

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.474 of 2009Judgment reserved on: 18-2-2020Judgment delivered on: 24-2-2020

Akhtar Khan (Dead) Through Legal Representative

Mohd. Umar Khan, Aged about 36 years, S/o Late Mr. Akhtar Khan,  
R/o Adarsh Nagar, Arkel Road, Basana, Tah. Basana, Distt.  
Mahasamund (C.G.)

(Defendant)  
---- Appellant

Versus

Kandarp Shahu (Dead) Through Legal Representative

Shri Lalit Kumar Sahu, aged about 59 years, S/o Late Shri Kandarp  
Sahu, R/o Village Shaletarai, Via Basna, Tahsil Pithora, District  
Mahasamund (C.G.)

(Plaintiff)  
---- Respondent

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For Appellant / Defendant: -

Mr. V.G. Tamaskar, Advocate.

For Respondent / Legal Representative of the original Plaintiff: -

Mr. Kishore Bhaduri and Miss Juhi Jaiswal, Advocates.

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Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Judgment

1. This second appeal preferred under Section 100 of the CPC by the defendant / appellant herein (now deceased and represented through legal representative), has been admitted for final hearing by formulating the following substantial questions of law: -

"1. Whether the lower appellate Court has erred in holding that the land given in rent to the appellant by the respondent i.e. Khasra No.58/7 is part of the land of Khasra No.58/1"A"?

2. Whether the Courts below have erred in holding that the appellant was tenant of the land belonging to the respondent?"

[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.]

2. The respondent / plaintiff instituted a suit for eviction and grant of arrears of rent stating inter alia that he is the title-holder of the suit shop No.1 situated at Dinesh Smriti Bhawan over Khasra No.58/7 which was let out to Akhtar Khan – original defendant for commercial purpose on a monthly rent of ₹ 550/-. It was further pleaded that rent of the suit property was not paid to the plaintiff from September, 2001 and the suit accommodation is required bona fide for his son as he has no other suitable alternative accommodation for the bona fide need. Since the provisions of the Chhattisgarh Accommodation Control Act, 1961 are not applicable at Village Basna, notice under Section 106 of the Transfer of Property Act, 1882, was served on 20-6-2003 terminating the tenancy and suit was instituted for eviction and arrears of rent on 19-9-2003 in which the defendant appeared and filed his written statement controverting the allegations made in the plaint and stated that the suit accommodation was given to him on rent, but the plaintiff refused and even declined to return the security amount of ₹ 30,000/- and as such, the plaintiff's suit is not based on any legal ground and six months' notice was required to be given for terminating the tenancy and the suit deserves to be dismissed with a cost of ₹ 5,000/-.
3. The trial Court upon appreciation of oral and documentary evidence on record found that the relationship of landlord and tenant is established and partly decreed the suit holding that the plaintiff is entitled for

eviction of the defendant and also entitled for rent from October, 2001 to June, 2003 total amounting to ₹ 11,550/-. The defendant preferred first appeal there-against before the first appellate Court and the first appellate Court by its impugned judgment & decree dismissed the appeal finding no merit against which the defendant has preferred 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.

4. Mr. V.G. Tamaskar, learned counsel appearing for the appellant herein / defendant, would submit that the lower appellate Court has committed legal error in holding the land given on rent to the defendant by the plaintiff i.e. Khasra No.58/7 is a part of Khasra No.58/1A by recording a finding which is perverse to the record and further committed legal error in holding that the defendant is tenant of the plaintiff by recording a finding which is perverse to the record. It is the case where plaintiff Kandarp Sahu has not entered into the witness box, therefore, adverse inference will be drawn as power of attorney holder cannot depose on behalf of the landlord. As such, the second appeal deserves to be allowed and judgments & decrees of both the Courts below be set-aside and the suit be dismissed.
5. Mr. Kishore Bhaduri, learned counsel appearing for the legal representative of the original plaintiff / respondent herein, would submit that both the Courts below have concurrently and rightly held that Khasra No.58/7 is part of Khasra No.58/1A, that finding is neither perverse nor contrary to the record and both the Courts have rightly held that the defendant is tenant of the plaintiff and the said finding is a

finding of fact based on the evidence available on record. He would further submit that the original plaintiff's son was examined and he had right to prove facts on behalf of the plaintiff as held by the Supreme Court in the matter of Man Kaur (Dead) By LRs. v. Hartar Singh Sangha<sup>1</sup>, as such, the appeal deserves to be dismissed.

6. 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: -**

7. The plaintiff filed suit for eviction and arrears of rent against the defendant namely, Akhtar Khan in which the defendant filed his written statement admitting that the plaintiff has given the suit land to the defendant on rent, but by way of amendment withdrawn the admission made to the written statement by deleting para 2 of the written statement. The plaintiff also made consequential amendment in his plaint by order dated 15-2-2006. By way of amendment, on 20-12-2005, the defendant introduced a plea that the land on which the suit accommodation is situated is Khasra No.58/1A, not Khasra No.58/7 and Khasra No.58/1A is held by one Ujal @ Amrit, therefore, the plaintiff has no right to file suit for eviction. The defendant have filed Ex.D-8 to demonstrate that the suit land is held by Ujal Shobhit, S/o Amchand, whereas the plaintiff has examined the said Ujal Sahu as PW-4 in which he has clearly stated that he has sold the land in favour of Kandarp Sahu, the plaintiff herein, on which Kandarp Sahu (plaintiff) has constructed a house and let-out to the defendant in which the

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defendant herein (tenant of Shop No.1) and Girdhari Lal Notani (tenant of shop No.1) were carrying on their business.

8. As such, it is clearly proved on record that the land on which the plaintiff has constructed house is held by the plaintiff and he had purchased from Ujal Sahu and it cannot be held that the suit land on which the suit shop is situated is held by Ujal Sahu. Even otherwise, both the Courts below have held that the defendant is tenant of the plaintiff and defendant Akhtar Khan in his affidavit under Order 18 Rule 4 of the CPC and in the examination-in-chief has admitted that he is the tenant of the plaintiff and as such, the defendant is estopped by Section 116 of the Evidence Act to question the title of the plaintiff. As such, both the Courts below have concurrently and rightly held that the plaintiff has constructed the suit shop on the land held by him and purchased from Ujal Sahu and the defendant is his tenant. Therefore, the lower appellate Court has rightly rejected the plea that the suit land on which the suit shops were constructed, was not owned by the plaintiff and the defendant is the tenant of the plaintiff / respondent, as such, non-examination of the plaintiff has not prejudiced his case in any manner whatsoever. The first substantial question of law is answered accordingly.

**Answer to substantial question of law No.2: -**

9. The defendant has clearly admitted in para 2 of his written statement that the suit accommodation was let out by the plaintiff to him. Not only this, in the affidavit filed under Order 18 Rule 4 of the CPC, defendant Akhtar Khan, in para 1, has clearly stated that he has taken the suit accommodation on rent in the year 1986 from Kandarp Sahu

on monthly rent of ₹ 260/-. Likewise, Girdhari Lal Notani (DW-2) has also stated in his examination-in-chief that the defendant has taken the suit shop on rent from the plaintiff in the year 1986 on monthly rent of ₹ 260/-. As such, there is overwhelming evidence and admission on the part of the defendant that he has taken the suit accommodation on rent from the plaintiff. This fact has been admitted by the defendant in the written statement and his witness Shankar (PW-3) and one Girdhari Lal Notani who was defendant No.1 in another suit have clearly admitted in this case that the defendant is tenant of the plaintiff, as per admission, from the year 1986. As such, the finding recorded by the two Courts below that the defendant is the tenant of the plaintiff is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record. The second substantial question of law is answered accordingly.

10. For the foregoing reasons, both the Courts below are justified in decreeing the suit of the plaintiff. The second appeal deserves to be and is accordingly dismissed. No order as to cost(s).

11. Decree be drawn-up accordingly.

Sd/-  
(Sanjay K. Agrawal)  
Judge