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HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.400 of 2009

- Baba Khan @ Ashfaque Ahmad, S/o. Shri Sheikh Ibrahim, aged about 58 years, By Profession Driver, R/o. Isaie Para, Tumgaon Road, Auto Colony, Mahasamund, PS & Tahsil Mahasamund, Distt. Mahasamund (CG)

---- Appellant /Defendant

Versus

- Meena Auto, aged about 49 years, W/o Shri Sushil Auto, R/o Auto Colony, Mahasamund , PS & Tahsil Mahasamund, Distt. Mahasamund (CG)

---Respondent/Plaintiff

For Appellant :Shri JA Lohani, Advocate
For Respondent : Not noticed

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

26.8.2020.

1. Proceedings of this matter have been taken up for admission through Video Conferencing.

2. Heard on admission and formulation of substantial question of law in this second appeal preferred by the defandant/tenant against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree of the trial Court by which the trial Court has decreed the suit for eviction filed by the plaintiff.

3. Learned counsel for the appellant/defendant submits that the plea of res-judicata was pressed into service by the appellant before

the trial Court but the trial Court has recorded a perverse finding that too without framing an issue in this regard and the same has been affirmed by the first appellate court. As such, the suit was barred by the plea of res-judicata, therefore, the appeal involves substantial question of law for determination and the appeal be admitted for hearing.

4. I have heard learned counsel for the appellant, considered his submission and perused the records of the Courts below.

5. The respondent/plaintiff (Smt. Meena Auto) filed a suit for eviction against the appellant/defendant stating inter-alia that he is monthly tenant for Rs.200/-. The tenancy commenced in the 1st day of English Calendar month and the suit house was inherited by her through her father-in-law and she and her son Anish Kumar was declared successor by competent Court and the defendant has failed to pay rent from the month of January 2004 and without her permission made substantive alteration in the suit house and despite notice, he has not vacated the suit premises and therefore, she is entitled for eviction and arrears of rent.

6. The defendant/appellant filed his written statement and opposed the suit stating that suit as framed and filed is barred by res-judicata and the suit deserves to be dismissed.

7. The trial Court on appreciation of oral and documentary evidence on record held that the plaintiff is the land-lord and the defendant is the

tenant and the plaintiff has proved the ground under Section 12(1)(a)(m) of the CG Accommodation control Act, 1961 and rejected the plea of res-judicata which has been affirmed by the first appellate court. The plea raised by the defendant that the suit is barred by res-judicata deserves to be rejected. In order to establish the plea of res-judicata, the defendant was required to file copy of pleading including copy of plaint/written statement, but the same was not filed. Except the copy of the judgment from which it appears that earlier suit filed by plaintiff's father-in-law was dismissed on the ground of bonafide need under Section 12(1)(e) of the Act 1961, whereas present suit was filed for eviction under Section 12(1)(a)(m) of the Act 1961. As such the plea of res-judicata has rightly been rejected by both the Courts below. I do not find any illegality in the said finding. Both the Court below have concurrently held that the plaintiff has succeeded in establishing the provisions of Section 12(1)(a)(m) of the Chhattisgarh Accommodation Control Act, 1961. The said findings of the Courts below is neither perverse nor contrary to the record and the appeal does not involve any substantial question of law for determination.

8. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
JUDGE

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