

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 327 of 2008****Judgment reserved on 24/02/2020****Judgment delivered on 28/02/2020**

1. Ashok Kumar Gupta (died) through LRs. :-

(a). Neelam Gupta, Aged about 64 years, Wd/o Late Shri Ashok Kumar Gupta.

(b). Sagar Kumar Gupta, Aged about 41 years, S/o Late Shri Ashok Kumar Gupta.

(c). Sameer Gupta, Aged about 41 years, S/o Late Shri Ashok Kumar Gupta.

--Appellants/LRs. of Plaintiff**Versus**

Smt. Gauri Bagchi, W/o Late Shri Ashok Kumar Bagchi, Age not known to the appellant, R/o Indira Chowk, Ram Nagar, Supela, Tahsil and District Durg, Chhattisgarh.

--- Respondent/Defendant

For Appellants :- Mr. Shashi Bhushan Tiwari, Advocate
 For Respondent :- Mr. B.P. Gupta, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1. This second appeal preferred by the appellants/Lrs. of plaintiff was admitted for hearing on the following substantial question of law :-

"Whether learned lower appellate Court was justified in reversing the decree by holding that the plaintiff failed to prove his title ?"

(For the sake of convenience, the parties will be referred hereinafter as per their status before the trial Court.)

2. Original plaintiff – Ashok Kumar Gupta (who died during the pendency of this second appeal) filed a suit for eviction and arrears of rent against the defendant stating *inter alia* that he and his wife purchased the land bearing Khasra No. 7848/1 from one Shanti Bai by registered sale deed dated 17/02/1998 (Ex. P/1) and got their names recorded in the revenue records. Thereafter, they constructed suit shop on the said land and let it out to the defendant for monthly rent of Rs. 800/-. Due to his *bona fide* need, plaintiff required the suit shop and therefore, he served Ex. P/6 upon the defendant to vacate the suit shop but defendant did not vacate the suit shop and failed to pay the rent from August, 1995 to March, 1997 which led to the filing of the suit by the plaintiff.

3. Defendant filed his written statement and set up a plea that one Soven Rai is the original owner of the suit shop at present who is running medical shop in the said suit shop and

the valid license is also in his name and since, Soven Rai is the necessary party who ought to have been impleaded as a party/defendant in the suit, therefore, plaintiff's suit deserves to be dismissed. He further stated that the land on which the suit shop is built, is a najul land in which plaintiff has no right and title and moreover, since plaintiff's wife Neelam Gupta jointly purchased the land along with the plaintiff from Shanti Bai, therefore, she should also have been impleaded as a party to the suit.

4. Learned trial Court framed as many as 15 issues and upon appreciation of oral and documentary evidence on record decreed the suit vide its judgment and decree dated 12/07/2005 holding that plaintiff and his wife purchased land bearing Khasra No. 7848/1 from Shanti Bai on 17/02/1998 vide Ex. P/1 and got their names recorded in the revenue records and thereafter, they constructed the suit shop on the said land which was let out to the defendant by him. The trial Court further held that plaintiff has established the relationship of landlord-tenant between him

and the defendant and due to his *bona fide* need he requires the suit shop, thereby, granting decree for eviction and payment of arrears of rent in his favour.

5. On appeal being preferred by the defendant under Section 96 of the CPC, learned first appellate Court reversed the finding of the trial Court solely on the ground that plaintiff has failed to prove title and establish the relationship of landlord/tenant between him and defendant and vide its judgment and decree dated 08/05/2008 allowed the appeal of the defendant against which this second appeal has been preferred by the appellants/Lrs. of plaintiff in which substantial question of law has been formulated and incorporated in the opening paragraph of this judgment.

6. Mr. Shashi Bhushan Tiwari, learned counsel for the appellants/LRs. of plaintiff would submit that the first appellate Court unnecessarily interfered with the judgment and decree of the trial Court on the ground that plaintiff has failed to prove his ownership over the suit shop under Section 12(1)(f) of the Chhattisgarh Accommodation Control Act, 1961

("the Act of 1961" for short), he is required to *prima facie* prove his title over the suit shop. The first appellate Court has ignored the overwhelming evidence in shape of Ex. P/1 and admission of the defendant, therefore, the judgment and decree of the first appellate Court deserves to be set aside. He further relies upon the decision rendered by the Supreme Court in Sheela and Ors. v. Firm Prahlad Rai Prem Prakash¹ and Muddasani Venkata Narsaiah (dead) through legal representatives v. Muddasani Sarojana².

7. Mr. B.P. Gupta, learned counsel for the respondent/defendant would support the impugned judgment and decree and submit that plaintiff has failed to plead and establish his title over the suit shop and further failed to prove that defendant is his tenant, therefore, the first appellate Court has rightly allowed the appeal and reversed the judgment and decree of the trial Court which calls for no interference.

8. I have heard learned counsel for the parties, considered their rival submissions made

¹ AIR 2002 SC 1264

² (2016) 12 SCC 288

herein-above and went through the records with utmost circumspection.

9. The suit was filed by the plaintiff against the defendant for eviction from the suit shop which was let out to him by the plaintiff on a monthly rent of Rs. 800/- as the said suit shop was required by the plaintiff for his bona fide non-residential purpose, as such, it is covered by Section 12(1)(f) of the Act of 1961.

10. Section 12(1)(f) of the Chhattisgarh Accomodation Control Act, 1961 provides as under :-

"12. Restriction on eviction of tenants -

(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in Civil Court against a tenant for his eviction from any accomodation except on one or more of the following grounds only, namely:

(a)	X	X	X
(b)	X	X	X
(c)	X	X	X
(d)	X	X	X
(e)	X	X	X

(f) that the accomodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accomodation is held and that

the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned;"

11. By virtue of the aforesaid provision, in the suit filed by the plaintiff/landlord seeking eviction of defendant/tenant on the ground of Section 12(1)(f) of the Act of 1961, plaintiff/landlord is not required to prove and establish the relationship of landlord/tenant existing between him and the defendant, but is required to prove that he is the owner of the suit shop thereof, but the ownership is not required to be proved in this suit like the suit which is based on title.

12. Their Lordships of the Supreme Court, in the matter of Sheela (supra), have explained the concept of 'landlordship' and 'ownership' qua landlord-tenant litigation. Paragraph 10 of the report states as under :-

"10. While seeking an eject-ment on the ground of bona fide requirement under Cl. (f) abovesaid the landlord is required to allege and prove not only that he is a 'landlord' but also that he is the 'owner' of the premises. The definition of 'landlord' and 'tenant' as given in Cls. (b) and (i) of S. 2 of the Act make it clear that under the Act the concept of landlordship is different from that of ownership. A person may be a 'landlord' though not an 'owner' of the premises.

The factor determinative of landlordship is the factum of his receiving or his entitlement to receive the rent of any accommodation. Such receiving or right to receive the rent may be on the own account of the landlord or on account of or for the benefit of any other person. A trustee, a guardian and a receiver are also included in the definition of landlord. Such landlord would be entitled to seek an eviction of the tenant on one or more of such grounds falling within the ambit of S. 12(1) of the Act which do not require the landlord to be an owner also so as to be entitled to successfully maintain a claim for eviction. Clause (f) contemplates a claim for eviction being maintained by an owner-landlord and not a landlord merely. Though of course, we may hasten to add, that 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 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. In *M.M. Quasim v. Manoharlal Sharma* (1981) 3 SCC 36, it was held that an 'owner-landlord' who can seek eviction on the ground of his personal requirement is one who has a right against the whole world to occupy the building in his own right and exclude anyone holding a title lesser than his own. In *Dilbagrai Punjabi v. Sharad Chandra* (1988) Supp SCC 710, this Court held that it was essential to sustain a claim of eviction under S. 12(1)(f) of the Act to establish that the plaintiff was the owner of the premises. However, the Court upheld the ownership of the

landlord having been proved on the basis of an admission of the ownership of the plaintiff made by the defendant in reply to notice given before the institution of the suit and the recital of the name of the plaintiff as the owner of the property contained in the receipts issued by the landlord to the tenant over a period of time. Thus, the burden of proving ownership in a suit between landlord and tenant where the landlord-tenant relationship is either admitted or proved is not so heavy as in a title suit and lesser quantum of proof may suffice than what would be needed in a suit based on title against a person setting up a contending title while disputing the title of the plaintiff. Nevertheless pleading and proving ownership, in the sense as it carries in Rent Control Law, is one of the ingredients of the ground under S. 12(1)(f) of the Act."

13. Therefore, it is quite vivid that plaintiff, in his suit for eviction, was not required to prove his ownership like in the suit based on title and is required to plead and prove ownership in the sense of one of the ingredients of Section 12(1)(f) of the Act of 1961.

14. Now, the question is whether the first appellate Court was justified in holding that plaintiff is not the owner of the suit shop for the purpose of Section 12(1)(f) of the Act of 1961, therefore, he is not entitled for decree under Section 12(1)(f) of the Act of 1961 ?

15. Plaintiff, in order to prove his ownership, has filed the sale deed dated 17/02/1998 (Ex. P/1) by which he and his wife Neelam Gupta purchased the land bearing Khasra No. 7848/1 area 870 sq. ft. from one Shanti Bai and thereafter, constructed four shops therein including the suit shop which is said to have been let out to the defendant.

16. Plaintiff was also examined as P.W. 1 and he has stated on oath that he is the owner of Khasra No. 7848/1 area 870 sq. ft. which is a diverted land and has also indicated the boundary of the land held by him. In the cross-examination made by defendant's counsel, in paragraph 13, plaintiff has categorically stated that defendant has been his tenant for the last 17-18 years and the defendant's counsel has not made an effective cross-examination on the statement of the plaintiff that he is the owner of Khasra No. 7848/1 which he purchased by sale deed dated 17/02/1998 (Ex. P/1).

17. The Supreme Court in the matter of Muddasani (supra) has clearly held that a party to the suit is required to put his version to the

witness of other side and if no such questions are put, the Court would presume that the witness account has been accepted by the other side (See: paragraph 15 of the report).

18. Plaintiff's statement that he is the owner of the suit shop which he constructed on the land bearing Khasra No. 7848/1 held by him stands uncontroverted as no effective cross-examination was made by the defendant's side by putting the question of ownership to the plaintiff. Likewise, defendant has been examined as D.W. 1 and in paragraph 2 he has admitted the fact that he has been in possession of the suit shop for the last 30 years and the adjoining shop was let out by the plaintiff to one Indu Igle which he got vacated by filing another suit and that suit was decreed in his favour. In paragraph 5, defendant has clearly admitted to the fact that he does not remember the Khasra No. of the suit shop and he is not aware as to whether the suit shop is situated on Khasra No. 7848/1.

19. In the matter of Muddasani (supra), the Supreme Court has clearly held that denial for want of knowledge is no denial at all.
20. In the written statement filed by the defendant, he has not once disputed the sale deed executed by Shanti Bai in favour of plaintiff and his wife Neelam Gupta and since, the defendant has not disputed the execution of the sale deed, it was not necessary for the plaintiff to examine the witness to prove the same. As such, it is uncontroverted evidence on record that plaintiff is the owner of Khasra No. 7848/1 on which the suit shop is constructed and therefore, plaintiff has proved his ownership for the purpose of Section 12(1)(f) of the Act of 1961 as held by the Supreme Court in Sheela (supra). Similarly, the trial Court has rightly recorded a finding that defendant is the tenant of plaintiff. The said finding is a correct finding which could not have lightly interfered with by the first appellate Court.
21. In view of the aforesaid legal analysis, it is held that the first appellate Court was absolutely unjustified in reversing the

judgment and decree of the trial Court by holding that plaintiff is not the title-holder of the suit shop after going deep into the question of title which is not required for the purpose of Section 12(1)(f) of the Act of 1961. Consequently, the judgment and decree of the first appellate Court is hereby set aside and that of the trial Court is restored.

22. The second appeal is allowed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet