

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 349 of 2006**

Viken Gupta @ Munna, Age 21 years, S/o. Dr. Surajpal Gupta, R/o. Sadar Bazar, Dhamtari, District Dhamtari (C.G.)

----- Appellant/Plaintiff

Versus

1. Jaitun Bai, Aged about 60 years, S/o Mohammed Idu,
2. Mohammed Rahim, Aged about 27 years, S/o. Mohammed Idu,
3. Mohammed Hakim, Aged about 25 years, S/o. Mohammed Idu,
4. Mohammed Yunus, Aged about 25 years, S/o. Mohammed Idu,
5. Mohammed Abdul, Aged about 23 years, S/o. Mohammed Idu,
6. Mohammed Kalim, Aged about 26 years, S/o Mohammed Aladin,
7. Jamaluddin, Aged about 22 years, S/o Mohammed Aladin,
8. Sugara Bai, Aged about 35 years, D/o Mohammed Aladin,
9. Nilopar, Aged about 20 years, D/o. Mohammed Aladin,
10. Naziya Kausar, Aged about 30 years, S/o. Mohammed Yusuf,
11. Sayeeda Begum, Aged about 40 years, Wd/o. Mohammed Yusuf,

All above R/o. Sadar Bazar (Bramhan Para), Dhamtari, Tahsil and District Dhamtari (C.G.)

----- Respondents/defendants

For Appellant : Mr. Manoj Paranjpe and
Mr. Anurag Singh, Advocate
For Respondents No. 1 and 2 & 6 to 9
: Mr. Adil Minhaj, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgement On Board

21/10/2019

(1) The substantial questions of law involved, formulated and to be answered in this second appeal preferred by plaintiff state as under:

"1. Whether the Courts below have committed error of law by non-suiting the plaintiff on the ground that the plaintiff has not proved his exclusive ownership of the suit accommodation ?

2. Whether the Courts below have committed error of law and the finding regarding the plaintiff's requirement of the suit accommodation for a *bonafide* non-residential need is perverse ?

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court).

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) The plaintiff/appellant filed a suit for

eviction against the defendants on the ground enumerated under Section 12(1)(f) of the M.P./C.G. Accommodation Control Act, 1961 (henceforth "Act, 1961") pleading *inter alia* that plaintiff -Viken Gupta @ Munna is the son of Dr. Surajpal Gupta, who was the real owner of the suit accommodation. It was further pleaded that the suit accommodation has been subjected to partition vide Ex.P-9, dated 8.8.1977 between the family members of the plaintiff and in pursuance of the said partition, the suit accommodation was fallen in his share. The plaintiff is presently carrying on his business of repairing radio and television shop in the accommodation owned by his brother namely Narayan Prasad Gupta (PW-3) and, therefore, he needs suitable accommodation bonafidely as he has no other reasonably suitable accommodation in the township of Dhamtari and, therefore, decree be granted in his favour on the ground of bonafide need under Section 12(1)(f) of the Act, 1961. The suit accommodation was let out by Dr. Surajpal Gupta to the father of defendants No. 1 to 5 i.e. Mohammed Idu and father of defendants No. 6 to 9 i.e. Mohammed Aladin.

(2.2.) Defendants filed their written statement stating *inter alia* that suit accommodation is not required bonafidely by the plaintiff. Plaintiff's

father namely Dr. Surajpal Gupta has closed his clinic and that accommodation is lying vacant. Similarly, the plaintiff and his brothers namely Dr. Narayan Prasad Gupta, Ravishankar Gupta & Ashok Gupta are the joint owner and landlord of the suit accommodation and shop earlier held by Punam Typing, which is adjacent to the suit accommodation, is lying vacant during pendency of the suit and that accommodation is suitable accommodation for the alleged bonafide need of the plaintiff and the plaintiff is not the owner of the suit accommodation and, therefore, he is not entitled for decree of eviction.

(2.3) The trial Court, by its judgment and decree dated 12.07.2004 passed in Civil Suit No. 98-A/2002, dismissed the suit of the plaintiff after having held that plaintiff and his three brothers namely Dr. Narayan Prasad Gupta, Ravishankar Gupta & Ashok Gupta are the joint owner and landlord of the suit accommodation and the plaintiff has failed to establish his ownership / title over the suit accommodation, therefore, he is not entitled for the decree eviction.

(2.4) The plaintiff preferred first appeal thereagainst. The First appellate Court, by its impugned judgment & decree dated 9-5-2006 in Civil Appeal 170-A/2004, after re-appreciating the oral and documentary

evidence available on record, affirmed the judgment & decree of the trial Court by dismissing the appeal, against which, this second appeal has been preferred by the appellant/plaintiff in which the substantial questions of law have been formulated and cataloged in opening paragraph of the judgment.

(4) Learned counsel appearing for the appellant/plaintiff would submit that fact of partition has been acknowledged vide Ex.P-9 dated 8.8.1977 and, in which, suit accommodation has fallen in share of the plaintiff and the accommodation, in which the plaintiff is presently carrying on his business of repairing of television and radio is of his brother namely Narayan Prasad Gupta (PW-3). He submits that other accommodations ie. Punam Typing has fallen into share of his brother Ashok Gupta (PW-2) and the Hospital, which has closed on account of death of his father Dr. Surajpal Gupta, has fallen into the share of plaintiff's mother, thus, the ownership and the bonafide need of the plaintiff is fully established and both the courts below have concurrently erred in not granting decree of eviction in favour of the plaintiff, as such, the finding recorded by both the courts below deserves to be set aside and the decree of eviction be granted in favour of the plaintiff.

(5) On the other hand, learned counsel appearing for the defendants No. 1 & 2 and 6 to 9 while opposing the contention made by counsel for the plaintiff would submit that both the courts below have concurrently and rightly held that the plaintiff is neither owner of the suit accommodation as required under Section 12(1)(f) of the Act of 1961 nor the suit accommodation is required *bonafidely* for his alleged *bonafide* need. He has taken me through the statements of plaintiff and defendants' witnesses to establish that suit accommodation is not required by the plaintiff for his *bonafide* need and he has other reasonably alternative suitable accommodation available in the same locality of the township of Dhamtari to satisfy the alleged *bonafide* need and, therefore, the decree granted by the both the courts below deserve to be upheld.

(6) I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(7) It is a case of the plaintiff that the sometime in the year 1974-75, there was a partition between his family members and in pursuance of the said partition, suit accommodation fell in his share, which has been

reduced in writing vide Ex.P-9 dated 8.8.1977.

(8) A careful perusal of the Ex.P-9, it appears that it is a deed acknowledging earlier partition duly signed by plaintiff's father and his four sons including plaintiff and in paragraph 3(३) (Ex.P-9), it is specifically mentioned that suit accommodation situated at Bramhanpara let out as tenant by Mohammed Idu was given to plaintiff (Viken Gupta @ Munna Lal Gupta) and on the basis of which, he has become the owner of the suit accommodation whereas it is a case of the defendants that the suit accommodation is held jointly by plaintiff and his three brothers and, therefore, the plaintiff is not the owner of the suit accommodation and, therefore, the plaintiff is not entitled to get the defendants-tenant evicted. The objection has been raised that Ex.P-9 is an un-registered documents, therefore, it is inadmissible in evidence.

(9) Admittedly, Ex. P-9 is not a partition deed. Incomplete partition made earlier in the year 1976 by plaintiff's father was acknowledged in writing vide Ex.P-9, therefore, it is not required to be registered as the earlier oral partition has been reduced in writing, as such, the objection raised that since Ex.P-9 is unregistered document, therefore, it is inadmissible in evidence, is devoid of merit, and the same is liable

to be rejected and it is hereby rejected in view of well settled principles of law in this regard.

(10) The next objection raised on behalf of the defendants that, it is an incomplete partition and it is only a shame transaction to get the defendants evicted by giving property in favour of present plaintiff. The said plea has been accepted by both the courts below whereas it is a deed acknowledging partition made in the year 1976 duly signed by plaintiff's father Dr. Suraj Pal Gupta, who is now no more and has already passed away.

(11) Plaintiff's two brothers namely Ashok Kumar Gupta (PW-2) and Narayan Prasad Gupta (PW-3) have already been passed examined and they were subjected to lengthy cross examination but nothing has been elicited from them to establish that earlier partition held in the year 1976 has been reduced in writing vide Ex.P-9 was the shame transaction. Merely branding a document to be the shame transaction, it cannot be held to be shame transaction. Thus, the defendants have failed to prove the document (Ex.P-9) is the shame transaction. Further, Merely because some of properties were left to be included in the earlier partition earlier held jointly, it cannot be held that Ex.P-9 is a shame transaction. The suit for partial partition by co-owner without embracing the

entire family property would not maintainable at the instance of one co-owner but a suit filed by the landlord based on already made partition, which has been allotted to him, cannot be said to be non maintainable merely on the ground that family partition (Ex.P-9) which was made in the year 1974-75, entire family property was not partitioned. The defendants, who are tenant, have failed to challenge the partition successfully and even they cannot be permitted to question the title of the plaintiff.

(12) Even a co-owner is as much an owner of the entire property as any sole owner of a property is. Co-owner can succeed in the suit without imleading all the co-owners. (See: Sri Ram Pasricha Vs. Jagannath and others¹). It is not in dispute in the present case that it is a defendants' case that plaintiff and his three brothers are joint owner of the suit property.

(13) As such, the finding recorded by two courts below that plaintiff has failed to prove his title over the suit property is absolutely perverse and is liable to be set aside. It is held that the plaintiff has established his ownership over the suit property vide Ex.P-9 dated 8.8.1977 and he is the owner of the suit accommodation.

1 (1976) 4 SCC 184.

Answer to next substantial question of Law

(14) The defendants have taken two objections that in the same locality where the suit property is situated, the plaintiff's father was running Hospital and since he has earlier closed the Hospital and thereafter he died, therefore, the plaintiff can run his business of repairing radio and television shop in that said shop held by father and, therefore, he has reasonably alternative suit accommodation of his own in the township of Dhamtari, is also devoid of merit in view of evidence available on record.

(15) Plaintiff's brother – Ashok Gupta has also been examined as PW-2. He has clearly stated in paragraph 5 of his statement that the accommodation held by his father – Dr. Surajpal Gupta, in which he (father – Dr. Surajpal Gupta) was running his Hospital, is in possession of his mother and in which, he (Ashok Gupta) is also running office as an Advocate and it has also been stated in paragraph 5 (c) of the plaint amended before the trial Court. Likewise, other suit accommodation, which the defendants are alleging to have fallen vacant and the same can be used by the plaintiff for his bonafide need, Ashok Gupta (PW-2) has also stated in paragraph 4 of his statement that the said accommodation has fallen in his share (Ashok Gupta) and

it is lying vacant.

(16) The Madhya Pradesh High Court in the matter of Ummedmal v. Dulichand², Shivmala Tejsingh Ingle v. Ramcharan Kundantal³ and Raj Kumar v. Vedprakash⁴ has clearly held that under Section 12(1)(f) of the Act, 1961 accommodation acquired or held by the son, mother or wife or any member of the family of plaintiff is not an alternative accommodation.

(17) In the instant case, it has already been held that one accommodation is held by plaintiff's mother and one accommodation is held by plaintiff's brother – Ashok Kumar Gupta, therefore, the said accommodations cannot be said to be the alternative accommodation for the purpose of Section 12(1)(f) of the Act, 1961.

(18) It is also well settled that alternative accommodation as required under Section 12(1)(f) of the Act, 1961, the landlord must be the owner of the said accommodation. Admittedly, two alternative accommodations indicated by the defendants is one accommodation is owned by plaintiff's mother and one accommodation is owned by the plaintiff's brother – Ashok Gupta, therefore, both the accommodations, which can be said to be available to the plaintiff for his

2 (1982) JLJ (SN) 74

3 1980 MPLJ 530

4 1982 JLJ 451

bonafide need is not owned by the plaintiff and he is not the owner thereof. The accommodations held by plaintiff's mother and his brother are not the alternative accommodation within the meaning of Section 12(1)(f) of the Act, 1961. Thus, both the courts below are absolutely unjustified in holding that the aforesaid accommodations are the reasonably suitable alternative accommodation of the plaintiff for his *bonafide* need.

(19) In consequence, the judgment and decree passed by both the courts below are set aside by answering the substantial questions of law in favour of the plaintiff and against the defendants.

(20) The defendants are directed to deliver the vacant and peaceful possession of the suit accommodation situated at Bramhan Para, Sadar Bazar Dhamtari as per map attached with the plaint and the suit map be made part of the decree, within a period of two months from the date of receipt of certified copy of this order.

(21) The second appeal is allowed to the extent indicated hereinabove. No cost(s).

(22) A decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

