

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 8-03-2019

Judgment delivered on 11-04-2019

FA No. 142 of 1998

1. Babulal S/o Dukhram Verma, Aged About 29 Years R/o Gram Amora, Chhattisgarh
2. Anil Kumar S/o Kishanchand Rohra, Aged About 24 Years R/o Mungeli, District Bilaspur M.P. Now Chhattisgarh, District : Mungeli, Chhattisgarh
3. Lavan Singh S/o Dukhram Verma, Aged About 35 Years R/o Gram Amora, Tahsil Bemetara, District Durg M.P. Now Chhattisgarh, District : Bemetara, Chhattisgarh
4. Nunai S/o Dukhram Verma, Aged About 32 Years R/o Gram Amora, Tahsil Bemetara, District Durg M.P. Now Chhattisgarh, District : Bemetara, Chhattisgarh
5. Munnulal (Dead) and deleted through LRs
5.1 - Nanhu Alias Laxmikant Verma, S/o Late Mannulal Verma, R/o Village Amora, Post Office- Sambalpur, Tah. Nawagarh, Distt. Durg, Chhattisgarh
5.2 - Mohanlal S/o Late Mannulal Verma, Aged About 36 Years R/o Village Amora, Post Office- Sambalpur, Tah. Nawagarh, Distt. Durg, Chhattisgarh
6. Smt. Lata W/o Shankar Verma, R/o Gram Bitkuri, Post Badra, Tahsil And District Bilaspur M.P. Now Chhattisgarh
7. Late Smt. Inderbai LRs All Included In Appeal
8. Ratan Singh Dead Through Lrs
 - 8(a) Smt. Kamla Bai Wd/o Late Ratan Singh Verma, Aged About 65 Years R/o Village Amora, Post Sambalpur, P.S. Nandghat, Tahsil Navagarh, Civil And Revenue District Bemetara, Chhattisgarh
 - 8.(b) Sushil Kumar S/o Late Ratan Singh Verma, Aged About 45 Years R/o Village Amora, Post Sambalpur, P.S. Nandghat, Tahsil Navagarh, Civil And Revenue District Bemetara, Chhattisgarh
 - 8.(c) Nirmal Kumar S/o Late Ratan Singh Verma, Aged About 43 Years R/o Village Amora, Post Sambalpur, P.S. Nandghat, Tahsil Navagarh, Civil And Revenue District Bemetara, Chhattisgarh

8.(d) Ganga Prasad S/o Late Ratan Singh Verma, Aged About 41 Years R/o Village Amora, Post Sambalpur, P.S. Nandghat, Tahsil Navagarh, Civil And Revenue District Bemetara, Chhattisgarh

8.(e) Binda Prasad S/o Late Ratan Singh Verma, Aged About 40 Years R/o Village Amora, Post Sambalpur, P.S. Nandghat, Tahsil Navagarh, Civil And Revenue District Bemetara, Chhattisgarh

8.(f) Lalit Kumar S/o Late Ratan Singh Verma, Aged About 38 Years R/o Village Amora, Post Sambalpur, P.S. Nandghat, Tahsil Navagarh, Civil And Revenue District Bemetara, Chhattisgarh

8.(g) Dilip Kumar S/o Late Ratan Singh Verma, Aged About 36 Years R/o Village Amora, Post Sambalpur, P.S. Nandghat, Tahsil Navagarh, Civil And Revenue District Bemetara, Chhattisgarh

8.(h) Smt. Usha Bai W/o Krishna Kumar, Aged About 47 Years R/o Village And Post Nagadh, P.S. Maro, Tahsil Navagarh, Civil And Revenue District Bemetara, Chhattisgarh

8.(i) Smt. Jamuna Bai W/o Mahesh Kumar, Aged About 44 Years R/o Village Ganiyari, Post Sambalpur, P.S. Nandghat, Tahsil Navagarh, Civil And Revenue District Bemetara, Chhattisgarh

8.(j) Smt. Rekha Bai W/o Kejram, Aged About 43 Years R/o Village Kalar Jevara, Post Khutera, P.S. Pathariya, Tahsil And District Mungeli, Chhattisgarh

---- Appellants

Versus

1. Pukhram Chordia Aged About 40 Years S/o Sugamchand, R/o Mungeli, Tahsil Mungeli, Distt. Bilaspur M.P. Now Chhattisgarh, Chhattisgarh
2. Lilam Chordia Aged About 33 Years S/o Sugamchand, R/o Mungeli, Tahsil Mungeli, Distt. Bilaspur M.P. Now Chhattisgarh, District : Mungeli, Chhattisgarh
3. Rajesh Chordia Dead Through Lrs

3(a) Smt. Pushpa Bai Wd/o Late Rajesh Choradiya, Aged About 46 Years

3.(b) Rahul Kumar Choradiya S/o Late Rajesh Choradiya, Aged About 26 Years

- 3(d) Kumari Shahi Shashi Chordiya, D/o Late Rajesh Choradiya, Aged About 21 Years
4. Lalit Chordia Aged About 27 Years S/o Sugamchand, R/o Mungeli, Tahsil Mungeli, Distt. Bilaspur M.P. Now Chhattisgarh, District : Mungeli, Chhattisgarh
 5. Smt. Geeta Vaidya W/o Late Shri Mohanlal Vaidya, Aged About 38 Years R/o Raipur M.P. Now Chhattisgarh, District : Raipur, Chhattisgarh
 6. Smt. Tara Surana W/o Sangilal Surana, Aged About 35 Years R/o Village Kondagaon, Distt. Bastar M.P. Now Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh
 7. Mohanlal S/o Late Mannulal Verma Aged About 36 Years R/o Village Amora, P.O. Sambalpur, Tahsil - Nawagarh, District Durg Chhattisgarh.
 8. Nanhu Alias Laxmikant Verma S/o Late Mannulal Verma R/o Village Amora, P.O. Sambalpur, Tahsil - Nawagarh, District Durg Chhattisgarh.

----- Respondents

For appellants	:	Mr. Prafull N. Bharat, Advocate
For respondents	:	Mr. Ashish Shrivastava and Mr. Anurag Verma, Advocates.

SB: Hon'ble Shri Justice Ram Prasanna Sharma
CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 18/12/1997 – 22/12/1997 passed by the 4th Additional District Judge, Bilaspur (linked at Mungeli) (CG) in Civil Suit No.19-A/90 wherein the said court decreed the suit for eviction in favour of respondents/plaintiffs and against the appellants No..2 Anil Kumar from the premises in question situated at village Shankar Ward,

Mungeli shown in map attached with plaint and consequential relief regarding payment of arrears of rent.

2) As per version of the appellants, the house in question was allotted to one Vedram in his share in family partition, but the trial Court recorded finding that the respondents being successors of one Suganchand are landlords and owners of the suit house. The trial Court has overlooked the registered partition deed (Ex.D1) dated 3-12-1954. The trial Court erred in recording finding that Vedram is not the real owner of the suit house. The said Sugamchand acquired property through a sale deed executed by Prem Singh and Ratan Singh in his favour, but the said Prem Singh and Ratan Singh had no title to the property, therefore, execution of sale deed did not bind Vedram and his heirs. The trial Court overlooked the documentary evidence consisting of entry in the Municipal records in the name of Vedram and demand of payment of property tax against him. These documents along with partition deed and the oral evidence adduced by appellants conclusively established that Vedram is the real owner of the property. It is further case of the appellants that any mortgage executed by Prem Singh in favour of Ambika Soni did not bind on Vedram because after partition Prem Singh could not be Karta of the family of which Vedram was a member. The sale in favour of Sugamchand by persons who had no title to the property did not

transfer any title in favour of Sugamchand. Partition deed dated 7-12-1954 is presumed to be correct as the same is 30 years old document. The said property did not fall in the shares of Prem Singh and Ratan Singh. There is no evidence of existence of any ground under Section 12 (1) of the MP/CG Accommodation Control Act, 1961. Denial of alleged title of the respondents did not prove any ground for ejectment under Section 12(1)(c) of the Act, 1961, therefore, finding of the trial Court is liable to be reversed.

3) On the other hand, learned counsel for the respondents would submit that as per Ex.P/14 & P/11 Lakshman Das was tenant in the house in question and presently occupied by successors of Lakshman Das. There is one partition deed (Ex.D/1) in which property is partitioned between share holders. There is no document that successor of Lakshman is in occupation as tenant of Vedram. From the record, it is established that they are tenants of Suganchand. Lakshman and his successor did not enter into witness box to prove that they are the tenants of Vedram, therefore, their tenancy is not established to that of Vedram.

4. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

5. Documents Ex.P/4 and P/11 go to show that one Lakshman Das was tenant of Suganchand in the house in question and same is occupied by the appellant Anil Kumar after death of Lakshman

Das being successor of Lakshman Das. From the pleadings and evidence adduced by both sides, it is clear that Anil Kumar is the successor of late Lakshman Das and he is occupying the premises as tenant. It means, Anil Rohara is not occupying the property as having any right over the property. From the record (Ex.P/1) which is sale deed executed in favour of Suganchand by Prem Sinng and Ratan Singh s/o. Madho Singh, it is established that Prem Singh and Ratan Singh have sold the property in question to Suganchand vide registered sale deed dated 10-7-1973 and rent note (Ex.P/11) is subsequently written on 31-12-1973 in favour of Suganchand.

6. From the evidence, it is clear that Vedram is the brother of Ratan Singh. As per argument advanced on behalf of the appellants, the property belongs to Vedram , but the said Vedram did not enter into witness box to establish that the house in question was allotted to his share on partition. No rent note was produced by the appellant Anil Kumar Rohara that he is the tenant of Vedram. It is also not clear from the statement of the appellant Anil Kumar Rohra that he is paying rent to Vedram or anybody else. In absence of evidence of Vedram in favour of Anil Kumar , it is not established that the appellant Anil Kumar is tenant of Vedram. Again, in absence of evidence of Vedram, it is not established that the property was allotted in his shares on partition,

therefore, it cannot be held that the house in question is owned by Vedram and the appellant Anil Kumar is tenant of Vedram.

7. Appellant Anil Kumar Rohra is not the original tenant. Original tenant was Lakshman Das who was predecessor of the appellant Anil Kumar and from rent note Ex.P/4 & P/11, it is established that Lakshman Das was tenant of late respondent Suganchand who purchased property from Prem Singh and Ratan Singh through registered sale deed. When predecessor of the appellant Anil Kumar Rohra did not object to his tenancy, the person claiming to be successor of Lakshman Das is stopped from saying that he is not tenant of Sugamchand/his successor. Any receipt of municipal record is not record of right or record of tenancy. It is maintained only for receiving tax by Municipal council therefore, municipal record in the name of Vedram or any other person will not change tenancy of the appellant Anil Kumar and late Suganchand and his successor, therefore, argument advanced on behalf of the appellants is not sustainable.

8. From the evidence of Lalit Chourdiya (PW/1) (para 7) and Chaturdas Mankpuri (PW/4) (para 3), it is established that Lalit has four brothers and all are married, the total family members are 13 and the house in question in which they are living consists of two rooms which is not sufficient for their requirement. It is settled law that the tenant or the court cannot judge the necessity of landlord.

Therefore, from the evidence of respondents/plaintiffs, it is established that the house in question is bona fide required for them and no other suitable accommodation is available for them in the city of Mungeli. The trial Court also recorded finding that since the appellant Anil Kumar has denied the tenancy which is inconsistent and adverse to the right of the landlord, therefore, landlord is also entitled for eviction on the ground of Section 12(1) (c) of the Act, 1961. The trial Court also recorded finding that after partition the property in question was allotted to Prem Singh and Ratan Singh who sold the house to Suganchand who was original plaintiff and landlord in present case, therefore, Suganchand was title holder/owner of the property which is not challenged by the other members of the family namely Vedram. After re-assessing the entire evidence this court has no reason to record contrary finding. The appeal is liable to be dismissed.

9. As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly, decree is passed in favour of respondents and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellant Anil Kumar to bear the cost of the respondents through out.

- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju