

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 477 of 2017

1. Deleted (Smt. Bhanuben) As Per Court Order Dated 17.04.2018.
2. Mayur Bhinde, S/o. Late Shrikant Bhinde, Aged About 31 Years, R/o. Near Laxmi Narayan Temple, Behind Radha Madhav Press, Raigarh, Tahsil & District Raigarh, Chhattisgarh

---- Appellant

Versus

1. Smt. Savita Devi, W/o. Late Devendra Sanwariya, Aged About 62 Years, R/o. Gandiganj, Station Road, District Raigarh, Chhattisgarh, Now Presently R/o. C/o. Kirti Chawda, Shalimar Township, Glossom Block, 3rd Floor, A.B.Road, Indore, Madhya Pradesh.
2. Yashwant Sanwariya, S/o. Late Nanhelal Sanwariya, Aged About 72 Years, R/o. Gandiganj, Station Road, District Raigarh, Chhattisgarh
3. Jayanti Sanwariya, S/o. Late Nanhelal Sanwariya, Aged About 65 Years, R/o. Gandiganj, Station Road, District Raigarh, Chhattisgarh
4. Seema Bhinde, W/o. Late Shrikant Bhinde, R/o. Near Laxmi Narayan Temple, Behind Radha Madhav Press, Raigarh, Tahsil & District Raigarh, Chhattisgarh

---- Respondents

For Appellant : Mr. Tarkeshwar Nande & Sourabh
Sharma, Advocates

For Respondents : Mr. Y.C.Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Judgment On Board

07.01.2019

Heard

1. The instant appeal is against the judgment and decree dated 24.06.2017 passed in Civil Appeal No.87/2015 by the Fourth Additional District Judge, Raigarh, whereby the Court below has decided the eviction case bearing No.75-A/2013 and has reversed the finding of the trial Court dismissing the suit. The present appeal is by the tenant.
2. Perusal of the order of both the Court below would show that the trial Court has dismissed the suit filed by Smt. Savita Devi, Yashwant Sanwariya & Jayanti Sanwariya wherein the suit was

filed for ejectment under Section 12(1)(e) and 12(1)(f) of the C.G. Accommodation Control Act. The appellate Court reversed the finding and has passed the order for eviction.

3. Learned counsel for the appellant would submit that the landlord plaintiff has failed to prove the bonafide need as joint tenancy was not given and one superstructure was required for non-residential purpose whereas another superstructure was required for residential purpose. It is contended that for non-residential purpose the bonafide need though was projected that of plaintiff No.1 but she was not examined though pleading contains that she wanted to open the school in the premises. It is further contended that the evidence is on record that during the pendency of the suit certain other properties which were available to the landlord were sold, therefore, need if any was satisfied and need was not proved beyond the reasonable doubt, so decree for bonafide need cannot be sustained and substantial question arises for consideration.
4. Perused the order of the Court below and the record. The record would reveal that the suit for ejectment was filed in the year 1994. In the schedule of the property, two superstructures have been shown, one has been stated for requirement of bonafide need to start a school and for another residential premises the need was projected that it is required for the family of the plaintiff which has grown up and to accommodate all, the same is required.
5. In respect of the residential purpose, house rent was fixed as Rs.80/- whereas for non-residential purpose the rent was fixed as Rs.120/-. Perusal of the record would show that for non payment of the rent the defence of the tenant was struck off according to

Section 13(1) of the Accommodation Control Act, which is reproduced herein :

“On a suit or any other proceeding being instituted by a landlord on any of the grounds referred to in Section 12 or in any appeal or any other proceeding by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice of appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant, as the case may be, or within such further time as the Court may on an application made to it allow in this behalf, deposit in the Court or pay to the landlord, an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made; and shall thereafter continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be.”

6. As per Section 13(6), if a tenant fails to deposit or pay any amount as required by this Section, the Court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit, appeal or proceeding, as the case may be. Admittedly, the defence striking out under Section 13(6) of C.G. Accommodation Control Act which was not subject of challenge.
7. Perusal of the record would show that the plaintiff had examined one Rajesh Parmar as PW-1, Yashwant Sanwariya as PW-2 & Anil Sanwariya as PW-3. PW-1 & PW-2 were cross examined and during the cross examination, the defendant tried to impress upon that the plaintiff has an alternative accommodation available and tried to avail a defence available under Accommodation Control

Act. The defence having been struck out for non payment of meager sum of rent of Rs.80 & 120/-, the said defence cannot be appreciated. It is further a settled law as laid down in **(2012) 2 SCC 155** in case of **Mohd. Ayub & Anr. v. Mukesh Chand** that the Court cannot direct the landlord to do a particular business against his will. The oral and documentary evidence produced by the plaintiff would show that one of the plaintiff has stated that the suit premises is required for opening a school for the other plaintiff. If the oral and documentary evidence therefore are examined, it would show that the plaintiff was able to discharge the onus which lay on him subject to the court forming that opinion. Therefore, the statement of Rajesh Parmar, PW-1, wherein he stated that the said house would be required for Savita Sanwariya to open a school reading along-with the statement of Yashwant Sanwariya, PW-2, would show that the plaintiffs were able to prove the need for one of the plaintiff though she was absent before the Court. Reading of the said evidence and the proposition finds support from the ratio of laid down in case of **Rattan Dev v. Pasam Devi** reported in **(2002) 7 SCC 441**. So whether one of the plaintiff for whom the need was projected to open a school for non-residential purpose cannot be qualified as not proved.

8. The statement of PW-2 who is also plaintiff has categorically stated that the plaintiff No.1 needs the premises to open a school. The plaintiff therefore having examined himself and projected need which is to be read in a cluster, it cannot be presumed that each plaintiff has to be examined separately. One plaintiff can depose on behalf of other plaintiff and the plaintiff No.2 as PW-2 has deposed the necessity of the need. Accordingly, I do not find

any substantial question of law arises for consideration in this case so as to admit this appeal.

9. In view of the above, this appeal is dismissed at the motion stage itself.

Sd/-
(Goutam Bhaduri)
Judge