

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 20-09-2019

Judgment delivered on 24-10-2019

FA No. 72 of 2013

- Prakash Kumar S/o Devandas Aged About 56 Years R/o Varsha Stores, Evergreen Chowk, Baijnathpara, Raipur, Tah. and Distt. Raipur, Chhattisgarh

---- Appellant/defendant

Versus

1. Smt. Nafiz Raza W/o Mohammed Yusuf Raza Aged About 43 Years R/o Katora Talab, Raipur, Tah. and Distt. Raipur Chhattisgarh
2. Mohammed Ahamed Raza S/o Mohammed Yusuf Raza Aged About 23 Years R/o Katora Talab, Raipur, Tah. And District : Raipur, Chhattisgarh
3. Mohammed Wasim Raza S/o Mohammed Yusuf Raza Aged About 18 Years R/o Katora Talab, Raipur, Tah. and District : Raipur, Chhattisgarh

---- Respondents/plaintiffs

For appellant : Mr. Sachin Singh Rajput and Mr. Sharad Mishra, Advocates.

For respondents : Mr. Manoj Paranjpe, Mr. Bharat Sharma and Mr. Shubhank Tiwari, Advocates.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellant has preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 being aggrieved by the

judgment/decreed passed by 5th Additional District Judge, Raipur (CG) in Civil Suit No. 3-A/2013 wherein the said court decreed the suit filed by the respondents for eviction of appellant/tenant from shop/house No. 41/362, 362/1 and 362/2 situated at Ever Green Chowk, Baijnathpara, Raipur.

2. The facts giving rise to this appeal, in brief, are that the respondents/plaintiffs herein have filed a suit for ejectment, vacant possession, balance rent and damages for a shop in the said premises named and styled as Versha Stores. Admittedly, the appellant was tenant of Gulam Mohammed who sold the entire property including the disputed shop by way of registered sale deed dated 6-8-2005 to respondents. After purchase of the property respondents informed the appellant vide legal notice dated 11-10-2005 that the respondents have become landlord and rent should be paid to them. Despite notice, rent was not paid then legal notice dated 4-2-2006 was issued against the appellant which was served to him on 7-2-2006 but arrears of rent was not paid within two months. It is further case of the respondents that they are in need of the shop for business of cosmetic and ladies garments and there is no vacant suitable accommodation available in the locality of Raipur. It is further case of the respondents that the appellant has denied the title of disputed shop and acted in a matter which is inconsistent with the purpose

for which he was admitted to tenancy, therefore, ground under Section 12(1)(a), 12(1)(f) and 12(1)(c) of the Chhattisgarh Accommodation Control Act, 1961 (for short, "the Act, 1961") is available to respondents. As per the appellant, the trial court recorded a finding contrary to factual matrix and legal aspect of the matter.

3. Learned counsel for the appellant would submit as under:

- i) The respondents failed to prove their bona fide requirement, hence impugned decree is liable to be set aside.
- ii) The trial court committed error in holding that rent of the shop was not paid from November, 2005 to August, 2006.
- iii) The dispute regarding shop in question is pending between respondents and Gulam Mohammed, therefore, decree under Section 12(1)(c) of the Act, 1961 is not liable to be sustained.

4. On the other hand, learned counsel for the respondents would submit that finding of the trial court is based on proper marshalling of the evidence which is not required to be interfered

with while invoking jurisdiction of the appeal. He placed reliance in the matter of **Bhagwati Tiwari vs. Makhanlal Yadav, 2008 LawSuit (MP) 592, Vinod Agrawal vs. Mangat Singh Chawla decided by this court on 28-8-2019, Prativa Devi (Smt) vs. T.V. Kkrishnan (996) 5 SCC 353 & Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta (1999) 6 SCC 222.**

5. I have heard learned counsel for the parties and perused the record of the court below including the judgment and decree.

6. The first question for consideration of this court is whether ground under Section 12(1)(a) of the Act, 1961 is available to the appellant.

7. From the evidence of Smt. Nafiz Raza (PW/1) and documents Ex.P/2, P/3, P/4 and P/5 it is established that after purchasing the property respondents side issued notice to appellant vide Ex.P/2 dated 11-10-2005 that the respondents have become landlord of shop in question, but appellant side did not pay the rent, thereafter notice was issued to appellant on 4-2-2006 which was received by him as per Ex.P/5. Notice was received on 7-2-2006 but arrears of rent was not paid within two months. Section 12(1)(a) of the Chhattisgarh Accommodation Control Act, 1961 may be read as under:

“12. Restriction on eviction of tenants. - (1)

Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner”.

8. In the present case, arrears of rent was not deposited within two months after receiving the notice, therefore, ground under Section 12(1)(a) of the Act, 1961 is available to the respondents and the trial court is right in holding that the appellant is liable to be evicted on this ground.

9. The next question for consideration of this court is whether the shop which is let to appellant is required bona fide by the respondents for starting business. As per evidence of Nafiz Raza (PW/1), she is willing to open cosmetic and ladies garments in the premise in question and no other alternate shop is available to her in the locality of Raipur.

10. It is contended on behalf of the appellant that one other shop is available to the respondents in Raipur. From the evidence of Nafiz Raza (PW/1) it is established that other shop is used for business of mobile phones. There is no oral and documentary evidence that any vacant suitable accommodation is available to the respondents side for starting their business. The trial court has elaborately discussed the entire evidence and recorded finding that shop is bona fide required by the respondents.

11. After re-assessing the evidence, this court has no reason to disturb the finding recorded by the trial court because it is not the job of the court or tenant to ration the need of the landlord and the landlord is the best judge for deciding which premise is suitable for starting the business. Finding on this count by the trial court is also not liable to be interfered with.

12. It is further contended on behalf of the appellant side that the matter is pending regarding property between Gulam Mohammed and respondents but no document was produced and proved before the trial court that any litigation is pending for the shop in question. The appellant denied that the respondents are landlord. Admittedly, the appellant is tenant and his status shall remain as tenant. There cannot be any tenancy without landlord. It is admitted by the appellant side that Gulam Mohammed was landlord of property in question. Gulam Mohammed did not

appear before the trial court from appellant side to say that he has not alienated the property in question in favour of the respondents. From the sale deed it is clearly established before the trial court that the respondents have purchased the property and they are landlords by operation of law. Denying their right is an act which is inconsistent with the purpose for which appellant side has admitted to tenancy, therefore, the trial court is right in holding that the ground under Section 12(1)(c) of the Act, 1961 is established and the appellant is liable to be evicted on this ground also.

13. After re-assessing the entire evidence, argument advanced on behalf of the appellant is not sustainable. Finding of the trial court is based on oral and documentary evidence adduced by both sides and same is not based on any irrelevant or extraneous material. The appeal is liable to be dismissed.

14. Accordingly, decree is passed in favour of respondents and against the appellant as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellant 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