

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on :9.6.2021****Judgment delivered on:16.6.2021****Second Appeal No.293 of 2006**

Shivprasad Tiwari, S/o Vasudev Prasad Tiwari, Aged about 51 years, R/o Naharpara, Raipur (CG)

----- Appellant/Plaintiff**Versus**

Banshilal Sablok (died) through LR's

1-A. Harish Sablok, S/o late Shri Banshilal Sablok, Aged about 48 years, R/o-P-225/6, Priyadarshni Nagar, Raipur, District-Raipur (CG)

-----Respondent/Defendant

For Appellant/Plaintiff: Mr.Amrito Das, Advocate

For Respondent/LR's of the Defendant:

Mr.N.L.Soni, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1.Proceedings of this matter have been taken-up through video conferencing.

2.This second appeal preferred by the appellant/plaintiff was admitted for hearing on 13.12.2007 by formulating the following substantial questions of law:-

"A. Whether the finding recorded by both the Courts below that the appellant/plaintiff is not the owner and the respondent/defendant not his tenant is perverse since both the Courts below overlooked the oral evidence of the plaintiff as also the documents Ex.P-1

and P-2 produced by Smt Bhagwati Bai, mother of the appellant/plaintiff ?

B. If yes, whether the judgment and decree passed under Section 12(i)(a) & (c) of the Chhattisgarh Accommodation Control Act, 1961 is liable to be set aside ?"

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

3. It is the case of the plaintiff that the suit accommodation was owned by his mother Bhagwati Bai, which she has purchased by Exs.P-1 & P-2 and constructed a shop therein which she let-out to original defendant Basnshilal, who died during pendency of this second appeal, on a monthly rent of ₹500/- for non-residential purpose and after her death he became landlord of the suit accommodation. It is further case of the plaintiff that the defendant is not paying rent for last 3 years, for which he served legal notice vide Ex.P-3 on 20.8.1998, which was replied by the defendant vide Ex.P-6, but neither paid the rent and denied the plaintiff's title and thereby he is entitled for decree under Section 12(1)(a) & (c) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as 'the Act of 1961').
4. Resisting the suit, the defendant filed his written statement and denied the averments made in the plaint

stating that he is not tenant of the plaintiff, he is the owner of the suit accommodation and therefore, the plaintiff is not entitled for decree. He has also pleaded that on 16th March, 1986 the plaintiff has also issued notice to the defendant, which he has replied vide Ex.D-1 on 11.4.86, which shows that the plaintiff is not landlord of the suit accommodation.

5. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 23.7.2003, dismissed the suit holding that relationship of landlord and tenant is not established and grounds under Section 12(1)(a) & (c) of the Act of 1961 are also not established. On appeal being preferred by the plaintiff, the first appellate Court affirmed the judgment and decree of the trial Court and dismissed the first appeal. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which two substantial questions of law have been formulated by this Court, which have been set-out in opening paragraph of this judgment.

6. Mr. Amrito Das, learned counsel for the appellant/plaintiff, would submit that both the Courts below have committed legal error in holding that relationship of landlord and tenant is not established

between the plaintiff and the defendant, ignoring the uncontroverted testimony of Shiv Prasad Tiwari (PW-1), he referred paras-7 and 19 and also referred the statement of Narayan Prasad Trivedi (PW-2) specifically paras-5 and 9 and submit that two witnesses have clearly admitted that the suit accommodation was let-out by the plaintiff's mother to the defendant and as such, relationship of landlord and tenant between the plaintiff and the defendant is established and findings recorded by two Courts below are liable to be dismissed. He would further submit that grounds under Sections 12(1) (a) & (c) of the Act of 1961 are fully and clearly established, but both the Courts below have dismissed the suit holding that grounds are not established, by recording a finding which is perverse to record.

7. On the other hand, Mr.N.L.Soni, learned counsel for the respondent/defendant, would support the judgment and decree of both the Courts below and submit that both the Courts below have concurrently and rightly held that relationship of landlord and tenant is not established and grounds under Section 12(1)(a) and (c) of the Act of 1961 are also not made out, as such, the appeal deserves to be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions made hereinabove

and also went through the records with utmost circumscription.

Answer to substantial question of law No.1:-

9. It is the case of the plaintiff that his mother purchased the suit property vide Exs.P-1 and P-2 and constructed a shop therein which was let-out to original defendant-Banshilal Sablok on monthly rent of ₹ 500/- for non-residential purpose and even after service of notice (Ex.P-3) the defendant has not vacated the suit accommodation and replied his notice denying the landlord-tenant relationship, as such, relationship of landlord and tenant is established and he is entitled for decree of eviction on the ground under Section 12(1)(a) and (c) of the Act of 1961, but both the Courts below have held that relationship of landlord and tenant between the plaintiff and the defendant is not established and dismissed the suit, which has been called in question in this second appeal.

10. In order to establish landlord-tenant relationship, the plaintiff-Shivprasad Tiwari has examined himself as PW-1 and also examined witness Shri Narayan Prasad Trivedi as PW-2. It is quite apparent from record that the suit land on which the accommodation is situated is purchased by the

plaintiff's mother Bhagwati Bai vide Exs.P-1 and P-2 on 1.8.63 and 5.10.64 respectively. The plaintiff has been examined as PW-1. He has stated that the suit accommodation was let out by his elder mother to the original defendant and fact is known to other witness Narayan Prasad Trivedi (PW-2), who has been examined as PW-2. In para-7 of cross-examination on question being asked by learned counsel for the defendant, the plaintiff has clearly stated that the suit accommodation was let-out by his mother Bhagwati Bai. Similarly, in para-19 on question being put by learned counsel for the defendant, the plaintiff has clearly stated that rent was being given by the defendant to him and in same paragraph, on question being put, this witness (PW-1) has clearly stated that the defendant is carrying his business in the suit accommodation, but in the capacity of his tenant. Similarly Narayan Prasad Tiwari (PW-2) in whose presence the suit accommodation has been let-out in para-5 he has clearly stated about the suit accommodation being let-out to the defendant in presence of Bhagwati Bai and and elder son Durga Prasad Tiwari. Similarly, he has clearly stated in para-6 that the plaintiff's mother purchased the suit land and thereafter tenancy was made in favour of the defendant.

11. Apart from the plaintiff witness in cross-examination, the aforesaid fact has been extracted from the plaintiff on suggestion from counsel for the defendant, which is binding to the defendant in which the plaintiff and his witness (PW-2) have clearly that that the suit accommodation was let-out by the plaintiff's mother to the defendant and the defendant is his tenant and he is not carrying his business on his own title/right, but he is tenant, as such, from the statements of plaintiff-Shivprasad Tiwari (PW-1) and Narayan Prasad Trivedi (PW-2), it is clearly established that the plaintiff's mother purchased the suit land and after death of his mother, the plaintiff has succeeded the suit property, as such, finding recorded by two Courts below that relationship of landlord and tenant between the plaintiff and the defendant is not established is perverse and is hereby set-aside and it is held that relationship of landlord and tenant is established between the plaintiff and original defendant.

Answer to substantial question of law No.2:-

12. The plaintiff has pleaded two grounds under Section 12(1)(a) and Section 12(1)(c) (c) of the Act of 1961. It is the case of the plaintiff that while replying to the notice dated 20.8.1998(Ex.P-3) served

to the defendant, he has denied the title of the plaintiff, which is a ground under Section 12(1)(c) of the Act of 1961 and reply to notice has also been filed as Ex.P-6.

13. Section 12(1)(c) of the Act of 1961 provides as under:-

"12. Restriction on eviction of tenants.-(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :

(c) that the tenant or any person residing with him has created a nuisance or has done any act which is inconsistent 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 the landlord therein:

Provided that the use by a tenant of a portion of the accommodation as his office shall not be deemed to be an act inconsistent with the purpose for which he was admitted to the tenancy."

14. A careful perusal of aforesaid document (Ex.P-6) would show that the defendant has not denied the title of the plaintiff specifically. Merely claiming that he is not tenant of the plaintiff would not constitute a ground under Section 12(1)(c) of the Act of 1961. For ground under Section 12(1)(c) of the Act of 1961, title must be specifically denied by the defendant, which is detrimental to the interest of the plaintiff,

then only ground under Section 12(1)(c) of the Act of 1961 is made out and simple and vague denial of the plaintiff's title, if any, would not constitute a ground under Section 12(1)(c) of the Act of 1961, therefore, the plaintiff is not entitled for decree under Section 12(1)(c) of the Act of 1961.

15. Section 12(1)(a) of the Act of 1961 specifically contemplates that tenant is duty bound to pay or remit the arrears of rent within two months from the date of service of demand of notice by the landlord and if he fails to tender the same within the statutory period the landlord get the right to evict the tenant on the said ground.

16. In the instant case, though legal notice has been served to the defendant on 20.8.1998 (Ex.P-3) and the defendant has also filed reply vide Ex.P-6 and the suit was filed on 22.12.1998, but arrears of rent has not been paid to the plaintiff on the premises that there is no relationship of landlord and tenant, as such, since it has already been held that relationship between the plaintiff and the defendant as landlord and tenant is established and despite service of notice (Ex.P-3) to the defendant he has not tendered arrears of rent within two months from the date of notice (Ex.P-1), the plaintiff would be entitled to

decree under Section 12(1)(a) of the Act of 1961. Both the substantial questions of law are answered in favour of the plaintiff and against the defendant.

17. The High Court of Madhya Pradesh in the matter of Satish Chandra v. Jankiprasad¹ has considered Section 12(1)(a) of the Act of 1961 and held that it is not necessary to mention in the demand notice the period within which arrears to be paid, and even if period less than two months is mentioned, the demand notice shall not become invalid.

18. Accordingly, the appeal is partly allowed and the judgment and decree of both the Courts below are hereby set aside and it is held that the plaintiff is entitled for decree of eviction under Section 12(1)(a) of the Act of 1961 and it is directed that the defendant will hand over the peaceful vacant possession of the suit accommodation as shown in para-1 of the plaint to the plaintiff within 30 days from the date of drawing the decree. The plaintiff will be entitled for the cost throughout.

19. A decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-