

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 166 of 2012**

Kalimuddin Vanak, S/o Late Shri Tahir Bhai Vanak,
Aged about 50 years, R/o Khaparganj, Tahsil and
Distt. Bilaspur, Chhattisgarh.

---Appellant/LRs. Of Plaintiff

Versus

1. Jaspal Singh Chabra, S/o Shri Sardar Singh
Chabra, Aged about 48 years, R/o Scooter Home,
Opposite Mariya Sahay Kendra, Link Road, Tarbahar
Chowk, Tahsil and Distt. Bilaspur, Chhattisgarh.

--- Defendant

2. Shakir Bhai S/o Late Taher Bhai Vanak, Aged about
55 years, R/o Task Enterprises Farishta
Apartment, Shop No. 9, Opposite Telephone G.E.
Road, Raipur, Tahsil and Distt. Raipur,
Chhattisgarh.

3. Mahmooda Bai Vanak, W/o Late Shri Taher Bhai
Vanak, R/o Khaparganj, Tahsil and Distt.
Bilaspur, Chhattisgarh.

--- Respondents

For Appellant :- Mr. Himanshu Sinha, Advocate

For Respondent No. 1 :- Mr. Vivek Shrivastava and

Mr. Ravindra Agrawal, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

22/02/2021

1. This second appeal preferred by the appellant/Lrs. Of original plaintiff was admitted for hearing on 27/11/2014 by formulating the following substantial question of law :-

"Whether the first appellate Court was justified in holding that the cause of the plaintiffs need of suit premises on bonafide ground does not survive after the death of the plaintiff ?"

[The parties will hereinafter be referred to as per their status given and ranking shown in the plaint before the trial Court.]

2. The suit accommodation (shop), situated at Tarbahar Chowk, Bilaspur as shown in Schedule 'A' appended with the plaint, was let out by the original plaintiff Tahir Bhai Vanak to the sole defendant Jaspal Singh Chabra on 01/08/1992 and an agreement was entered into by them on 15/02/2003 (Ex. P/1) for letting out the suit shop on a monthly rent of Rs. 1,650/- for a period of five years i.e. upto 31/03/2008 for non-residential purpose.
3. It is the case of the original plaintiff that he is a businessman and is an authorized retailer of Amul Company in Bilaspur for which he

requires a retail showroom and the suit shop fulfills his requirement as he did not have any other alternative accommodation in the township of Bilaspur and he also wanted to start a separate business for his grandson Adnan Vanak, therefore, the suit shop was required bonafidely for the joint need of plaintiff and his grandson for which he served legal notice to the defendant/tenant on 06/12/2006 for handing over the vacant possession of the suit shop and when the defendant/tenant failed to do so, on 31/03/2008, plaintiff informed the defendant/tenant about the termination of tenancy but the defendant/tenant still did not vacate the suit shop which necessitated the plaintiff to file a suit against him for ejectment, recovery of possession and for damages.

4. Resisting the suit, the defendant/tenant filed his written statement stating inter alia that he has been in possession of the suit shop as a tenant since the year 1992 and he has been paying rent regularly and the plaintiff does not require the suit shop bonafidely as he has alternative accommodation in the township of

Bilaspur which fulfills his requirement and moreover, the suit shop is also not required for bonafide need of his grandson, as such, the suit deserves to be dismissed.

5. Learned trial Court, after appreciation of oral and documentary evidence on record, decreed the suit vide judgment and decree dated 29/11/2008 holding that the suit shop is required bonafidely by the plaintiff for joint need of his' and his grandson's and he has no other alternative accommodation in the township of Bilaspur and thereby, terminated the tenancy.
6. Feeling aggrieved by the judgment and decree of the trial Court, the defendant preferred an appeal under Section 96 of CPC. After passing of the decree by the trial Court and during the pendency of the appeal, sole plaintiff namely Tahir Bhai Vanak died on 28/07/2009 and his legal heirs were impleaded as party/respondents in the appeal. Learned first appellate Court, vide its impugned judgment and decree dated 14/02/2012, took cognizance of the fact that since sole plaintiff has died, his bonafide need has come to an end and further held that plaintiff's grandson Adnan Vanak does not fall

within the meaning of "member of the family" as per Section 2(e) of Chhattisgarh Accommodation Control Act, 1961 (hereinafter 'the Act of 1961') and ultimately, set aside the judgment and decree of the trial Court and dismissed the suit against which the instant second appeal has been preferred by the LRs. of the sole plaintiff under Section 100 of CPC in which substantial question of law has been framed and set out in the opening paragraph of this judgment.

7. Mr. Himanshu Sinha, learned counsel for the appellant/Lrs. of plaintiff, would submit that the first appellate Court has gravely erred in holding that after passing of the decree for ejectment under Section 12(1)(f) of the Act of 1961, since the original plaintiff has died, his bonafide need has come to an end. He would further submit that the first appellate Court is also unjustified in holding that grandson of the plaintiff would not fall within the meaning of "member of the family" under Section 2(e) of the Act of 1961 as he would definitely fall within "any other relation dependent upon him" used in Section 2(e) of the Act of 1881 and defendant did not take any such objection before the trial

Court qua the grandson of the plaintiff not being "member of the family" and therefore, his need not being bonafide need and for the first time, the said objection was taken by the defendant before the first appellate Court that the need of grandson cannot be said to be bonafide need of the plaintiff and therefore, decree for eviction cannot be passed. As such, the judgment and decree passed by the first appellate Court deserves to be set aside and that of the trial Court be restored.

8. Mr. Vivek Shrivastava and Mr. Ravindra Agrawal, learned counsel for respondent No. 1/defendant, would support the impugned judgment and decree passed by the first appellate Court and submit that since decree was granted under Section 12(1)(f) of the Act of 1961 for sole need of the plaintiff, therefore, once he has died after passing of the decree, his bonafide need has come to an end which has rightly been held by the first appellate Court. They would further submit that grandson of the plaintiff would not fall within the meaning of "member of the family" as per the definition under Section 2(e) of the Act of 1961, as such, learned first

appellate Court has rightly set aside the judgment and decree of the trial Court and dismissed the suit which deserves to be maintained.

9. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
10. The question for consideration would be whether the first appellate Court was justified in holding that upon the death of the original plaintiff/landlord Tahir Bhai Vanak, his bonafide need has come to an end and the decree for eviction granted in favour of the plaintiff/landlord under Section 12(1)(f) of the Act of 1961 deserves to be set aside.
11. Admittedly, decree for eviction passed under Section 12(1)(f) of the Act of 1961 was granted by the trial Court in favour of the original plaintiff/landlord Tahir Bhai Vanak who died during the pendency of the appeal preferred by the landlord/tenant before the first appellate Court and his Lrs. were substituted as party/respondents in the appeal. The first appellate Court set aside the judgment and

decree of the trial Court and dismissed the suit holding that since the original plaintiff/landlord has died during the pendency of the appeal, therefore, his bonafide need (if any) has come to an end and further held that the need of his grandson cannot be said to be bonafide as his grandson would not fall within the meaning of "member of the family" as defined under Section 2(e) of the Act of 1961.

12. The Supreme Court, recently, in the matter of Hukum Chandra (dead) through legal representatives v. Nemi Chand Jain and others¹ relying upon its earlier decision in the matter of Om Prakash Gupta v. Ranbir B. Goyal² held that rights of the parties stand crystallised on the date of institution of the suit. However, in appropriate cases, court can take note of all the subsequent events. It was further held that the normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtained at the commencement of the litigation. It was also held that whenever, there is subsequent events of fact or law, which have a material bearing on

1(2019) 13 SCC 363

2(2002) 2 SCC 256

the rights of the parties to relief or on the aspects of moulding appropriate relief to the parties, the court is not precluded from taking cognizance of the subsequent changes of fact and law to mould the relief. Hukum Chandra's case (supra) was relating to Section 12(1)(f) of the M.P. Accommodation Control Act, 1961 (like the case in hand) and their Lordships of the Supreme Court finding that landlord's son for whom eviction of the suit premises had been sought, though became gainfully employed after filing of suit, declined to take subsequent event on record and dismissed the appeal filed by tenant affirming decree for eviction.

13. Similarly, in the matter of D. Sasi Kumar v. Soundararajan³, their Lordships of the Supreme Court relying upon its earlier decision in the matter of Gaya Prasad v. Pradeep Srivastava⁴, held that the landlord should not be penalised for the slowness of the legal system and the crucial date for deciding the bona fide requirement of landlord is the date of application for eviction, and reiterated the proposition laid down in Gaya Prasad (supra).

3(2019) 9 SCC 282

4(2001) 2 SCC 604

14. The effect of the death of landlord, qua the bona fide need under Section 13(1)(g) of Bombay Rents, Hotel and Lodging House Rates Control Act, 1847, was considered by the Supreme Court in the matter of **Shantilal Thakordas and others v. Chimanlal Maganlal Telwala**⁵. It was held that if the law permits the eviction of the tenant from the requirement of the landlord "for occupation as a residence for himself and members of his family", then the requirement was both of the landlord and the members of his family. On his death the right to sue survives to the members of the family of the deceased landlord. It was further held that after the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and the occupation of the other members of the family.

15. Similarly, in the matter of **Kamleshwar Prasad v. Pradumanju Agarwal (dead) by L.R's.**⁶, their Lordships of the Supreme Court have held that even if the landlord has died during the pendency of the writ petition in the High Court, the bona fide need cannot be said to have lapsed

5AIR 1976 SC 2358

6AIR 1997 SC 2399

as the business in question can be carried on by his widow or any elder son. As such, the bona fide need continues and business can be carried on.

16. The decision of the Supreme Court in Kamleshwar Prasad (supra) has been followed by the M.P. High Court in the matter of Swarnjeet Singh v. Asharam Gamne⁷ holding that if the bona fide need continues, business can be carried-on by widow of the original landlord or any other elder son.

17. Similarly, the Supreme Court in the matter of Shakuntala Bai and others v. Narayan Das and others⁸ has held that bona fide need of landlord has to be examined on the date of institution of the proceedings and if decree for eviction is passed, the death of landlord during the proceeding of appeal preferred by tenant will make no difference and his heirs are entitled to defend the estate. It was observed as under: -

"14. Sub-section (1) of Section 12 of the Act says "no suit shall be filed in Civil Court against a tenant for his eviction ...". The language employed does not say "no decree shall be passed ...". So the bar created is against filing of the suit except on one of the grounds enumerated in

clauses (a) to (p) of the sub-section. Therefore what is to be seen is whether the suit was validly filed i.e. whether on the date of filing of the suit one of the grounds was made out. A suit validly filed cannot be scuttled or held no longer maintainable in absence of any specific provision to that effect. Therefore, the principle that "the need of the landlord must exist till the decree for eviction is passed by the last Court and attains finality" can even otherwise have no application here in view of the express language used in the section.

15. As the preamble shows the Madhya Pradesh Accommodation Control Act, 1961 has been enacted for expeditious trial of eviction cases on the ground of bona fide requirement of landlords and generally to regulate and control eviction of tenants. If the subsequent event like the death of the landlord is to be taken note of at every stage till the decree attains finality, there will be no end to litigation. By the time a second appeal gets decided by the High Court, generally a long period elapses and on such a principle if during this period the landlord who instituted the proceedings dies, the suit will have to be dismissed without going into merits. The same thing may happen in a fresh suit filed by the heirs and it may become an unending process. Taking into consideration the subsequent events may, at times, lead to rendering the whole proceedings taken infructuous and colossal waste of public time. There is no warrant for interpreting a Rent Control legislation in such a manner the basic object of which is to save harassment of tenants from unscrupulous landlords. The object is not to deprive the owners of their properties for all times to come."

18. Thus, from the aforesaid propositions of law, it is quite vivid that on account of death of landlord/owner during the pendency of the

first appeal, decree for eviction already granted cannot be set aside. The law permits eviction of tenant for the bona fide requirement of landlord for the purpose of continuing or starting business for his own or for his major sons or unmarried daughter. The landlord who intended to start his business in the suit accommodation and during the pendency of the first appeal subsequently dies after getting the decree, his legal representatives cannot be denied decree for eviction. The first appellate Court cannot deny decree in favour of landlord merely because landlord has died during the pendency of the first appeal. The legal representative or senior member of his family takes his place and is entitled to continue or start his profession or avocation in the suit accommodation which was intended by the landlord and the family members of the landlord like his son i.e. appellant herein cannot be deprived of the decree of ejectment, even after death of original plaintiff/landlord as he can start/carry on the business intended by the decree-holder.

19. The first appellate Court has reversed the judgment and decree of the trial Court also on the ground that grandson would not fall within the meaning of "member of the family" as described under Section 2(e) of the Act of 1961.

20. Section 2(e) of Chhattisgarh Accommodation Control Act, 1961 defines "member of the family" as under :-

"(e) *"member of the family"* in case of any person means the spouse, son, unmarried daughter, father, grandfather, mother, grandmother, brother, unmarried sister, paternal uncle, paternal uncle's wife or widow, or brother's son or unmarried daughter living jointly with, or any other relation dependent on him;"

21. A careful perusal of the aforesaid definition of "member of the family" would show that it also includes any other relation (other than the ones specified in the definition) who is dependent upon the landlord within the meaning of "member of the family" by virtue of Section 2(e) of the Act of 1961.

22. Section 12(1)(f) of the Chhattisgarh Accommodation Control Act, 1961 states 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 any civil

Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :

(a) to (e) XXX XXX

(f) that the accommodation let for non-residential purposes is required bonafide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accomodation is held and that the landlord or such person has no other reasonably non-residential accommodation of his own in his occupation in the city or town concerned;"

23. The term "member of the family" has been defined in Section 2(e) of the Act of 1881, however, in Section 12(1)(f) of the Act of 1961, the words "his family" are deliberately omitted and right of eviction is restricted to the landlord for his own business or for the business of his major sons or unmarried daughters. (see : Nandkishore v. Sarjudevi⁹). As such, the first appellate Court is right in holding that need of the landlord for his business would not include business of his grandson.

24. Thus, it is held that though the original plaintiff has died after passing of the decree for eviction by the trial Court and during the pendency of the first appeal and only on that

account, decree granted by the first appellate Court under Section 12(1)(f) of the Act of 1961 cannot be set aside and bonafide need would not come to an end, that business can be continued by his son/other senior members of the family as held by the Supreme Court as well as the Madhya Pradesh High Court in the above-stated judgments (supra). It is further held that though for need of grandson would not fall within Section 12(1)(f) of the Act of 1961 but it would not have adverse effect on the decree of eviction, as already held that business can be continued by his son/appellant or any other family member. The first appellate Court is absolutely unjustified in reversing the decree of the trial Court only on that account, without noticing the well-settled law in that regard. As such, the decree granted by the first appellate Court in favour of the defendant is liable to be set aside being absolutely perverse and contrary to record. As such, the impugned judgment and decree passed by the first appellate Court is hereby set aside and that of the trial Court is restored.

25. The second appeal deserves to be and is accordingly dismissed. No cost(s).

26. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet