer of the right of the landlord can take effect only if the tenant attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlord's rights. Since attornment by the tenant is not

⁴ AIR 1957 Cal 627

⁵ (2015) 13 SCC 13

required, a notice under Section 106 in terms of the old terms of lease by the transferor landlord would be proper and so also the suit for ejectment."

- 18.** The dictionary meaning of the word 'attornment' is : "Transfer, legal acknowledgment of new landlord". (Oxford Dictionary).

It is an overt act by which the tenant acknowledges and accepts the new person as the landlord in the place of the old landlord. It has no impact on the lease except for the substitution of one landlord for another, and the terms and incidents thereof continue and operate. It does not bring about a new tenancy or lease; nor does it destroy the existing one, or alter the rights and obligations of the lessor and the lessee prevailing at the moment of the attornment.

- 19.** Halsbury, in his Laws of English, Vol. 23, Third Edition at p. 408, observed that where the occupier is a tenant and agrees to hold of a new landlord during the currency of the agreement without any change in the terms of the tenancy, this is a mere attornment.

- 20.** In Words and Phrases, Permanent Edition, Vol. IV at p. 798, attornment is defined as follows-

"Attornment is the act of recognising a new landlord. It is a continuance of an existing lease on the same conditions in all respects, putting another in the place of the original landlord.

Any act done by a tenant whereby he recognises a change of the person to whom rent is due, is an attornment and an agreement to pay rent to an assignee of the

lease is such an act."

21. In Corpus Juris Secundum, Vol. 51 at p. 527, it is observed-

"An Attornment, in effect is a continuation of an existing lease, and the tenant holds on the same conditions as under the former landlord; the tenant's possession is that of the original lease."

22. Reverting to the facts of the present case in the light of aforesaid principle of law contained in Section 109 of the TP Act and effect of that provision considered by Their Lordships of the Supreme Court and the Madhya Pradesh High Court in the above-stated judgments (supra), it is quite vivid that Section 109 of the TP Act creates statutory attornment and by virtue of the transfer of lease property transferee ipso facto acquires all the rights of the lessor, and a new relationship is created between the transferee and the lessee. Letter of the attornment is not necessary to complete title to the assignee. The first appellate Court also held that relationship of landlord and tenant between the plaintiff and the defendants is not established, which runs contrary to the provisions contained in Section 109 of the TP Act, as held herein-above. The first appellate Court has clearly held that Maikulal Nigam was erstwhile owner

of the suit accommodation and he has alienated the suit property in favour of the plaintiffs by registered sale deeds dated 24.9.1985 (Exs.P-1, P-16 and P-17 respectively) and thus, they have become owner thereof and there is statutory attornment by virtue of the provisions contained in Section 109 of the TP Act in favour of the plaintiffs and were possessed all the rights of the suit accommodation as owners having been purchased by registered sale deeds for valid consideration and by virtue of Section 17 of the Act of 1908 they have acquired title to the property and since the defendants were continuing as tenants they are bound by said transfer and since the suit has been filed for eviction on the ground enumerated under Section 12(1) (a), (c), (e) and (h) of the Act of 1961 and these grounds are established being tenants, as such, relationship of landlord and tenant between the plaintiffs and the defendants are established and the grounds having found established by the trial Court under Section 12(1) (c), (e) and (h) of the Act of 1961, which ought not to have been disturbed by the first appellate Court, as such, setting aside of decree by the first appellate Court is absolutely unjustified. The substantial questions

of law are answered in favour of the plaintiffs and against the defendants.

23. In view of above-stated legal analysis, the judgment and decree of the first appellate Court to the extent that relationship between landlord and tenant is not established is perverse and contrary to record and in consequence, the second appeal filed by the plaintiffs is allowed and the judgment and decree of the first appellate Court is set aside and that of the trial Court is hereby restored.

24. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

25. A decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-