

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 247 of 2012**

1. Prakash Chand Sharma (died) through LRs. :-

A. Smt. Shakuntala Devi Sharma, Wd/o Late Prakash Chand Sharma, Aged about 52 years.

B. Radha Krishna Sharma S/o Late Prakash Chand Sharma, Aged about 34 years.

C. Yogesh Sharma S/o Late Prakash Chand Sharma, Aged about 32 years.

D. Saroj Sharma D/o Prakash Chand Sharma, Aged about 36 years.

All R/o Near Kotra Road, Raigarh, Tahsil and Distt. Raigarh, Chhattisgarh.

---Appellant/Defendant

Versus

Vinod Sharma S/o Dhanraj Sharma, Aged about 40 years, Occupation Private Service, R/o House No. 2, Seth Kirodimal Colony, Raigarh, Tahsil and Distt. Raigarh, Chhattisgarh.

--- Respondent/Plaintiff

For Appellant	:-	Mr. Vineet Kumar Pandey, Advocate
For Respondent	:-	Mr. Vivek Tripathi, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board (Through Video Conferencing)

14/07/2021

1. This second appeal preferred by the appellant/defendant was admitted for hearing on 18/04/2017 by formulating the following substantial question of law :-

"Whether the Courts below, while considering the documentary evidence Ex.P.11, Ex.P.13 and Ex.P.14, were justified in holding that the relationship of landlord and tenant has duly been established between the parties and consequently justified in granting the decree for eviction under Section 12(1)(e) of the Chhattisgarh Accommodation Control Act, 1961 ?"

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

2. Plaintiff filed a suit for eviction and arrears of rent against the defendant stating inter alia that the suit accommodation shown in Schedule 'A' annexed with the plaint was let out by him to the defendant for a monthly rent of Rs. 150/- commencing from the first date of calender month and ending on the last date of that month, but the defendant stopped paying rent from June, 1998 and moreover, the suit accommodation is required by the plaintiff for residing as he has no other alternative accommodation in the

township of Raigarh and tenancy of defendant has been terminated by serving notice dated 07/04/2001 with effect from 22/04/2001, yet the defendant has not vacated the suit premises which has led to filing of the suit for eviction based on Section 12(1)(e) of Chhattisgarh Accommodation Control Act, 1961 (hereafter 'the act of 1961') and for arrears of rent from June, 1998 to May, 2001 amounting to Rs. 5,100/-.

3. Defendant filed his written statement denying the plaint allegations stating inter alia that the suit accommodation has been constructed on Khasra No. 194/2 area 0.010 hectare at the time of his ancestors and defendant and his brother Kashiram Sharma, both are staying in the suit accommodation separately for a fairly long time and plaintiff has no right or title over the suit accommodation and there is no relationship of landlord and tenant between plaintiff and himself. Defendant also filed a counter-claim seeking permanent injunction restraining the plaintiff from interfering with his peaceful possession.

4. Plaintiff filed written statement to the counter-claim and denied the allegations made by

the defendant and stated that plaintiff is the title-holder and landlord and defendant is his tenant, as such, defendant is not entitled for relief of permanent injunction.

5. On the basis of pleadings of parties, learned trial Court, framed as many as 10 issues and recorded the evidence of the parties to decide those issues. It is appropriate to notice here that by interim order dated 23/08/2003, trial Court struck off the defence of the defendant on the ground that he failed to deposit rent in accordance with the provisions of the Act of 1961 and further by its judgment and decree dated 14/03/2011 dismissed the counter-claim of defendant and decreed the suit partly holding that defendant is tenant of plaintiff for a monthly rent of Rs. 150/- and the suit accommodation is required by the plaintiff for his bona fide need as he has no other alternative accommodation in the township of Raigarh, but declined to grant decree under Section 12(1)(a) or 12(1)(e) of the Act of 1961.
6. On appeal being preferred by the defendant against the decree for eviction passed by the trial Court in favour of plaintiff, learned

first appellate Court, by its impugned judgment and decree dated 06/07/2012, affirmed the judgment and decree passed by the trial Court against which this second appeal has been preferred by the appellant/defendant in which substantial question of law has been framed and set out in the opening paragraph of this judgment.

7. Mr. Abhishek Sharma, learned counsel for the appellant/defendant, would submit that the finding recorded by both the Courts below particularly holding that the relationship of landlord and tenant has been established between plaintiff and defendant on the basis of Exhibits P-11, P-13 and P-14 is perverse and is liable to be set aside and the instant appeal deserves to be allowed.
8. Mr. Vivek Tripathi, learned counsel for the respondent/plaintiff, would support the impugned judgment and decree and submit that both the Courts below, on the basis of proper evaluation of oral and documentary evidence on record, have rightly come to the conclusion that the relationship of landlord and tenant has been established between plaintiff and defendant and

decreed the suit of the plaintiff, as such, the instant appeal deserves to be dismissed.

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

10. It is pertinent to mention here that trial Court has granted decree in favour of plaintiff holding that plaintiff is the title-holder of the suit accommodation and he is the landlord and defendant is his tenant, as such, the relationship of landlord and tenant has been established between them and also that the suit accommodation is required bona fide by the plaintiff for residence as he has no other alternative accommodation in the township of Raigarh. The trial Court has also struck off the defence of the defendant by order dated 23/08/2003.

11. The finding recorded by both the Courts below that plaintiff needs the suit accommodation for his bona fide under Section 12(1)(e) of the Act of 1961 cannot be called in question in this second appeal as defence of defendant was struck off under Section 13(6) of the Act on 23-8-2003

and the only question that can be examined is whether the relationship of landlord and tenant is established between plaintiff and defendant in light of Exhibits P-11, P-13 and P-14.

12. A careful perusal of Exhibit P-11 would show that it is a memo issued by the plaintiff to the Assistant Engineer, Chhattisgarh Electricity Board raising objection to the electric connection to be given to the defendant in which plaintiff has clearly stated that defendant is in illegal possession of the suit accommodation for which matter is pending before the Court and the electric connection has already been disconnected once due to non-payment of electricity bill, therefore, without the consent of the plaintiff/landlord, electric connection be not reconnected. By this document the plaintiff has though said that defendant is in illegal possession of the suit accommodation but he has clearly asserted that he is the landlord, therefore, this document cannot be said to be a document which clearly supports the case of the plaintiff that defendant is his tenant.

13. Exhibit P-13 is a copy of istegasa filed in the Court of Executive Magistrate, Raigarh at the

instance of plaintiff against defendant who is wherein it has been stated that defendant is staying as a tenant in the house of Vinod Sharma and there is some estrangement between defendant Prakashchandra Sharma and plaintiff Vinod Sharma, as such, it is quite vivid that in this document, the name of defendant Prakashchandra Sharma is mentioned as tenant, therefore, it cannot be said that in any way it furthers the case of the defendant.

14. Exhibit P-14 is the statement of defendant in which he has clearly stated that he has taken the suit accommodation from plaintiff's father on monthly rent of Rs. 125/- and he has entered into agreement to sale with regard to the suit accommodation with plaintiff and his father for Rs. 28,100/- but plaintiff's father asked him to vacate the premises, as such, it is established that he was tenant of plaintiff's father.

15. Consequently, on the basis of Exhibits P-11, P-13 and P-14, it cannot be held that defendant was not the tenant of plaintiff and the concurrent finding recorded by both the Courts below on the basis of oral and documentary evidence on record that defendant is tenant of

plaintiff and the relationship of landlord and tenant has been established between plaintiff and defendant is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record, particularly the defence of defendant has also been struck off by the trial Court by order dated 23/08/2003, therefore, the trial Court has rightly decreed the suit of the plaintiff and it has rightly been affirmed by the first appellate Court. I do not find any merit in this second appeal.

16. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

17. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet