

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 133 of 2013

Reserved on : 12.07.2019

Delivered on : 02.08.2019

1. Ambumal, S/o Teomal, aged about 75 years, R/o Khokhopara, Post Head Post Office Raipur, P.S. Old Police Station, Raipur, Civil & Revenue District- Raipur (C.G.)
2. Nirmala Devi, W/o Mirchumal, aged about 55 years, R/o Bhangdapara, Post- Head Post Office Raipur, P.S. Moudhapara Raipur, Civil & Revenue District- Raipur (C.G.)
3. Meerabai, W/o Nandlal, aged about 50 years, through Nirmala Devi, R/o Bhangdapara, Post- Head Post Office Raipur, P.S. Moudhapara, Raipur, Civil & Revenue District- Raipur (C.G.)
4. Samti Bai, W/o Brijlal, aged about 45 years, through Nirmala Devi, R/o Bhangdapara, Post- Head Post Office Raipur, P.S. Moudhapara, Raipur, Civil & Revenue District- Raipur (C.G.)

---- Appellants

Versus

Santosh Kumar, S/o Bhawandas, aged about 50 years, R/o in front of Hanuman Temple, House No. 50/175, Naya Ward No. 65, Khokhopara, Purani Basti, Raipur Kamred Sudhir Mukharjee Ward, Post Head Post Office Raipur, P.S. Old Police Station, Raipur, Civil & Revenue District- Raipur (C.G.)

---- Respondent

For Appellants	:	Mr. Sudeep Verma, Advocate.
For respondent	:	Mr. Manish Thakur, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 23.04.2013 passed by Seventh Additional District Judge, Raipur (C.G.) in Civil Suit No.

14-A/2011, wherein the said court dismissed the suit filed by the appellants/ plaintiffs for eviction of the respondent from house bearing No. 50/175 situated at Ward No. 65, Khokhopara, Raipur (C.G.).

2. As per the appellants/ plaintiffs, appellant No. 1 and his real brother Sunderdas jointly owned a house as mentioned above. After death of Sunderdas on 24.01.1992, his three daughters namely Nirmala Devi, Meera Bai and Sati Bai who are appellants/ plaintiffs No. 2 to 4, were co-owner of the suit house. The respondent/ defendant is tenant of the appellants on the basis of oral agreement. The agreed rent of the house is Rs. 1500/- per month. From 01.07.2006, the respondent stopped the payment of rent till 01.05.2009 and did not pay the same even after issuance of legal notice on 06.02.2009 i.e. why the suit was filed, but the same was dismissed by the trial court contrary to the facts and legal aspects of the matter.
3. Learned counsel for the appellants submits as under:-
 - (i) Finding of the trial court is not based on evidence and the trial court has completely ignored testimony of the witnesses supporting the claim of the appellants.
 - (ii) Finding recorded by the trial court is not in the fitness of facts and the same is liable to be set aside.
4. On the other hand, learned counsel for the respondent submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same is not liable to be interfered with 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. First question for consideration before this Court is whether the respondent is tenant of the appellants. Mirchumal (PW-1) is power of attorney holder of the appellants, but he is not able to state the date of initiation of tenancy. He is not able to state as to how Ambumal and Sunderdas acquired the property. As per version of this witness, earlier Koushilya Devi was receiving the rent, but he is also not able to state as to when Koushilya Devi died and after passing of Koushilya Devi who was receiving the rent. Receipt of payment of rent and rent note were not produced before the trial court. The landlord is under obligation to supply receipt of rent to the tenant, but in the present case, no receipt was filed in support of statement of this witness. This witness has stated before the trial court as power of attorney holder, but there is nothing on record to say as to why the appellants did not enter into witness box and if they were unable to appear before the trial court, why their evidence are not recorded on Commission. In absence of evidence of any of the appellant/ plaintiff and in absence of any document regarding rent note or receipt of rent, the trial court opined that it is not proved to the satisfaction of the court that the respondent is tenant of the appellants.
7. The trial court has elaborately discussed the entire evidence and after reassessing the same, this Court has no reason to take a contrary view. Argument advanced on behalf of the appellants is not sustainable.

8. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellants and in favour of the respondent on the following terms and conditions:-

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun