

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.2 of 2009Judgment reserved on 31-8-2020Judgment delivered on: 6-10-2020

Sheo Prasad Gupta (dead) through legal representatives
(Plaintiff)

1. A. Anil Kumar Gupta, Age 55 years, S/o Late Shri Sheo Prasad Gupta,

B. Aruna Gupta, Age 49 years, D/o Late Shri Sheo Prasad Gupta,

R/o Opposite CIMS, Sadar Bazaar, Bilaspur (C.G.)
(Legal representatives of the plaintiff)
---- Appellants

Versus

1. Kamal Prasad, S/o Late Shri Laxmi Prasad Rajak, Aged about 56 years,

2. Hanuman Prasad, S/o Late Shri Laxmi Prasad Rajak, Aged about 50 years, Kamal Washing House, Sadar Bazaar, Bilaspur (C.G.)
(Defendants)
---- Respondents

For Appellants / LR's of the Plaintiff: -

Mrs. Renu Kochar, Advocate.

For Respondents / Defendants: -

Mr. Malay Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. Proceedings of this matter have been taken-up for final hearing through video conferencing.
2. This second appeal preferred by the plaintiff / appellant herein, now substituted by his legal representatives, was admitted for hearing on 1-7-2020 by formulating the following twin substantial questions of law: -

“1. Whether both the Courts below were justified in holding that plaintiff is not the owner of the suit accommodation and he has not established his ground of bona fide need under Section 12(1)(f) of the Chhattisgarh Accommodation Control Act, 1961?

2. Whether both the Courts below were justified in holding that plaintiff is not entitled for decree of eviction based on subsequent event?”

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

3. The suit shop bearing Plot No.44, Nazul Sheet No.18 situated at Sadar Bazaar, Bilaspur town, is the subject matter of dispute and is hereinafter referred to as suit accommodation, which was admittedly, owned by the plaintiff and let out to defendants No.1 & 2 on monthly rent of ₹ 300/- for non-residential purpose in which the defendants are carrying on laundry in the name and style of Kamal Washing House. The tenancy being monthly, commences from 1st day of each calendar month and ends on the last day of the said calendar month. The original

plaintiff aged about 72 years was an Advocate by profession. It is the case of the plaintiff that in the side *gali* of the other part of the suit accommodation, some more rooms are situated in the same building out of which one room is being used by the plaintiff for his consultation room and he has no other accommodation in his possession for his office. It is the further case of the plaintiff that by way of oral family arrangement dated 20-11-1998, the suit accommodation was allotted to his son Anil Kumar Gupta, room situated at western side was allotted to his wife Smt. Lakshmi Gupta and the southern side room was retained by him and accordingly, intimation to defendants No.1 & 2 by notice Ex.P-1 dated 1-3-1999 was given informing them about the oral family arrangement and directing them to pay rent with effect from 21-11-1998 to his son Anil Kumar Gupta and to vacate the premises by 31-3-1998, reiterated by termination notice dated 12-3-2001 (Ex.P-4). But the defendants neither accepted Anil Kumar Gupta as landlord and owner of the suit accommodation nor paid rent and meanwhile, the portion of house allotted to him (plaintiff) was locked by the plaintiff's son Anil Kumar Gupta, thereby no accommodation is available to the plaintiff to carry on his profession and he has no other alternative accommodation in the township of Bilaspur and therefore the suit accommodation is required bona fide for

carrying on his practice as Advocate for his Chamber. It was also pleaded by the plaintiff that the accommodation allotted to him was locked by his son in collusion with the defendants and since the defendants did not pay rent to his son Anil Kumar Gupta, the filing of suit was necessitated for getting the defendants evicted from the suit accommodation and after terminating the tenancy by sending notice (Ex.P-4) dated 12-3-2001, suit was filed stating that he is entitled for eviction and arrears of rent by appropriate decree with costs.

4. The defendants resisting the suit, filed their written statement and admitted the fact of letting out the suit accommodation by the plaintiff to them on monthly rent of ₹ 300/- and that they are carrying on the business of laundry and washing cloths for last 50 years and admitted that they are the tenants of the plaintiff. The defendants further pleaded that the suit accommodation held by the plaintiff from where he is presently continuing his litigation office of Advocate is sufficient and further suit accommodation is not required for his office as an Advocate. With regard to ownership of the suit accommodation, the defendants pleaded that the plaintiff himself has served notice Ex.P-1 dated 1-3-1999 terminating the tenancy and giving the suit accommodation to his son Anil Kumar Gupta and asking them to pay rent, but when they

approached plaintiff's son Anil Kumar Gupta, he asked them to continue to pay rent to his father (plaintiff herein), as such, on own showing of the plaintiff, the plaintiff is not the owner thereof and therefore he cannot get the suit accommodation evicted under Section 12(1)(f) of the Chhattisgarh Accommodation Control Act, 1961 (for short, 'the Act of 1961'), because, he ceased to be owner with effect from 20-11-1998 by way of Ex.P-1 i.e. notice dated 1-3-1999 followed by another notice dated 12-3-2001 (Ex.P-4) reiterating the stand taken in Ex.P-1. As such, the suit deserves to be dismissed with cost(s).

5. Upon appreciation of oral and documentary evidence available on record, while answering all the four issues in negative, the trial Court dismissed the suit holding that as per oral family arrangement dated 20-11-1998 and the termination notice Ex.P-4, the plaintiff has ceased to be owner of the suit accommodation, as such, he is not entitled for decree for eviction and arrears of rent. The plaintiff / appellant called in question the legality, validity and correctness of the judgment & decree passed by the trial Court by preferring an appeal under Section 96 of the Code of Civil Procedure, 1908, but he remained unsuccessful in the first appeal as the first appellate Court has declined to interfere with the judgment & decree of

the trial Court, rather affirmed the judgment & decree resulting into preference of this second appeal before this Court in which two substantial questions of law have been formulated which have been set out in the opening paragraph of this judgment for the sake of completeness.

6. Mrs. Renu Kochar, learned counsel appearing for the appellants herein / legal representatives of the original plaintiff, would submit that the second appeal remained pending before this Court for last more than ten years and meanwhile, on 22-10-2010, original plaintiff Sheo Prasad Gupta expired and his legal representatives were brought on record, and now, appellant No.1 is Anil Kumar Gupta, who is son of the original plaintiff and also an Advocate, and is contesting the appeal. She would further submit that both the Courts below have grossly erred in not appreciating the facts in proper manner and thereby came to a finding which is perverse and result of completely misreading of oral and documentary evidence available on record. She would also submit that the defendants having admitted in the written statement that the original plaintiff who inducted them in the tenanted premises was their landlord, the two Courts below have failed to appreciate the fact that the plaintiff made oral family arrangement which is evident from notice Ex.P-1 informing them to give rent to his son Anil Kumar Gupta

pursuant to that oral family arrangement and vacate the suit premises by giving vacant possession to him, but they neither accepted Anil Kumar Gupta as their landlord / owner nor paid rent, nor vacated the suit premises and his son Anil Kumar Gupta locked the accommodation in collusion with the defendants which was allotted to the plaintiff in oral family arrangement by which the plaintiff could not continue his office as an Advocate and as such, the oral family arrangement was never accepted and acted upon by the defendants which persuaded the plaintiff to file suit for eviction on the ground of bona fide need under Section 12(1)(f) of the Act of 1961 and he had other option to fulfill his bona fide need. She would contend that the original plaintiff was not only the landlord, but owner thereof, as the oral family arrangement was never accepted and acted upon by the defendants and as there is no iota of evidence in the entire records holding that the defendants have ever accepted Anil Kumar Gupta – plaintiff's son as landlord or owner thereof and paid rent of the suit accommodation to him. Even otherwise, the family arrangement does not create any right, interest and title in the property and it does not amount to transfer and it also does not create any interest in the property. She would further contend that the question of title in a suit for eviction is wholly irrelevant except

to the extent of proving ownership in view of one of the requirements to establish the ground under Section 12(1)(f) of the Act of 1961. She would also contend that landlord is the best judge of his need and the tenants cannot dictate whether the accommodation already held by him is sufficient or not and even otherwise, the suit accommodation is situated at the main road in the heart of the city of Bilaspur and the accommodation held by him in the same building which is on the side street / gali, has been locked by the son of the plaintiff – Anil Kumar Gupta, therefore, the bona fide need is clearly proved and there is no other alternative accommodation in the township of the city of Bilaspur. Mrs. Kochar, learned counsel, would finally submit that subsequent event of death of landlord will not non-suit the plaintiff as it is the need for non-residential purpose falling within the meaning of Section 12(1)(f) of the Act of 1961 and undisputedly, the plaintiff's son is also an Advocate and therefore he can have litigation chamber in the suit accommodation and the death of original landlord / plaintiff would not have any effect on the decree ultimately to be passed by this Court. As such, judgments & decrees of both the Courts below be set aside and decree for eviction and arrears of rent be granted in favour of the plaintiff, now his legal representatives,

by answering the substantial questions of law in favour of the plaintiff.

7. Mr. Malay Shrivastava, learned counsel appearing for the defendants, would submit that both the Courts below are absolutely justified in dismissing the suit of the plaintiff, particularly in view of the fact that the plaintiff himself by way of Ex.P-1 – notice informed to the defendants that Anil Kumar Gupta (plaintiff's son) has become the absolute owner and landlord of the suit accommodation by way of oral family arrangement and directed them to pay rent to Anil Kumar Gupta, but Anil Kumar Gupta did not accept the rent though they contacted him to pay rent and he directed to pay rent to his father (original plaintiff) and finding no option, they have deposited the rent in CCD and in order to evict the defendants under Section 12(1)(f) of the Act of 1961, the plaintiff must be owner thereof which the original plaintiff had ceased to be “owner” on his own showing with effect from 20-11-1998 in view of notice Ex.P-1 reiterated by Ex.P-4 dated 12-3-2001 and his statement before the Court that in the family arrangement, the suit accommodation has been allotted to his son. As such, one of the main ingredients required mandatorily / *sine qua non* for granting decree of eviction on the ground of Section 12(1)(f) of the Act of 1961 is totally

missing, therefore, the trial Court has rightly proceeded to dismiss the suit which in turn, the first appellate Court has rightly endorsed by dismissing the appeal and which cannot be taken exception to by the plaintiff before this Court, as concurrent finding of fact of the two Courts below are neither shown to be perverse nor contrary to the record warranting any interference by this Court in the limited interference under Section 100 of the CPC. As such the second appeal deserves to be dismissed with costs.

8. 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.

Answer to Substantial Question of Law No.1: -

9. The suit accommodation is a part of building owned by late Sheo Prasad Gupta – original plaintiff who filed suit for eviction and arrears of rent. He was an Advocate by profession and died during the pendency of this second appeal. The suit accommodation is situated at Main Road, Sadar Bazaar, Bilaspur, whereas the litigation office of the original plaintiff at the date of filing suit was situated in the street adjoining to the suit accommodation in the same building. His son Anil Kumar Gupta, now appellant No.1, is also an Advocate. It appears

that on account of family dispute, by way of oral family arrangement dated 20-11-1998, the original plaintiff allotted the suit accommodation to his son and the accommodation which the original plaintiff was already having in the street opening on eastern side of the suit accommodation was being used by him as litigation chamber and he kept the same for himself, and the other accommodation situated on western side was allotted to his wife Smt. Lakshmi Gupta on 20-11-1998 and therefore the original plaintiff informed about the said oral family arrangement dated 20-11-1998 to the defendants and directed them to pay rent and vacate the suit accommodation and handover the possession to his son Anil Kumar Gupta as per oral family arrangement, but that arrangement was neither accepted by Anil Kumar Gupta nor by the defendants which is evident from the fact that the defendants neither paid rent to Anil Kumar Gupta nor made any communication to the original plaintiff accepting Anil Kumar Gupta as landlord and owner thereof and as a further consequence, the accommodation which was already held by the plaintiff and being used as an office was locked by his son Anil Kumar Gupta by which the oral family arrangement could not be acted upon and fell into ground. Ex.P-1 is the notice dated dated 1-3-1999 which was sent by the plaintiff to the defendants informing the said oral family

arrangement. Since the oral family arrangement could not be acted upon for last three years i.e. since 20-11-1998 and the accommodation / office in his possession was locked, the plaintiff decided to file suit for eviction after sending notice Ex.P-4 dated 12-3-2001, based on his bona fide need and arrears of rent and accordingly, he filed suit on 9-10-2001 stating inter alia that the oral family arrangement made by him on 20-11-1998 was not accepted by the defendants and his son Anil Kumar Gupta was not accepted as landlord and owner, and arrears of rent was not paid to him and Anil Kumar Gupta had already locked his suit premises in which he was carrying on his office as Advocate knowing well that the suit accommodation allotted to him is already occupied by tenants and getting eviction is a tedious job and therefore the accommodation already occupied by him (plaintiff) has also gone which necessitated him to file suit for ejection of tenant stating that he is landlord and owner of the suit accommodation and oral family arrangement was not accepted by the defendants and Anil Kumar Gupta and he has no other alternative accommodation and relationship of landlord-tenant was accepted by the defendants. The firm stand which was taken by the defendants is, the oral family arrangement allegedly made by the plaintiff and informed to them vide Ex.P-1 that his son Anil

Kumar Gupta has become landlord / owner is not permissible in the eyes of law and Anil Kumar Gupta has not sought any relief. The defendants further pleaded that Anil Kumar Gupta has never asked for vacation of the suit accommodation and on tendering rent, he has declined to accept the rent and asked them to pay rent to his father Sheo Prasad Gupta – the plaintiff herein, therefore, the plaintiff cannot get decree for eviction under Sections 12(1)(a) & 12(1)(f) of the Act of 1961.

10. At this stage, it would be appropriate to notice the ingredients of Section 12(1)(f) of the Act of 1961. Clause (f) of subsection (1) of Section 12 of the Act of 1961 will apply if the following conditions or requirements are satisfied: -

- (1) that the accommodation is let for non-residential purposes;
- (2) that the accommodation so let is required bonafide by the landlord;
- (3) that the requirement is for the purposes of continuing or starting business;
- (4) that the said business is his or that of any of his major sons or unmarried daughters or that of any person for whose benefit the accommodation is held, as the case may be;
- (5) that either the landlord or any other person for whose benefit the accommodation is held, as the case may be, is the owner of the premises;

(6) that the landlord or such other person, as the case may be, has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.

11. Admittedly, the suit accommodation was let-out for non-residential purposes i.e. for carrying on the business of laundry which is sought to be evicted by the plaintiff for opening litigation chamber, as he was an Advocate by profession. The definition of “business” in Section 12(1)(f) of the Act of 1961 is comprehensive enough to include “profession or any activity directed towards earning livelihood”. Therefore, a lawyer is entitled to acquire the premises occupied by his tenant for starting his profession. The M.P. High Court speaking through R.J. Bhawe, J. in the matter of Tarachand Gupta v. Smt. Annapurnabai¹ held that the grounds enumerated in clauses (e) and (f) of Section 12(1) of the Act of 1961 are designed to make it possible for a landlord to acquire his own property for his *bona fide* need and the word “business” has wider connotation than “commercial activity” and it includes activities directed towards earning livelihood and thus includes vocation and profession. It has been observed in paragraph 6 of the report as under: -

1 1968 M.P.L.J. 751

“6. I have already pointed out that the restricted interpretation of the expression "business" used in section 12(1)(f) would unnecessarily create anomaly and invidious distinction between a "commercial activity" and "vocation and profession". Though in common parlance the expression "business" is generally used in reference to commercial activity, no authority has been brought to my notice to support the contention of the Advocate-General that the word "business" has acquired the fixed connotation as urged by him. In 'Shorter Oxford English Dictionary', "business" has been defined to mean "The state of being busily engaged in anything; diligent labour: That about which one is busy; function, occupation etc.; gen. Occupation, esp. serious occupation, work; Trade, commercial transactions or engagements; A commercial enterprise as a going concern". The phrase "Man of business" has been defined as "One engaged in public affairs. One engaged in mercantile transactions. A man skilled in business, an attorney". This definition shows that the word "business" is comprehensive enough to include "profession or any activity directed towards earning livelihood". In 'Blacks's Law Dictionary' (Fourth Edition) it has been stated that the term 'business' has no definite or legal meaning. Thereafter, a number of cases are quoted to show what the term may mean or embrace. Those cases show that 'activity of some continuity, regularity and permanency, means of material being and livelihood' is included in the term 'business'. 'Employment, occupation, or profession engaged in for gain or livelihood' is also included within the definition of 'business'. It is no doubt true that 'commercial activity' is included in the term 'business'. But that is not its only meaning. From what has been stated above, it is clear that the word "business" has wider connotation than "commercial activity" and it includes activities directed towards earning livelihood and thus includes vocation and profession. I am, therefore, not prepared to interpret the word "business" in the

restricted sense as suggested, as there is nothing in the context to give that expression the restricted meaning. I, therefore, reject the contention that the appellant cannot be ejected from the premises for the reasons urged.”

12. Similarly, the plaintiff in para 3 of the plaint has clearly pleaded that the suit accommodation is bona fide required for opening his office as an Advocate, as he has no other alternative accommodation in the township of Bilaspur. This pleading has not been seriously disputed, but it has only been pleaded that the accommodation held by the plaintiff is sufficient and it has been further pleaded that the suit accommodation is not required for the plaintiff for his office. It is well settled law that landlord is the best judge of his need and it is the landlord's decision which has to be given preference and tenant cannot dictate as to which accommodation is more suitable for his profession.

13. The Supreme Court in the matter of Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta² has analysed the concept of bona fide requirement and held that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an

exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself – whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is *bona fide*.

14. In the matter of Ragavendra Kumar v. Firm Prem Machinery & Co.³, the Supreme Court has held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter.
15. In the matter of Prativa Devi v. T.V. Krishnan⁴, it was held by the Supreme Court that the landlord is the best judge of his requirement and courts have no concern to dictate the landlord as to how and in what manner he should live. The *bona fide* personal need is a question of fact and should not be normally interfered with.
16. The Supreme Court in the matter of Anil Bajaj and another v. Vinod Ahuja⁵ repelling the argument with regard to availability of reasonably alternative accommodation, their Lordships held that it is not for the tenant to dictate to the landlord as to how

3 (2000) 1 SCC 679

4 (1996) 5 SCC 353

5 (2014) 15 SCC 610

the property belonging to the landlord should be utilised by him for the purpose of his business. It was observed as under:-

“6. ... What the tenant contends is that the landlord has several other shop houses from which he is carrying on different businesses and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilised by him for the purpose of his business. ...”

17. As such, in view of the aforesaid mandate of their Lordships of the Supreme Court rendered in the above-noted judgments (supra), the claim of the defendants that the accommodation already held by the plaintiff is sufficient for his use and the plaintiff does not require the suit accommodation cannot be accepted and it is held that the suit accommodation is required bona fide for shifting his litigation office in the suit accommodation and the plaintiff had no other alternative accommodation in the township of Bilaspur for his litigation office as an Advocate on the date of institution of suit.

18. Now, the main dispute is with regard to ownership, as it is the case of the defendants that the plaintiff has ceased to be owner thereof of the suit accommodation with effect from 21-11-1998 vide Ex.P-1 reiterated by notice Ex.P-4 and the plaintiff's

son – Anil Kumar Gupta has become owner and landlord of the suit accommodation, therefore, he is not entitled to decree for eviction.

19. Clause (f) of Section 12(1) of the Act of 1961 provides that in order to get the tenant evicted the landlord has to plead and prove that he is the owner of the suit accommodation and the accommodation let for non-residential purposes is required bona fide by himself for the purpose of continuing or starting his business or for any other person for whose benefit the accommodation is held, as the case may be.

20. At this stage, it would be appropriate to notice the definition of “landlord” employed in Section 2(b) of the Act of 1961, which states as under: -

“(b) “landlord” means a person, who, for the time being, is receiving, or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the accommodation were let to a tenant and includes every person not being a tenant who from time to time derives title under a landlord;”

21. The expression “if he is the owner thereof” employed in clause (f) of Section 12(1) of the Act of 1961 does not mean that apart from being a landlord the plaintiff seeking eviction of his

tenant under the two clause must necessarily be the 'absolute owner' of the accommodation or of the land on which the accommodation stands. The purpose of the Act was not merely to regulate and control the eviction of tenant from the accommodation but also to regulate and control rent of accommodation and other aspects connected with letting.

22. The effect of the definition of the term 'landlord' was that it included not only a person who had a right to occupy the accommodation for himself and in his own right but also a person who was an agent, guardian, trustee or the receiver who did not have the right to occupy it in his own right but had the said right only for the benefit of another. But, then, in the context of sub-section (1) of Section 12 of the Act, which related to regulation and control of eviction of tenants from the accommodation, while permitting the eviction of tenants from the accommodation on the ground of the landlord's *bona fide* requirement for residential or non-residential purpose, it was proper that the Legislature thought it fit to allow only such a 'landlord' to claim eviction who had a right to occupy the accommodation for himself and in his own right. It is obvious that there was no question of 'landlord' who was a mere agent, guardian, trustee or the receiver who did not have the right to occupy the accommodation in his own right being made entitled

to obtain eviction on the ground of his *bona fide* requirement for residential or non-residential purposes. It is for the said reason that to make it clear that the right to claim eviction under clauses (e) and (f) of sub-section (1) of Section 12 of the Act was available only to such a 'landlord' who had right to occupy the accommodation for himself and in his own right that the Legislature thought it fit to qualify the use of the term 'landlord' in the said clause by the words "if he is the owner thereof". (See Asif Ali v. Rahandomal⁶.)

23. The Supreme Court in the matter of M.M. Quasim v. Manohar Lal Sharma and others⁷, interpreting the ingredients of clause (c) of Section 11(1) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, observed as under: -

"14. ... while taking advantage of the enabling provision enacted in S. 11 (1) (c), the person claiming possession on the ground of his reasonable requirement of the leased building must show that he is a landlord in the sense that he is owner of the building and has a right to occupy the same in his own right. A mere rent collector, though may be included in the expression landlord in its wide amplitude, cannot be treated as a landlord for the purposes of S. 11 (1) (c). This becomes manifestly clear from the explanation appended to the sub-section. By restricting the meaning of expression landlord for the purpose of S. 11 (1) (c), the legislature manifested its intention namely that the landlord alone can seek eviction on the ground of his personal requirement if he is one

⁶ 1986 J LJ 313

⁷ AIR 1981 SC 1113

who has a right against the whole world to occupy the building himself and exclude any one holding a title lesser than his own. Such landlord who is an owner and who would have a right to occupy the building in his own right, can seek possession for his own use. ..."

24. In Asif Ali (supra), considering the meaning of the words 'if he is the owner thereof' employed in clauses (e) and (f) of subsection (1) of Section 12 of the Act of 1961, the M.P. High Court clearly held that apart from being a landlord the plaintiff seeking eviction of his tenant under the said clauses must not necessarily be the 'absolute owner' of the accommodation or of the land on which the accommodation stands and observed as under: -

"14. In the opinion of this Court, from the abovesaid discussion, it is clear that the words 'if he is the owner thereof' as used in clauses (e) and (f) of Section 12(1) of the M.P. Accommodation Control Act, 1961 do not mean that apart from being a landlord the plaintiff seeking eviction of his tenant under the said clauses must necessarily be the 'absolute owner' of the accommodation or of the land on which the accommodation stands. It may be that the absolute ownership of the accommodation of the land on which the accommodation stands vests in another person and the plaintiff himself is only a tenant of the said person. It may be that the person having absolute ownership may be in a position to dispossess the plaintiff on the basis of his title or on the basis of any breach of the lease. Yet, as against the defendant i.e. his tenant, the plaintiff remains the 'owner' in case he is receiving to or entitled to receive rent from the defendant on his own account i.e. in case he is the person who in the

event of reversion of tenancy of the defendant has the right to occupy the accommodation in his own right.

15. The attention of this Court is drawn by the learned counsel for the defendant-appellant to a decision of this Court in *Shambhoo Khan v. Alka*⁸. It is no doubt true that in the said case the word 'owner' occurring in clauses (e) and (f) of Section 12(1) of the Act was interpreted to mean 'absolute owner' and it was held that as a 'tenant' in relation to his sub-tenant could not be deemed to be the 'owner' of the accommodation, he had no right to evict the 'sub-tenant' under the said clause on the ground of his *bonafide* requirement. However, in view of the various decisions as mentioned above, including that of the Division Bench of this Court in *Mohammad Nurul v. Huda's case*⁹ (supra) and that of the Supreme Court in *M.M. Quasim's case* (supra), it is submitted with due respect that Shambhoo Khan's case is not correctly decided."

25. The decision in M.M. Quasim (supra) has further been followed by the Supreme Court in the matter of Sheela and others v. Firm Prahlad Rai Prem Prakash¹⁰. In Sheela (supra), their Lordships held as under: -

"10. ... the concept of ownership in a landlord-tenant litigation governed by Rent Control Law has to be distinguished from the one in a title suit. Ownership is a relative term the import whereof depends on the context in which it is used. In Rent Control Legislation, the landlord can be said to be owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. What may suffice and hold good as proof

8 1977 MPLJ-SN 2

9 AIR 1953 Nag. 251

10 AIR 2002 SC 1264

of ownership in a landlord tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. ...”

26. The principle of law laid down in Sheela (supra) has been followed by the Supreme Court in the matter of Kasthuri Radhakrishnan and others v. M. Chinniyan and another¹¹.

27. The Supreme Court in the matter of Apollo Zipper India Limited v. W. Newman and Company Limited¹² taking into consideration its earlier judgments in Sheela (supra) and Boorugu Mahadev & Sons v. Sirigiri Narasing Rao¹³ has clearly held that in an eviction suit filed by the landlord against the tenant under the rent laws, when the issue of title over the tenanted premises is raised, the landlord is not expected to prove his title like what he is required to prove in a title suit. It was further held that the burden of proving the ownership in an eviction suit is not the same like a title suit.

28. Reverting to the facts of the present case in the light of the aforesaid meaning and definition of the term ‘if he is the owner thereof’ used in Section 12(1)(f) of the Act of 1961 and the principles of law enunciated by the Supreme Court and the M.P. High Court (supra) in that behalf, it is quite vivid that in the instant case, the plaintiff, admittedly, was absolute owner of the

11 (2016) 3 SCC 296

12 (2018) 6 SCC 744

13 (2016) 3 SCC 343

suit accommodation and in order to settle the family dispute, he made oral family arrangement on 20-11-1998 and the suit accommodation was allotted to his son Anil Kumar Gupta, now appellant No.1 herein, and another room in which the plaintiff was carrying-on his office was allotted to him (plaintiff) and it was duly informed to the defendants also. It is pertinent to mention here that the family arrangement does not amount to transfer and it does not also create any interest.

29. It is well settled by the Supreme Court in the matter of Ram Charan Das v. Girja Nandini Devi and others¹⁴ that the transaction of a family settlement entered into by the parties who are members of a family bona fide to put an end to the dispute among themselves, is not a transfer. It is not also the creation of an interest. For, in a family settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent by the other parties.

30. The Supreme Court in the matter of Ganeshi (D) through L.Rs. and others v. Ashok and another¹⁵, considering its earlier judgment in the matter of Kale and others v. Deputy Director of Consolidation and others¹⁶, held that a family arrangement is not a transfer of property, affirming the judgment of the first

14 AIR 1966 SC 323

15 AIR 2011 SC 1340

16 AIR 1976 SC 807

appellate Court as such family arrangement is inter se arrangement of family property between its members.

31. Thus, in order to settle the dispute among them, oral family arrangement was sought to be made by original plaintiff Sheo Prasad Gupta on 20-11-1998 and accordingly, oral family arrangement was made and notice was issued on 1-3-1999 (Ex.P-1) and reiterated by Ex.P-4 to the defendants about the said oral family arrangement, but it was never accepted and acted upon by the defendants, as defendant No.1 did not accept Anil Kumar Gupta as owner / landlord and did not pay rent to him and even did not vacate the suit accommodation which is evident from the fact that the defendants have pleaded that they have contacted Anil Kumar Gupta to pay rent, but he declined and asked them to pay rent to his father – plaintiff Sheo Prasad Gupta. It was the case of the plaintiff that the defendants did not accept the said oral family arrangement, rather locked the premises already held and occupied by him (plaintiff) wherein he was carrying-on his litigation office. As such, the oral family arrangement was never accepted by the defendants. Once family arrangement was not acted upon by the defendants either by not paying rent to his son Anil Kumar Gupta nor by delivering possession to his son; the right, title and interest in the suit accommodation remained with the original plaintiff and the

plaintiff filed suit for eviction based on the ground enumerated under Section 12(1)(f) of the Act of 1961. Therefore, it cannot be held that he (original plaintiff) had ceased to be owner of the suit accommodation vide Ex.P-1. The defendants throughout in their written statement before the trial Court up to this Court, only have sought to take advantage of the dispute between the plaintiff and his son and did not take any stand and did not lead any evidence to establish their stand. As such, it cannot be held that the plaintiff has ceased to be owner thereof once the oral family arrangement was made on 20-11-1998 which was never accepted and acted upon particularly by the defendants. In other words, the plaintiff was owner of the suit accommodation at the time of institution of suit, as the defendants themselves have admitted the relationship of landlord-tenant by filing written statement and by not disputing the averments made in paragraphs 1 & 2 of the plaint and thereby they are estopped from denying the title of the plaintiff by virtue of the provision contained in Section 116 of the Indian Evidence Act, 1872.

32. Section 116 of the Indian Evidence Act, 1872 provides as under: -

“116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or

person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

33. By virtue of the above-stated provision, no tenant of any property, shall, during the continuance of tenancy, be permitted to deny the title of the lessor to such property. The rule of estoppel contained in Section 116 of the Evidence Act continues to operate so long as the tenant has not surrendered possession of the tenancy premises to his lessor or unless evicted by the title holder. (See Ashok Bimal Ghosh v. Beant Kaur¹⁷.)

34. Similarly, in the matter of Vashu Deo v. Balkishan¹⁸, the Supreme Court considered the Rule enacted in Section 116 of the Indian Evidence Act, 1872 and held as under: -

“6. ... Section 116 of the Evidence Act, which codifies the common law rule of estoppel between landlord and tenant, provides that no tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy, a title to such immovable property. The rule of estoppel so enacted has three main features: (i) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy; (ii)

¹⁷ JT 2002 (Suppl 1) SC 559

¹⁸ (2002) 2 SCC 50

such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord; and (iii) Section 116 of the Evidence Act is not the whole law of estoppel between the landlord and tenant. The principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case. ...”

35. Thus, from the above-stated analysis, the plaintiff has fully established that the suit accommodation let-out to the defendants for non-residential purpose that is to carry out the work of laundry, is required *bona fide* by him for himself for shifting his litigation chamber as Advocate and he had no other alternative accommodation in the township of Bilaspur and he is owner of the suit accommodation. Therefore, both the Courts below are absolutely unjustified in holding that the plaintiff has failed to prove that he is the owner thereof and he has not established the ground under Section 12(1)(f) of the Act of 1961. The finding in this regard of both the Courts below are set aside. Substantial question of law No.1 is answered accordingly.

Answer to Substantial Question of Law No.2: -

36. It is evident on record that both the Courts below have not granted decree for eviction filed by the plaintiff and dismissed the suit and the second appeal preferred by him remained pending before this Court for last ten years and meanwhile,

original plaintiff Shoe Prasad Gupta died on 22-10-2010 and his son Advocate Anil Kumar Gupta and his daughter Aruna Gupta have now been substituted as legal representatives of the original plaintiff. The argument is that since the original plaintiff has died during the pendency of this second appeal, therefore, bona fide need, if any, has come to an end and no decree for eviction can be granted.

37. The Supreme Court, recently, in the matter of Hukum Chandra (dead) through legal representatives v. Nemi Chand Jain and others¹⁹ relying upon its earlier decision in the matter of Om Prakash Gupta v. Ranbir B. Goyal²⁰ held that rights of the parties stand crystallised on the date of institution of the suit. However, in appropriate cases, court can take note of all the subsequent events. It was further held that the normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtained at the commencement of the litigation. It was also held that whenever, there is subsequent events of fact or law, which have a material bearing on the rights of the parties to relief or on the aspects of moulding appropriate relief to the parties, the court is not precluded from taking cognizance of the subsequent changes of fact and law to mould the relief. Hukum Chandra's case (supra) was relating to Section 12(1)(f) of the

¹⁹ (2019) 13 SCC 363

²⁰ (2002) 2 SCC 256

M.P. Accommodation Control Act, 1961 (like the case in hand) and their Lordships of the Supreme Court finding that landlord's son for whom eviction of the suit premises had been sought, though became gainfully employed after filing of suit, declined to take subsequent event on record and dismissed the appeal filed by tenant affirming decree for eviction.

38. Similarly, in the matter of D. Sasi Kumar v. Soundararajan²¹, their Lordships of the Supreme Court relying upon its earlier decision in the matter of Gaya Prasad v. Pradeep Srivastava²², held that the landlord should not be penalised for the slowness of the legal system and the crucial date for deciding the bona fide requirement of landlord is the date of application for eviction, and retained the proposition laid down in Gaya Prasad (supra).

39. The effect of the death of landlord, qua the bona fide need under Section 12(1) (e) & (f) of the Act of 1961 was considered by the Supreme Court in the matter of Shantilal Thakordas and others v. Chimanlal Maganlal Telwala²³. It was held that if the law permits the eviction of the tenant from the requirement of the landlord "for occupation as a residence for himself and members of his family", then the requirement was

²¹ (2019) 9 SCC 282

²² (2001) 2 SCC 604

²³ AIR 1976 SC 2358

both of the landlord and the members of his family. On his death the right to sue survives to the members of the family of the deceased landlord. It was further held that after the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and the occupation of the other members of the family.

40. Similarly, in the matter of Kamleshwar Prasad v. Pradumanju Agarwal (dead) by L.R's.²⁴, their Lordships of the Supreme Court clearly held that even if the landlord died during the pendency of the writ petition in the High Court, the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder son. As such, the bona fide need continues and business can be carried on.

41. The decision of the Supreme Court in Kamleshwar Prasad (supra) has been followed by the M.P. High Court in the matter of Swarnjeet Singh v. Asharam Gamne²⁵ holding that if the bona fide need continues, business can be carried-on by widow of the original landlord or any other elder son.

42. Similarly, the Supreme Court in the matter of Shakuntala Bai and others v. Narayan Das and others²⁶ has held that bona fide

24 AIR 1997 SC 2399

25 2001(1) M.P.H.T. 396

26 AIR 2004 SC 3484

need of landlord has to be examined on the date of institution of the proceedings and if decree for eviction is passed, the death of landlord during the proceeding of appeal preferred by tenant will make no difference and his heirs are entitled to defend the estate. It was observed as under: -

“14. Sub-section (1) of Section 12 of the Act says "no suit shall be filed in Civil Court against a tenant for his eviction ...". The language employed does not say "no decree shall be passed ...". So the bar created is against filing of the suit except on one of the grounds enumerated in clauses (a) to (p) of the sub-section. Therefore what is to be seen is whether the suit was validly filed i.e. whether on the date of filing of the suit one of the grounds was made out. A suit validly filed cannot be scuttled or held no longer maintainable in absence of any specific provision to that effect. Therefore, the principle that "the need of the landlord must exist till the decree for eviction is passed by the last Court and attains finality" can even otherwise have no application here in view of the express language used in the section.

15. As the preamble shows the Madhya Pradesh Accommodation Control Act, 1961 has been enacted for expeditious trial of eviction cases on the ground of bona fide requirement of landlords and generally to regulate and control eviction of tenants. If the subsequent event like the death of the landlord is to be taken note of at every stage till the decree attains finality, there will be no end to litigation. By the time a second appeal gets decided by the High Court, generally a long period elapses and on such a principle if during this period the landlord who instituted the proceedings dies, the suit will have to be dismissed without going into merits. The same thing may happen in a fresh suit filed by the heirs and it may

become an unending process. Taking into consideration the subsequent events may, at times, lead to rendering the whole proceedings taken infructuous and colossal waste of public time. There is no warrant for interpreting a Rent Control legislation in such a manner the basic object of which is to save harassment of tenants from unscrupulous landlords. The object is not to deprive the owners of their properties for all times to come.”

43. Thus, from the aforesaid propositions of law, it is quite vivid that on account of death of landlord / owner during the pendency of second appeal, decree of eviction already granted cannot be set aside. The law permits eviction of tenant for the bona fide requirement of landlord for the purpose of continuing or starting business for his own or for his major sons or unmarried daughter. The landlord who intended to start his business in the suit accommodation and could not get the decree for eviction during his lifetime and subsequently dies, his legal representatives cannot be denied decree of eviction, if they are otherwise entitled drawing similar analogy as enunciated in the above judgments (supra). The second appellate court cannot deny decree in favour of landlord merely because landlord has died during the pendency of this second appeal. The legal representative or senior member of his family takes his place and is entitled to continue or start his profession or avocation in the suit accommodation which was intended by the landlord and the

family members of the landlord cannot be deprived of the decree of ejectment, even after death of original plaintiff / landlord.

44. Reverting finally to the facts of the present case, it is quite vivid that since the original landlord – Sheo Prasad Gupta, who was an Advocate, had died during the proceeding of this appeal, and admittedly, substituted plaintiff No.1 Anil Kumar Gupta is also an Advocate by profession and the suit accommodation is situated in the main road and in the heart of the township of Bilaspur, it cannot be held that on the death of the original plaintiff – Sheo Prasad Gupta, bona fide need has come to an end. As such, finally, it is held that since the plaintiff has succeeded in proving his requirement for bona fide need, he was the owner thereof, he has no other alternative accommodation in the township of Bilaspur and even on account of his death, since the legal representative of the original plaintiff – Anil Kumar Gupta is also an Advocate by profession and he has also now become the owner of the suit accommodation as required under Section 12(1)(f) of the Act of 1961 and the accommodation is sought to be evicted for opening litigation office of Advocate which can be continued by Anil Kumar Gupta, Advocate – appellant No.1 herein, therefore, on the basis of subsequent event, decree cannot be denied to the

present plaintiffs being the legal representatives of the original plaintiff. Substantial question of law No.2 is answered accordingly.

45. Concludingly, judgments & decrees of both the Courts below are set aside and the plaintiff's suit is decreed. It is ordered that the defendants / respondents herein will handover peaceful and vacant possession of the suit accommodation to the appellants herein / legal representatives of the original plaintiff within two months from the date of drawing decree.

46. The second appeal is allowed to the extent indicated herein-above with cost throughout.

47. Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge