

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 28-02-2019

Judgment delivered on 29-03-2019

SA No. 103 of 2006

- Teekam Das aged about 62 years s/o. Jiyaldas, occupation partner Athwa Proprietor Messers Radio Tarang, Mahatma Gandhi Road, Raipur, Tahsil Va Zila Raipur (CG) (died and deleted) through LR

1(a) Suresh Mandhyam S/o Late Teekam Das Mandhyam, Aged About 49 Years R/o Raman Mandir, Fafadih, Raipur, Chhattisgarh,

1(b) Deepak Mandhyan S/o Late Shri Teekam Das Mandhyan, Aged About 44 Years R/o Raman Mandir, Fafadih, Raipur, Chhattisgarh .

---- Appellants/Defendants

Versus

1. Shailendra Kumar Namdeo S/o Lal Bahadur Namdev, Aged About 26 Years Occupation Television Sudharak, Mahatma Gandhi Road Raipur, Tahsil And District Raipur, Chhattisgarh (died and deleted)
2. Savita Mordia W/o Ajay Mordia, Aged About 51 Years R/o 26 Kanwar Villa, Shree Colony, Near Kamal Plaza, Old Bypass Road Amrawati- 444606 Maharashtra, District : Amravati, Maharashtra
3. Priya Bajaj W/o Jai Prakash Bajaj, Aged About 46 Years R/o A-3, Royal James, Daman Road, Chala, Vapi 396191, District Walsad Gujarat, Gujarat
4. Reeta Vatnani W/o Naresh Vatnani, Aged About 40 Years R/o E 184, Sector 5, Devendra Nagar, Raipur, Chhattisgarh

Respondents No. 2 to 4 Daughters of the deceased appellant - Teekam Das, District : Raipur, Chhattisgarh

---- Respondents

For appellants : Mr. Prafull N. Bharat, Advocate.

For respondents : Mr. B.P. Sharma, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 100 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 28-1-2006 passed by 10th Additional District Judge (FTC) Raipur (CG) in Civil Appeal No. 40-A of 2004 wherein the said court passed decree in favour of respondents for shop in question reversing the judgment and decree passed by the XI th Civil Judge, Class 1 Raipur in Civil Suit No. 192-A/2002 dated 17-9-2003.

2. The original respondent No.1/plaintiff filed a suit for eviction and arrears of rent pleading *inter alia* that he is the owner and landlord of the suit accommodation and the original plaintiff is tenant for monthly rent of Rs.250/-. The First Appellate Court decreed the suit on the ground of bona fide need under Section 12(1)(f) of the MP/CG Accommodation Control Act, 1961 (for short, "the Act,1961") and for denial of the landlord title under Section 12(1)(c) of the Act.1961. This appeal is admitted on the following substantial questions of law.

- l) Whether the Lower Appellate Court was not justified in passing a decree for eviction under Section 12(1)(c) of the

MP/CG Accommodation Control Act, 1961?.

- ii) Whether the Lower Appellate Court erred in law in passing a decree under Section 12 (1)(f) of the MP (CG) Accommodation Control Act, 1961 without recording a finding that the plaintiff was the owner of the suit premises and was having an authority of law to maintain a claim under Section 12(1)(f) of the said Act?.

3) Learned counsel for the appellants would submit as under:

- I) Original respondent was not owner of the suit accommodation and it is the property of the grand-mother, therefore, bona fide need for his own business has not been established.
- ii) The respondent is miserably failed to establish his title over the suit accommodation which is *sine qua non* for granting a decree under Section 12(1)(f) of the Act, 1961. Respondent has more reasonable suitable accommodation for his business, therefore, finding of the trial

Court is not liable to be sustained.

- iii) Denial of respondent title is nothing but challenged to derivative title of the respondent. As per version of original appellant the respondent's grand-mother is title holder of the suit accommodation.

Reliance has been placed in the matter of

Sheela and others vs. Firm Prahlad Rai

Prem Prakash, reported in JT 2002 (2)

SC 536.

4. On the other hand, learned counsel for the respondent would submit that the appellant/tenant has paid rent to the respondent/landlord, therefore, he is stopped from challenging title of landlord by virtue of Section 116 of the Indian Evidence Act, 1872. Landlord is not required to prove his title on the basis of principle applicable in suit for declaration of title.

5. I have heard learned counsel for the parties and perused the records of both the courts below including the judgment and decree.

6. From the evidence on record, it is established that original appellant paid rent to original respondent as landlord of the premises in question. Though it is pleaded by the appellant that

one Tulsa Bai is owner of the premises in question, but no record of right was produced by the appellant side to establish that Tulsa Bai was owner of the premises in question. It is also not case of the appellant that he is paying rent to Tulsa Bai who is owner of premises in question. The respondent side produced document before the trial Court to establish that he is owner of the premises in question and was getting rent earlier from the appellant side which was paid by him. It is the case between landlord and tenant and admittedly tenancy is admitted and it is also admitted that the rent was paid to original respondent as landlord. In the case of landlord and tenant, landlord is not required to prove his title on the basis of principle applicable in suit for declaration of title. The admission of earlier payment of rent is determinative factor for relationship as tenant and landlord. In the present case, the respondent/landlord side has produced sufficient documents to show that he is recorded owner of the property in question, therefore, finding of the trial Court that the respondent has proved his ownership is based on evidence available on record and same is not based on any irrelevant or extraneous material. The appellant side was free to establish ownership of the premises of anybody else but they failed to prove the same whereas the respondent side established ownership by sufficient documents of local bodies. As no one is claiming to be owner of

the said premises, the evidence adduced by the respondent side is sufficient to establish his ownership, therefore, the trial Court is right in holding that the respondent has proved the better title from any body else. Again from the evidence, it is established that respondent is in bona fide need of premises in question and the landlord is the best person to judge his/her necessity for establishing requirement. The court is not required to go for rationing of the premises of the landlord. The First Appellate court has recorded the finding that the original respondent was the owner of the suit premises because he is having better title than others, therefore, it cannot be held that the First Appellate Court without recording any finding regarding ownership of the house of the respondent passed the decree. Thus, second substantial question of law is answered in negative.

7. The appellant/tenant side first paid the rent to respondent/landlord side and then stopped payment by saying that respondent side is not owner of the premises in question. If tenant was bona fide to question as to how title came to vest to landlord, it should have been done after depositing the rent under protest, but that is not done and without depositing the rent he retained the possession against contract of tenancy. Stopping payment of rent is not bona fide on the part of the tenant who is enjoying possession as tenant without consideration. His act is

not bona fide and he substantially affected the right of recovery of rent of respondent/landlord side, therefore, the First Appellate Court is right in holding that the act of the appellant/tenant affected the right of landlord substantially which comes within purview of Section 12(1)(c) of the Act, 1961. The first substantial question of law is answered in negative. The case law cited by learned counsel for the appellant does not help to him as the same is distinguishable from the facts of the present case.

8. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed. .

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju