

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.15 of 2011**

Mohammad Azim, aged about 68 years, S/o Gulam Nabi, Mamta Soap Works, Rikhia Para, Near Bohra Kabristan, Opp. Dr. Viridi's House, Jawahar Nagar Ward, Raipur, Tahsil and District Raipur (CG)

----- Appellant/Defendant

Versus

Daudi Bohra Jamat Sole Trusty His Holiness Saiyadana Dr. Mohammad Burhanuddin Managing Committee, Anjuman A. Saify, Through Power of Attorney/Secretary S. Talib Hussain, S/o Shri M. Abdulla Bhai, Sadar Bazar, Raipur, Tahsil and District Raipur (CG)

----- Respondent/Plaintiff

For Appellant/Defendant : Mr.Ravindra Agrawal, Advocate
 For Respondent/Plaintiff: Mr.B.P.Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

13.03.2020

1.The substantial questions of law involved, formulated and to be answered in this second appeal preferred by the appellant/defendant are as under:-

“1. Whether the appellant is not liable for eviction due to the fact that he raised permanent construction over the suit land and his right to possess the suit property as tenant became irreversible ?

2. Whether in terms of compromise decree passed in Civil Suit No.6-A/1988 passed on 9-12-1989, the respondent has admitted the nature of tenancy as irreversible ?”

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

2. The suit shop admeasuring 57.6x35 ft. situated at Rikhipara Ward, Jawahar Nagar, Raipur is Wakf property said to be leased out by the plaintiff to the defendant on a monthly rent of ₹ 75/- and the plaintiff-trust is exempted by virtue of the notification issued under Section 3(2) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as "the Act of 1961"). The plaintiff filed a suit for eviction of the defendant stating inter-alia that the defendant has not paid rent from 1.1.1990 up to 2001 and for which, notice was served to him and ultimately he deposited the entire rent on 10.7.2001 up to 31.12.2001 with the plaintiff, but the defendant has not handed over the vacant possession of the suit shop after 31.12.2001 and accordingly, tenancy was terminated by legal notice dated 26.2.2002 and thereafter the present suit was filed for eviction.

3. The defendant has filed his written statement and denied the averments made in the plaint stating inter-alia that the defendant is a permanent tenant of Anjuman-Ei-Saifi Bohra Jamat and is running his business there in the name of Mamta Soap Works. The suit shop was obtained on lease by his father Mohd.

Gulam Nabi in the year 1945-46 from the then Secretary of Anjuman-Ei-Saifi Wakf and initially the rent of the suit shop was of ₹ 180/- per year, which was increased from time to time. On 09.12.1989, civil suit No.6-A/1988 filed by the plaintiff was compromised with the terms that the defendant will pay the annual rent of ₹ 900/- per year and he is at liberty to alter/renovate his construction as per his convenience and need. Since the defendant has raised permanent construction over the suit land, there is no question of vacation of the suit shop and the tenancy has become permanent in nature and become irreversible. The plaintiff has other alternative sufficient adjoining space and land to enhance its religious and charitable work and as such, the suit deserves to be dismissed.

4. The trial Court upon evaluation and after appreciation of oral and documentary evidence available on record, by its judgment and decree dated 10.5.2010, decreed the suit holding that the plaintiff is landlord and the defendant is his tenant on a monthly rent of ₹ 75/- and the suit accommodation is exempted by virtue of the notification issued under Section 3(2) of the Act of 1961 and permanent structure has been constructed without leave of the plaintiff, which has been affirmed by the first appellate Court.

Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant, in which substantial questions of law have been formulated by this Court, which have been set-out in the opening paragraph of this judgment.

5. Mr. Ravindra Agrawal, learned counsel for the appellant/defendant, would submit that since the tenancy is permanent and the defendant is permanent tenant of the plaintiff-trust, therefore, no decree for eviction can be passed against him as tenancy is permanent in nature, as such, the judgment and decree of both the Courts below deserve to be set aside. He relied upon the judgment of the Supreme Court in the matter of Bejoy Gopal Mukherji v. Pratul Chandra Ghose¹ and Sivayogeswara Cotton Press, Devangere and others v. M. Panchaksharappa and another².

6. On the other hand, Mr. B.P. Sharma, learned counsel for the respondent/plaintiff, would submit that the defendant is tenant of the plaintiff as civil suit No.6-A/1988 was ended with the compromise giving liberty to the defendant to alter/renovate his construction, it had not assumed the character of permanent tenancy and as such, the appeal deserves to be dismissed.

1 AIR 1953 SC 153

2 AIR 1962 SC 413

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

8. As it has already been noticed hereinabove that the suit accommodation is exempted by virtue of the notification issued under Section 3(2) of the Act of 1961 and the suit property being Wakf property the plaintiff-trust was not required to plead and establish any of the grounds enumerated under Section 12(1) of the Act of 1961. It is the case of the defendant that since he was allowed to make permanent construction over the suit shop and he has made permanent construction, the tenancy is permanent in nature and become irreversible and as such, he cannot be evicted, which the trial Court as well as the first appellate Court both have not accepted holding that the defendant is tenant of the plaintiff by appreciating oral and documentary evidence available on record.

9. The Supreme Court in the matter of Hamidullah (Dead) by his legal representatives and others v. Sheikh Abdullah and others³ has held that the onus of proving that a tenancy is permanent is on the tenant. In every case an inference of permanency of tenancy is a

³ (1972) 4 SCC 800

question of fact depending upon the facts of each particular case. The mere fact of payment of uniform fixed rent for a long time or long possession of the land and making constructions thereon at tenant's own expense will not by itself raise a presumption of permanent tenancy. It is the cumulative effect of these circumstance coupled with several other facts that may lead to an inference of permanent tenancy.

- 10.** The Supreme Court in the matter of Bejoy Gopal Mukherji (supra) has held that neither possession for generations at uniform rent, nor construction of permanent structure by itself is conclusive proof of permanent tenancy. It was further held that it is the cumulative effect of these, coupled with several other facts, that may lead to inference of permanent tenancy. It was observed as under:-

"4...The mere fact of rent having been received from a certain person may not, as held in 7 Cal.W.N. 132(E) (supra) and 17 Cal. W.N. 156(F) (supra), amount to a recognition of that person as a tenant. Mere possession for generations at a uniform rent nor construction of permanent structure by itself may not be conclusive proof of a permanent right as held in A.I.R. 1929 Cal. 37 (H) (supra) but the cumulative effect of such fact coupled with several other facts may lead to the inference of a permanent tenancy as indicated.....".

- 11.** Reverting to the facts of the present case in light of principle of law laid down by the Supreme

Court in the above-stated judgments (supra), it is quite vivid that the defendant has made permanent construction over the suit shop on the basis of compromise decree in the earlier suit with liberty to alter/renovate the construction already made and he has conferred with the right of permanent tenancy, which both the Courts below have not accepted by recoding the well reasoned finding. The defendant has failed to establish that even permanent construction was made with express or implead leave of the plaintiff and even in terms of compromise decree, he was only granted liberty to alter/renovate the construction already made, as such, there is no evidence on record to hold so.

12. The Supreme Court in the matter of Hamidullah (supra) has held that the onus of proving that a tenancy is permanent is on the tenant and the mere long possession of the land and making construction thereon at tenant's own expense will not by itself raise a presumption of permanent tenancy. Even otherwise, the wakf property is exempted from the provisions of the act of 1961.

13. At this state, it would be appropriate to notice the provisions of Wakf Act applicable to wakf/suit property. Section 36F of the Wakf Act, 1954 (hereinafter called as 'the Act of 1954') applicable

at the time of alleged grant of lease states as under:-

"36F. Restriction on power to grant lease of wakf property.-(1) A lease or sub-lease for any period exceeding three years of any immovable property which is Wakf property shall, notwithstanding anything contained in the deed or instrument of Wakf or in any other law for the time being in force, be void and of no effect.

(2) A lease or sub-lease for a period exceeding one year and not exceeding three years of immovable property which is Wakf property shall, notwithstanding anything contained in the deed or instrument of Wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease or sub-lease or renewal thereof under this section, review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct."

As such, lease for period exceeding three years is absolutely void in terms of Section 36F (1) of the Act of 1954, therefore, lease by the plaintiff to the defendant of the suit property which is wakf property apparently granted to the appellant/defendant exceeding three years would be void and the defendant's lease being void cannot be allowed to take a plea contrary to statutory provisions contained in Section 36F of the Act of 1954. In view of the aforesaid legal analysis, it cannot be held that the defendant has pleaded and established that

his tenancy is permanent in nature and has become irreversible and he cannot be evicted from suit premises. Both the Courts below have rightly analyzed the facts and circumstances of the case and came to the conclusion that the defendant has failed to prove that his tenancy is permanent in nature and he is permanent tenant of the plaintiff. I do not find any illegality or perversity in the said finding. The substantial questions of law is answered in favour of the plaintiff and against the defendant.

14. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

15. Decree be drawn-up accordingly.

16. At this stage, Mr.Ravindra Agrawal, learned counsel for the appellant/defendant, would submit that some time may be granted to the appellant/defendant to vacate the suit shop, to which, Mr.Sharma, learned counsel for the plaintiff, graciously agreed and would submit that this Court may consider granting of reasonable time to the appellant to vacate the suit accommodation subject to usual conditions.

17. Time upto 30th June, 2020 is granted to the appellant/defendant to vacate the suit accommodation subject to following conditions:

(i) The appellant/defendant shall submit an usual

written undertaking before the trial Court within 3 weeks from today that he shall vacate the suit accommodation on or before 30th June, 2020 by delivering peaceful possession to the respondent/plaintiff and will not create any right/third party interest over the suit accommodation in the meanwhile and shall not deliver possession to any other person/party except plaintiff.

(ii) The appellant/defendant shall deposit the entire arrears of rent within 3 weeks from today and to pay regular rent in the shape of damages with effect from 1st April, 2020 till the actual date of delivery of possession of the suit accommodation before the trial Court to the plaintiff towards damages for occupation and use of the suit accommodation by him.

If the aforesaid conditions are not complied with by the appellant/defendant, the decree granted in favour of the plaintiff, shall be executable forthwith in accordance with law.

Sd/-

(Sanjay K.Agrawal)

Judge

B/-