

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.296 of 2012**

Smt.Kalindri Bai, aged about 55 yrs. W/o Bhupendra Kumar Agrawal, R/o Sanjay Ward, Bhatapara P.O./P.S./Tahsil Bhatapara, Distt. Balodabazar-Bhatapara (CG)

----- Appellant/Plaintiff

Versus

Bagwati Prasad Dhruw, aged about 54 yrs., S/o Bhagtu Prasad Gond (teacher-Govt.Primary School vill.Amakoni)r/o vill. Amakoni P.O. Suhela, Tahsil Simga, Distt.Balodabazar-Bhatapara (CG)

----- Respondent/Defendant

And

Second Appeal No.424 of 2012

Bhagwati Prasad Dhruv S/o Bhagatu Prasad aged about 54 years, R/o village Aamakoni, Profession-Teacher, P.S. & Tahsil Simga, District B.B.Bhatapara (CG)

----- Appellant/Defendant

Versus

Smt.Kalindi Bai w/o Bhupendra Kumar Agrawal, aged about 55 years, R/o Bhatapara, P.S. & Tahsil Bhatapara, Distrit B.B.Bhatapara (CG)

----- Respondent/Plaintiff

For Appellant/Plaintiff:

Mr.B.M.Rao, Advocate in SA No.296/2012

For Respondent/Defendant:

Mr.A.P.Sharma, Advocate in SA No.296/2012

For Appellant/Defendant:

Mr.A.P.Sharma, Advocate in SA No.424/2012

For Respondent/Plaintiff:

Mr.B.M.Rao, Advocate in SA No.424/2012

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

8/7/2021

1. Second Appeal No.296/2012 preferred by the appellant/plaintiff was admitted for hearing on 29.6.2021 by formulating the following substantial question of law:-

"Whether the First Appellate Court is justified in granting decree of Rs.1,15,000/- along with interest in favour of defendant without any counter claim filed on behalf of defendant by recording a finding perverse to the record ?"

2. Second Appeal No.424/2012 preferred by the appellant/defendant was admitted for hearing on 8.11.2012 by formulating the following two substantial questions of law:-

"1. Whether the lower appellate Court was justified in granting money decree of Rs.1,15,000/- along with interest at the prevailing bank rate without any claim of relief ?

2. Whether the lower appellate Court was justified in passing the decree of entitlement of monthly rent of Rs.300/- in absence of such claim ?"

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

3. Plaintiff-Smt.Kalindri Bai filed a suit for decree of possession stating inter-alia that the suit house which she was gifted to her by her father by registered gift deed dated 17.5.80 in which she is title-holder and it was leased out to the defendant on monthly rent of ₹750/- commencing on 1st day of

English calender month and ending of that calender month. It was further pleaded that the plaintiff has taken a loan of ₹50,000/- from the defendant to be adjusted in rent, when the plaintiff decided to refund the amount, the defendant denied and insisted for execution of sale deed in his favour resulting into filing of the suit after termination of tenancy by notice dated 26.3.2003 claiming decree for eviction / possession from the defendant.

4. Resisting the suit, the defendant filed his written statement and denied the averments made in the plaint stating inter-alia that he has already purchased the suit house on 7.3.2000 on consideration of ₹90,000/- and the plaintiff taken ₹22,000/- as advance and possession has been handed over to him and ₹28,000/- has been paid on 11.6.2000 and remaining amount has also been paid on installments, but sale deed has not been executed in his favour. He has also incurred ₹25,000/- in maintenance of the suit house, as such, the suit deserves to be dismissed.

5. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 12.8.2008, dismissed the suit holding that relationship of landlord and tenant between plaintiff and defendant is not established and

the defendant has purchased the suit house from the plaintiff on payment of ₹90,000/- and the plaintiff is not entitled for decree of eviction. On appeal being preferred by the plaintiff, the first appellate Court by the impugned judgment and decree held that though the plaintiff is title-holder of the suit house and entitled for decree of eviction, but directed that ₹1,15,000/- be refunded to the defendant as ₹90,000/- towards the amount paid to her and ₹25,000/- which he has incurred in maintenance of the suit house, against which, the plaintiff has preferred Second Appeal No.296/2012 and the defendant has preferred Second Appeal No.424/2012 against order granting decree of rent from 1st July, 2002 to the date of payment.

6. Since both the appeals are arising out of the common judgment and decree, both were clubbed together, heard together and being disposed of by this judgment.

7. Mr.B.M.Rao, learned counsel for the appellant/plaintiff in Second Appeal No.296/2012, would submit that since there is no counter-claim of ₹1,15,000/- made by the defendant in his written statement, no decree of ₹1,15,000/- could have been passed against the plaintiff and in favour of the defendant, therefore, that part of decree deserves to be set-aside, which is opposed by Mr.A.P.Sharma,

learned counsel for the defendant stating inter-alia that the defendant has paid ₹90,000/- to the plaintiff and ₹25,000/- was incurred in maintenance of the suit house, as such, it has rightly been passed.

8. Mr.A.P.Sharma, learned counsel for the appellant/defendant in Second Appeal No.424/2012, would submit that decree for rent has not been claimed by the plaintiff, yet the first appellate Court granted w.e.f. 1st July, 2002, which is liable to be set-aside, which is opposed by Mr.B.M.Rao, learned counsel for the plaintiff.

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

10. The suit for eviction based on landlord relationship has been dismissed by the trial Court, but the first appellate Court granted holding the plaintiff to be title-holder and granted decree for possession of the suit house. On the said part of decree, no question of law has been proposed or framed in second appeal preferred by the defendant, as such, no lis is required to be adjudicated on the decree for possession granted in favour of the plaintiff.

11. Now, there is decree for payment of ₹90,000/- and

₹25,000/- total ₹1,15,000/- along with interest in favour of the defendant and against the plaintiff.

12. It is not in dispute that the defendant did not lay any counter-claim claiming an amount of ₹1,15,000/- along with interest from the plaintiff. Definitely, such a claim was not put to trial giving notice to the plaintiff. Therefore, in absence of counter-claim or counter-suit by the defendant claiming an amount of ₹1,15,000/-, no money decree to the extent of ₹1,15,000/- could have been passed by the first appellate Court, which is accordingly set-aside.

13. Now, coming to Second Appeal No.424/2012 preferred by the defendant.

14. It is true that the plaintiff did not claim any rent w.e.f. 1st July, 2002 from the defendant, yet again the first appellate Court has granted decree of rent from 1st July, 2002 to the date of payment, which has not been claimed in the plaint, as such, decree for payment of rent from 1st July, 2002 as held by the first appellate Court is hereby set-aside.

15. In that view of the matter, decree of the first appellate Court directing payment of ₹1,15,000/- along with interest by the plaintiff to the defendant is hereby set-aside. Similarly, decree for payment of

rent of ₹300/- per month from 1st July, 2002 by the defendant to the plaintiff is also hereby set-aside. Consequently, only part of decree for possession is maintained and other part of money decree is hereby set-aside.

16. Both the appeals are partly allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

17. Appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-