

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 158 of 2008**

1. Shubh Narayan Singh (died) through LRs. :-

(i). Saraswati Devi Wd/o Late Shubh Narayan Singh, Aged 68 years.

(ii). Dev Bahadur Singh S/o Late Shubh Narayan Singh, Aged 58 years.

Both are R/o ward No. 59, Hari Nagar, Katul Board, Durg, District Durg, Chhattisgarh.

(iii). Ram Bahadur Singh S/o Late Shubh Narayan Singh, Aged 55 years.

(iv). Shyam Bahadur Singh S/o Late Shubh Narayan Singh, Aged 43 years.

Both are R/o Deepak Nagar, Ward No. 24, Gali No. 6., Durg, District Durg, Chhattisgarh.

(v). Babita Singh, D/o Late Shubh Narayan Singh, W/o Arun Kumar Singh, Aged 46 years, R/o Shanti Nagar, Dundera, District Durg, Chhattisgarh.

---Appellants/Defendants

Versus

Raisaheb Madho Prasad and Gajra Bai Chandrakar Private Trust, Station Road, Durg, Through its President Dr. Mangal Prasad Chandrakar S/o Late Jageshwar Prasad Chandrakar, Aged about 60 years, R/o Station Road, Durg, Tahsil and Distt. Durg, Chhattisgarh.

--- Respondent/Plaintiff

20/05/2020

2. Mr. Sourabh Sahu, learned counsel for the appellant/defendant would submit that both the trial Court as well as the first appellate Court have concurrently erred in holding that plaintiff is entitled for decree under Section 12(1)(o) along with Section 12(1)(c) and 12(1)(m) of the Chhattisgarh Accommodation Control Act, 1961 (in short, "the Act of 1961") by recording a finding which is perverse and contrary to the record which gives rise to substantial question of law for determination.

3. Plaintiff filed a suit for eviction and arrears of rent principally on the ground that the defendant, without taking permission, has taken possession of some portion of the property which is not included in the accommodation let out to him by the plaintiff and despite of written notice (Ex. P/3) issued and served to him, he has not vacated the suit accommodation. Moreover, it is also the case of the plaintiff that suit accommodation is bonafidely required for reconstruction under Section 12(1)(h) of the Act of 1961.

4. Defendant opposed by filing his written statement stating *inter alia* that he has not encroached upon the additional portion of the accommodation let out to him by the plaintiff and the said suit accommodation is not required bonafidely for construction and reconstruction purposes, therefore, plaintiff is not entitled for decree as claimed.

5. Learned trial Court, upon evaluation of oral and documentary evidence on record, decreed the suit in favour of the plaintiff on the ground of Section 12(1)(o) in addition to Sections 12(1)(a) and 12(1)(h) of the Act of 1961.

6. On appeal being preferred by the defendant, learned first appellate Court, though concurred with the trial Court on the ground of Section 12(1)(o) of the Act of 1961, but held that plaintiff is not entitled for decree under Section 12(1)(a) and is entitled for decree under Sections 12(1)(c) and 12(1)(m) in addition to section 12(1)(o) of the Act of 1961.

7. Both the Courts below have found one common ground established under Section 12(1)(o) of the Act of 1961 that defendant, without taking written permission of the landlord/plaintiff, has taken possession of the additional portion of the accommodation which is not included in the suit accommodation let out to him by the plaintiff and despite written notice (Ex. P/3) being served upon him, he has not vacated the suit accommodation. The said finding recorded concurrently by both the Courts below with regard to Section 12(1)(o) of the Act of 1961 is a finding of fact based on material available on record which is neither perverse nor contrary to the record and does not give rise to 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

Harneet