

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.105 of 2010**

Prabhu Ram Sahu (died) through LR's

Rajesh Sahu son of late Prabhuram Sahu, aged about 60 years, resident of Banjari Road, Raipur, Tahsil & District-Raipur (CG)

---Appellant/Defendant No.1

Versus

1. Smt. Sakuntala Chouhan Widow of Rudra Kumar Chouhan, Age-65 years, Sarvarakar, Shri Satyanarayan Swami Mandir, Goal Bazar, Raipur (CG)

---Respondent No.1/Plaintiff

2. Shri Dalchand Jain, Jain Novelty, Ravi Bhavan, Resident of G.E. Road, Raipur (CG)

---Respondent No.2/Defendant No.2

For Appellant/Defendant No.1:

Mr.G.D.Washwani, Advocate

For Respondent No.1/Plaintiff:

Mr.Manoj Paranjape and Mr.Anurag Singh, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

14/01/2021

1. Heard this second appeal on admission and formulation of substantial question of law preferred by the appellant/defendant No.1.
2. By the impugned judgment and decree, the first appellate Court has affirmed the judgment and decree of the trial Court decreeing the suit of the plaintiff on the grounds enumerated under Section 12(1)(a) and 12(1)(c) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter called

as 'the Act of 1961').

3. Mr.G.D.Washwani, learned counsel for the appellant/defendant No.1, would submit that both the Courts below are absolutely unjustified in granting decree under Section 12(1)(a) of the Act of 1961 as there is non-compliance of the provisions contained in Section 12(9) of the Act of 1961. Similarly, the alleged damage to the suit accommodation by defendant No.1 would not constitute the ground under Section 12(1)(c) of the Act of 1961 and as such, the second appeal involves substantial question of law for determination and it be formulated accordingly for determination.
4. The plaintiff filed a suit on the grounds enumerated under Section 12(1)(a) and 12(1)(c) of the Act of 1961 stating inter-alia that defendant No.1 is her tenant let-out for ₹15/- per month commencing from first day of english calender month and ending on the last day of said calender month, but defendant No.1 failed to pay rent for the period 01.12.2004 to 31.1.2007 (total 26 months) i.e. total ₹650/- and for which notice dated 28.9.2006 (Ex.P-1) was served to defendant No.1, but defendant No.1 did not deliver the vacant possession thereof, which constitutes a ground under Section 12(1)(a) of the Act of 1961. Similarly, the plaintiff also pleaded

that behind the suit accommodation, there is house of defendant No.1 and in order to have access to the said house, defendant No.1 has dismantled one side wall of the suit accommodation during concurrence of tenancy, which being nuisance constitutes a ground under Section 12(1)(c) of the Act of 1961.

5. Resisting the suit, defendant No.1 filed his written statement and denied the averments made in the plaint stating inter-alia that no such ground is made out for evicting defendant No.1/tenant from the suit accommodation and the suit deserves to be dismissed.
6. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 28.3.2009, decreed the suit on both grounds under Section 12(1)(a) and 12(1)(c) of the Act of 1961. On appeal being preferred by defendant No.1, the first appellate Court affirmed the judgment and decree of the trial Court and dismissed the appeal.
7. So far as the ground under Section 12(1)(a) of the Act of 1961 is concerned, it has concurrently been recorded by both the Courts below that defendant No.1 has failed to make payment of rent amounting to ₹650/- for 26 months from 01.12.2004 to 31.01.2007. The finding recorded by two Courts below that

defendant No.1 has failed to pay rent for 26 months despite having served two months notice as required under Section 12(1)(a) of the Act of 1961 did not vacate the suit accommodation is a finding of fact based on evidence available on record. It is neither perverse nor contrary to record. Section 12(9) of the Act of 1961 is not applicable for ground under Section 12(1)(a) of the Act of 1961.

8. Similarly, both the Courts below have concurrently held that defendant No.1 in order to have access to his house situated behind the suit accommodation dismantled one side wall of the suit accommodation, which is an act constitutes nuisance on the ground under Section 12(1)(c) of the Act of 1961.
9. Under Section 12(1)(c) of the Act of 1961, the tenant shall be liable to be evicted from the suit accommodation if the tenant or any person residing with him has created a nuisance or has done any act which is consistent with the purpose for which he was admitted to the tenancy of the accommodation or which is likely to affect adversely and substantially the interest of landlord therein.
10. **R E Megarry** in Rent Act, 9th edition, has mentioned that under the ground for eviction for creating nuisance, illegal use or deterration of premises by the tenant it must fall within one of the following

heads, (i) he has been guilty of conduct which is a nuisance or annoyance to the adjoining occupiers, (ii) he has been convicted of using or allowing the use of premises for immoral purpose or (iii) the condition of the dwelling house is in the opinion of the Court deteriorated owing to the acts of waste by him or owing to his neglect or defect.

11. The Madhya Pradesh High Court in the matter of Kamalchand v. Vijay Kumar Jain¹ relying upon text of R E Megarry (supra) held that causing damage to the premises occupied by tenant also amounts to act of nuisance.
12. Such a finding of fact recorded by two Courts below that causing damage to the suit accommodation would constitute ground under Section 12(1)(c) of the Act of 1961 and the tenant is liable to be evicted is correct finding based on evidence available on record. It is also neither perverse nor contrary to record. I do not find any perversity or illegality in the said finding and even I do not find any substantial question of law for determination of this second appeal.
13. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine* without notice to other side. No cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

¹ 1978(II) MP Weekly Notes 100