

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.76 of 2008

Smt. Akanksha Singh, aged 21 years, W/o Shri Abhishek Kumar Singh, R/o Pendra, Tehsil Pendra Road, District Bilaspur (C.G.)

(Plaintiff)

(Respondent)

---- Appellant

Versus

1. Ramesh, aged 40 years, S/o late Shri Daddu Prasad,
2. Suresh, aged 33 years, S/o late Shri Daddu Prasad,
3. Ritesh, aged 21 years, S/o late Shri Daddu Prasad,
4. Rakesh, aged 27 years, S/o late Shri Daddu Prasad,
5. Sarita, aged 24 years, D/o late Shri Daddu Prasad,
6. Savitri, aged 43 years, D/o late Shri Daddu Prasad,
7. Saroj, aged 35 years, D/o late Shri Daddu Prasad,
8. Sarla, aged 29 years, D/o late Shri Daddu Prasad,

All residents of Pendra, Tehsil Pendra Road, District Bilaspur (C.G.)

(Defendants)

(Appellants)

---- Respondents

For Appellant / Plaintiff: -

Mr. Somnath Verma and Smt. Ritu Alfred, Advocates.

For Respondents / Defendants: -

Mr. Aditya Khare, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

29/01/2020

1. This appeal preferred by the plaintiff was admitted on the following substantial question of law: -

“Whether the first appellate Court was justified in reversing the judgment and decree of the trial Court by recording a finding which is perverse to the record?”

[For sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.]

2. The plaintiff filed suit for eviction and arrears of rent stating inter alia that she is the landlord and owner of the suit accommodation situated at Village Pendra, Tehsil Pendra Road, Distt. Bilaspur whereas, the original defendant was tenant on monthly rent of ₹ 75/- and the suit accommodation was let out to him vide Ex.P-1 on 2-2-1991 and since the accommodation is required bona fidely and it has become dilapidated, therefore, notice was served vide Ex.P-6 and when the suit accommodation was not vacated, suit was filed. The defendant set up the plea that he is not the tenant and is the owner of the suit accommodation, therefore, he is not liable to be evicted.
3. The trial Court after appreciating oral and documentary evidence available on record held that the plaintiff is owner of the suit accommodation and the original defendant is her tenant and relying upon Ex.P-1, the trial Court has further held that the defendant was on monthly rent of ₹ 75/- and decreed the suit in favour of the plaintiff which was reversed by the first appellate Court solely on the ground that the relationship of landlord and tenant is not established and therefore the plaintiff is not entitled for eviction against which this second appeal has been preferred by the plaintiff in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.

4. Mr. Somnath Verma, learned counsel appearing for the appellant herein / plaintiff, would submit that the first appellate Court grossly erred in reversing the finding of the trial Court holding that relationship of landlord and tenant between the plaintiff and the original defendant is not established ignoring the fact that Ex.P-1 has not been disputed by the defendant and no question has been asked with regard to Ex.P-1 and it remained unchallenged as such, the relationship of landlord and tenant is fully established and the plaintiff has rightly been granted decree by the trial Court and as such, the judgment & decree of the first appellate Court deserve to be set-aside by allowing this second appeal.
5. Mr. Aditya Khare, learned counsel appearing for the respondents herein / LRs of the original defendant, would submit that the plaintiff has failed to bring evidence on record and the original defendant's name has also been registered in the office of the Electricity Board and bills were issued in his name and he is residing in the suit accommodation for fairly long time, his name is Daddu Vishwakarma. He would further submit that 15 days' clear notice has not been served upon the defendant therefore the suit has rightly been dismissed.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
7. The trial Court has clearly held that the relationship of landlord and tenant between the plaintiff and the original defendant is established

relying upon Ex.P-1 i.e. the agreement between the plaintiff and the defendant and decreed the suit, but the first appellate Court has reversed the judgment & decree of the trial Court solely on the ground that relationship of landlord and tenant is not established between the parties. It is the case of the plaintiff that vide Ex.P-1 the suit accommodation was let out to the original defendant on monthly rent of ₹ 75/- on 2-2-1991 (Ex.P-1). Ex.P-1 has been proved by the plaintiff and her witness Bhagwandas Gupta (PW-2) has also been examined. The plaintiff (PW-1 – Aakanksha Singh) has clearly stated that Ex.P-1 is the *ikrarnama*. She has been cross-examined and in the cross-examination, she has also stated that the registered instrument was executed with regard to tenancy of ₹ 200/- per month. No question has been asked to this witness from the defendant's side qua Ex.P-1 – tenancy agreement between the parties and it has not been suggested that the agreement was never executed and it has not been signed by the defendant. Likewise, Bhagwandas Gupta (PW-2) is a witness to Ex.P-1 from whom also no question with regard to Ex.P-1 has been asked that no such agreement was entered and the defendant never signed the said agreement, rather on the suggestion made by the defendant's counsel it has been stated by the said witness that the defendant is staying in the suit accommodation for last 15 years.

8. The Supreme Court in the matter of Muddasani Venkata Narsaiah (dead) Through Legal Representatives v. Muddasani Sarojana¹ has

clearly held that party to the suit is required to put his version to the

¹ (2016)12 SCC 288

witness, if no such questions are put the Court would presume that the witness account has been accepted. Their Lordships observed as under: -

“15. Moreover, there was no effective cross-examination made on the plaintiff’s witnesses with respect to factum of execution of sale deed, PW 1 and PW 2 have not been cross-examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one’s own version in cross-examination of opponent. The effect of non-cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in *Bhoju Mandal v. Debnath Bhagat*². This Court repelled a submission on the ground that same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in *Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd.*³

16. In *Maroti Bansi Teli v. Radhabai*⁴, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of Calcutta in *A.E.G. Carapiet v. A.Y. Derderian*⁵ has laid down that the party is obliged to put his case in cross-examination of witnesses of opposite party. The rule of putting one’s version in cross-examination is one of essential justice and not merely technical one. A Division Bench of the Nagpur High Court in *Kuwarlal Amritlal v. Rekhilal Koduram*⁶ has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in *Karnidan Sarda v. Sailaja Kanta Mitra*⁷ has laid down that it cannot be too strongly emphasized that the system of administration of justice

2 AIR 1963 SC 1906

3 1957 SCC OnLine P&H 177 : AIR 1958 P&H 440

4 1943 SCC OnLine MP 128 : AIR 1945 Nag 60

5 1960 SCC OnLine Cal 44: AIR 1961 Cal 359

6 1949 SCC OnLine MP 35 : AIR 1950 Nag 83

7 1940 SCC OnLine Pat 288 : AIR 1940 Pat 683

allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff."

9. Reverting to the facts of the present case in light of the aforesaid proposition of law, it is quite vivid that though Ex.P-1 has been said to be executed by the plaintiff and it has been proved by the plaintiff and her witness Bhagwandas Gupta (PW-2), but no question with regard to execution of agreement Ex.P-1 has been asked from the plaintiff and her witness, as such, their version is acceptable and it cannot be held that such an agreement never took place between the parties which the trial Court has rightly accepted to be true and relied upon the same to hold that relationship of landlord and tenant between the parties is established, but the first appellate Court on extraneous consideration holding that since the defendant has denied his signature, therefore, it is not established, recorded a finding which is absolutely perverse to the record.
10. The next submission of learned counsel appearing for the defendant is that 15 days' notice has not been served for terminating the tenancy. It is correct to say that 15 days' notice was not served to the defendant while terminating the tenancy, but the defendant did not take such ground in the written statement nor pressed the same during the course of trial and thereby deemed to have waived such plea of valid notice of termination of tenancy. Therefore, the defendant cannot be permitted to raise such a new ground which he

had already waived during the course of trial.

11. As such, I am unable to sustain the judgment & decree of the first appellate Court and accordingly, it is hereby set-aside and that of the trial Court is restored. The substantial question of law is answered accordingly.
12. The appeal is allowed to the extent indicated herein-above. No order as to cost(s).
13. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge