

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.77 of 2012**

**Babulal Duggad @ Babulal Jain, S/o Late Rawatmal Duggad,
aged about 55 years, R/o Ram Mandir, Sadar Bazar, Durg, Tahsil
& District Durg (C.G.)**

**(Defendant)
---- Appellant**

Versus

1. A] Smt. Benabai, Wd/o Late Bhuwanlal Soni,
B] Ani Kumar, S/o Late Bhuwanlal Soni,
C] Rajendra Soni, S/o Late Bhuwanlal Soni,
D] Hemant Kumar Soni, S/o Late Bhuwanlal Soni,
All above R/o Bhilai-3, Tahsil Patan, District Durg (C.G.)
E] Omprakash Soni, S/o Late Bhuwanlal Soni, R/o Behind the
house of Bhagwat Soni, Jain Gali, Sadar Bazar, Durg, Tahsil
Durg, District Durg (C.G.)
2. Smt. Anusuiya Bai, Wd/o Late Anil Kumar, R/o Sukala Chowk,
Bhilai-3, Tahsil Patan, District Durg (C.G.)
3. Bhagirathi, S/o Samaliya Sao, aged about 56 years, R/o Bhilai-3,
Tahsil Patan, District Durg (C.G.)
4. A] Smt. Binda Bai, Wd/o Late Parmu, aged about 61 years,
B] Ganesh, S/o Late Parmu, aged about 38 years,
C] Satyanarayan, S/o Late Parmu, aged about 31 years,
D] Premnarayan, S/o Late Parmu, aged about 30 years,
E] Banshi (died and deleted)
F] Nirbhay, S/o Late Parmu, aged about 28 years,
5. Bodhram, S/o Samaliya Sao, aged about 40 years,
6. Mohan Lal, S/o Chinta Sao, aged about 66 years,
7. A] Smt. Nema Bai, Wd/o Late Virendra, aged about 68 years,
B] Shrawan Kumar, S/o Late Virendra, aged about 42 years,
C] Narendra Kumar (died and deleted)
D] Gajendra, S/o Late Virendra, aged about 31 years,

E] Surekha, D/o Late Virendra, aged about 24 years,

F] Nand Kumar, S/o Late Virendra, aged about 22 years,

G] Preetbala, D/o Late Virendra, aged about 18 years,

All above R/o Bhilai-3, Tahsil Patan, District Durg (C.G.)

(Plaintiffs)

---- Respondents

For Appellant / Defendant: -

Mr. Manoj Paranjpe & Mr. Anurag Singh, Advocates.

For Respondents No.1A to E, 4A, 6 and 7D: -

Mr. B.P. Sharma and Ms. Anuja Sharma, Advocates.

For Respondents No.3, 4D, 4F, 7E, 7F and 7G: -

Mr. Badruddin Khan, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

24/02/2021

1. This second appeal preferred by the defendant / tenant / appellant herein was admitted for hearing on the following substantial questions of law:

“1. Whether the finding arrived at by the Court below is justified in the issuance of the decree as per the provisions of Sections 12(1)(a) and 12(1)(f) of the Chhattisgarh Accommodation Control Act, 1961?

2. Whether by virtue of sale of suit premises by one of the co-owners of the property, the bona fide need stands extinguished?”

(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 respondents herein / seven plaintiffs filed suit for eviction of the defendant from the suit accommodation on the ground under Sections 12(1)(a), (f) & (h) of the Chhattisgarh Accommodation Control Act, 1961 (for short, ‘the Act of 1961’) stating inter alia that the suit accommodation was let out to the

defendant in the year 1967-68 for non-residential purpose i.e. for clothing business on monthly rent of ₹ 275/- commencing from first day of each English calendar month and ending on the last day of the month, but the suit accommodation is required for the bona fide need of sons of plaintiffs No.4 & 5 and they have no alternative accommodation in the township of Durg; tenancy has been terminated on 17-12-1990 , yet it has not been vacated and rent of ₹ 632/-, total ₹ 930/- has not been paid, as such, they are entitled for eviction on the ground under Sections 12(1)(a) & 12(1)(f) of the Act of 1961 which was resisted by the defendant by filing written statement stating inter alia that map for construction has not been sanctioned, no sufficient money was there with the plaintiffs for construction of building, sons of plaintiffs No.4 & 5 are not unemployed and they have alternative accommodation in their possession, as such, the plaintiffs are not entitled for eviction.

3. The trial Court after appreciating oral and documentary evidence available on record held that though the plaintiffs are landlords and relationship of landlord and tenant is established between the parties, but the bona fide need of only sons of plaintiffs No.4 & 5 is established and they have no alternative accommodation in their possession and also the defendant has not paid rent since January, 1991, and accordingly decreed the suit under Sections 12(1)(a) & (f) of the Act of 1961. On appeal preferred by the defendant, the first appellate Court has affirmed the judgment and decree of the trial Court; questioning the same, this second appeal has been preferred in which substantial questions of law have been formulated which have

been set-out in the opening paragraph of this judgment for the sake of completeness.

4. Mr. Manoj Paranjpe, learned counsel for the appellant herein / defendant, would submit that both the Courts below have concurrently erred in holding that the suit accommodation is required bona fide for the bona fide need of the sons of plaintiffs No.4 & 5 and further erred in holding that they have no alternative suit accommodation in the township of Durg. He would further submit that on 25-5-2011, one of the co-owners – plaintiff No.3 Bhagirathi has alienated the suit property to Neelamchand, Rajesh Kumar & Vinod Kumar by registered sale deed dated 25-5-2011, as such, the plaintiffs' need has come to an end. Therefore, judgments & decrees of both the Courts below be set aside and the plaintiffs' suit be dismissed. He would rely upon the recent decision of the Supreme Court in the matter of H.S. Goutham v. Rama Murthy and another etc.¹ and the decisions of the M.P. High Court in the matters of Melaram Jairam Punjabi v. Shah Babulal Chhotelal Mehta² and Bhaiyalal v. Chhotelal Tiwari³ to buttress his submission.

5. Mr. B.P. Sharma, learned counsel for the respondents herein / defendants, except plaintiff No.3 Bhagirathi, would submit that both the Courts below have rightly and concurrently held that the plaintiffs have established the bona fide need of Suresh & Ganesh – sons of plaintiffs No.4 & 5, which has remained unchallenged and both the Courts have concurrently held that the defendant has further failed to prove that the plaintiffs have

1 C.A.No.1844/2010, decided on 12-2-2021

2 1998(2) M.P.L.J. 243

3 1971 M.P.L.J. (104)

suitable alternative accommodation in the township of Durg for carrying on their non-residential purpose, therefore, the substantial questions of law deserve to be answered in favour of the plaintiffs. Even otherwise, the defendant has failed to produce documents evidencing that rent has been deposited after filing of suit in compliance of Section 13(1) of the Act of 1961.

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. Decree has been granted by the two Courts below in favour of the plaintiffs under Sections 12(1)(a) & (f) of the Act of 1961 and substantial questions of law have been framed on both the grounds. Firstly, ground under Section 12(1)(f) of the Act of 1961 has to be dealt with for the sake of convenience.
8. Admittedly, the suit accommodation was let out for non-residential purpose to the defendant on monthly rent which is sought to be evicted by the plaintiffs for bona fide need of sons of plaintiffs No.4 & 5 – Suresh & Ganesh, they have been examined as PW-2 and PW-5 which has not been controverted by the defendant. As such, there is overwhelming evidence on record that the suit accommodation is required for the bona fide need of the two sons of plaintiffs No.4 & 5 namely, Suresh & Ganesh for non-residential purpose. It is the case of the defendant that the plaintiffs have other suitable accommodation in their possession for the said bona fide need, but the trial

Court as well as the first appellate Court have clearly recorded a finding that the defendant did not adduce any oral and documentary evidence to establish as to which is the alternative accommodation in their possession suitable for the bona fide need of the plaintiffs. Merely saying that the plaintiffs have other suitable accommodation for the bona fide requirement to satisfy their need would not serve any purpose unless appropriate pleading is made and clinching evidence is brought on record to hold that the plaintiffs have another alternative suitable accommodation in the township at Durg to satisfy their bona fide need. As such, the concurrent findings recorded by both the Courts below that sons of plaintiffs No.4 & 5 require the suit accommodation for their bona fide need under Section 12(1)(f) of the Act of 1961 and there is no alternative suitable accommodation in the township of Durg, are findings of fact based on the evidence available on record. Even otherwise, the Supreme Court in the matter of Ram Prasad Rajak v. Nand Kumar & Bros. and another⁴ held that bona fide need does not give rise to substantial question of law. As such, the finding of fact recorded by the two Courts below holding the ground under Section 12(1)(f) of the Act of 1961 is established, is neither perverse nor contrary to the record.

9. So far as the ground under Section 12(1)(a) of the Act of 1961 is concerned, both the Courts below have concurrently recorded a finding that the defendant has failed to make payment of arrears of rent even after service of two months' notice as required under Section 12(1)(a) and despite entering into trial before the

4 (1998) 6 SCC 748

trial Court, the defendant did not deposit rent. As such, both the Courts below have rightly held that the ground under Section 12(1)(a) of the Act of 1961 is also made out against the defendant for eviction under Section 12(1)(a).

Answer to substantial question of law No.2: -

10. Decree for eviction was granted on 18-1-1996 and thereafter, first appeal was preferred which was decided on 16-12-2011 and this second appeal is pending since 14-2-2012. Now, application under Order 41 Rule 27 of the CPC and application under Order 6 Rule 17 of the CPC have been filed stating that one of the plaintiffs namely Bhagirathi (plaintiff No.3) has sold the suit property on 25-5-2011 by registered sale deed which has been filed and now, on that basis, decree is sought to be nullified on the ground that once the accommodation or part of accommodation of the suit property has been sold by one of the co-owners, bona fide need has come to an end. As such, the substantial question of law has been formulated in anticipation of its grant, as the stage for consideration of the application under Order 41 Rule 27 of the CPC has arisen now.

11. Mr. Sharma, learned counsel appearing for the plaintiffs except plaintiff No.3 Bhagirathi, at this stage, would contend that if the contents of this application are taken to be true, no case for reception of additional evidence is made out. Alienation by one of the co-owners of the suit property to the extent of his share would not nullify the decree concurrently granted by the two Courts below, as such, the alienation has been procured in order to nullify the valid decree granted by the trial Court and affirmed by the first appellate Court. He would further contend

that though alienation is made on 25-5-2011 and thereafter, first appeal was decided on 16-12-2011, this ground was available to be taken by the defendant before the first appellate Court, but it was not taken before the first appellate Court and decree was allowed to be passed and after the decree having been passed affirming the judgment & decree of the trial Court by the first appellate Court, this document has been brought on record to frustrate the decree, it suffers from delay and laches also and even otherwise, it is not covered by Order 41 Rule 27 of the CPC.

12. The question for consideration would be, whether the application under Order 41 Rule 27 of the CPC deserves to be granted?
13. The settled principle of law is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 of the CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself. (See Union of India v. Ibrahim Uddin and

another⁵.)

14. It is also well settled that it is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court. Hence, in the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (See State of U.P. v. Manbodhan Lal Srivastava⁶ and S. Rajagopal v. C.M. Armugam⁷.)

15. In Manbodhan Lal Srivastava's case (supra), the Supreme Court has held that additional evidence should not be permitted at the appellate stage in order to enable one of the parties to remove certain lacunae in presenting its case at the proper stage, and to fill in gaps. It was further held that of course, the position is different where the appellate court itself requires certain evidence to be adduced in order to enable it to do justice between the parties.

16. Similarly, in S. Rajagopal (supra), the Supreme Court held that there is no justification for grant of application under Order 41 Rule 27 of the CPC particularly because even if that register (additional evidence) is brought, a lot of oral evidence would have to be recorded in order to have the register properly proved and to give an opportunity to the party, against whom

5 (2012) 8 SCC 148

6 AIR 1957 SC 912

7 AIR 1969 SC 101

inferences follow from it, to meet those inferences.

17. Reverting to the facts of the case, though the part of suit accommodation has been sold by one of the co-owners during the pendency of first appeal on 25-5-2015, but there is no reason assigned in the application for not bringing on record the said document / additional evidence by filing application under Order 41 Rule 27 of the CPC before the first appellate Court with due diligence, as the application is blissfully silent and even otherwise, such a document is not essential for determining the lis between the parties. As such, no case is made out for admission of additional evidence under Order 41 Rule 27 of the CPC.

18. Accordingly, the application under Order 41 Rule 27 of the CPC (I.A.No.3/2012) and the application under Order 6 Rule 17 of the CPC (I.A.No.2/2012) both stand rejected and consequently, the second substantial question of law is answered against the defendant / appellant herein.

19. Resultantly, the second appeal is dismissed affirming the judgment and decree of the first appellate Court on the ground under Sections 12(1)(a) & (f) of the Act of 1961. The substantial questions of law are answered accordingly. No order as to cost(s).

20. Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge