

HIGH COURT OF CHHATTISGARH, BILASPURF.A No.400 of 2017Reserved on 30.06.2021Pronounced on 12.07.2021

Surendra Singh Amodiya S/o M.S. Amodiya, Aged About 40 Years R/o Behind Nandu Garage, Telipara Bilaspur, District Bilaspur Chhattisgarh..... Defendant **--- Appellant**

Versus

Mishri Lal Kashyap S/o Mahadev Prasad Kashyap, Aged About 50 Years R/o Behind Hotel Ajit, Telipara Bilaspur, Tehsil And District Bilaspur Chhattisgarh..... Plaintiff No. 1 **-----Respondent**

For Appellant:	Shri Arvind Shrivastava, Advocate.
For Respondent:	Shri Ahmad Hussain, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J
C A V Judgment

1. This Appeal has been preferred by the Defendant under Section 96 of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the legality and propriety of the judgment and decree dated 25.07.2017 passed in Civil Suit No.300-A/2014, whereby the trial Court has decreed the Plaintiff's claim for eviction on the ground enumerated under Section 12(1)(f) of the Chhattisgarh Accommodation Control Act, 1961 (for short 'the Act of 1961'). The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated, the facts of the case are that the Plaintiff instituted a suit claiming eviction of the Defendant from the suit premises on the ground enumerated under Section 12(1)(b) and (f) of the Act of 1961. According to him, the Defendant was inducted in the suit premises i.e. Shop Nos.3 & 4 having area of 12' x 15' = 180 sq.ft under the written tenancy dated 06.07.2005 for a period of 11 months as described in red

colour in Plaintiff Schedule – 'A' situated in front of Hotel Ajit, Telipara road, Juna Bilaspur which are constructed over the land bearing Khasra No.367/14 admeasuring 0.02 acres. It is pleaded in the Plaintiff that the Plaintiff needs the suit shops *bona fide* for carrying out the business of himself and also for his sons and daughters for which, a reasonable and suitable accommodation is not available with him in the concerned city of Bilaspur, while the Defendant has other premises available with him for his business. It is pleaded further that without his consent, the Defendant had sub-let the suit premises to someone else illegally and pleaded further that he has failed to pay him the rent for a period of 25 months commencing w.e.f. April, 2006 up to April, 2008 which goes to Rs.1,15,000/- despite his oral and written notice being given. Therefore, he has been constrained to institute the suit in the instant nature, instituted on 01.04.2008.

3. While denying the alleged *bona fide* need of the Plaintiff, it is stated by the Defendant that he was inducted as a tenant by his father Mahadev Prasad Kashyap in the year 1992 and now he is continuously in possession at the monthly rent of Rs.4,600/-. While denying further the creation of sub-tenancy, it is contested further on the ground that after the death of the Plaintiff's father, the suit premises will be inherited by all his heirs and the Plaintiff alone will not be the sole owner of it, and therefore, the suit as brought by him is not maintainable and is liable to be dismissed. It is pleaded further that the entire rent of Rs.1,15,000/- has been deposited in CCD on 16.05.2008 with the permission of the Court.

4. After considering the evidence led by the parties, it was held by the trial Court that the Plaintiff is the owner of the suit premises acquired from his father which he needed *bona fide* for his alleged need not only for

himself but also for his children and held further that the suitable and alternative accommodation for the said purpose is not available with him in the concerned city. As a consequence of it, the trial Court decreed the claim on the ground enumerated under Section 12(1)(f) of the Act of 1961. This is the order, which has been questioned by way of this Appeal.

5. Learned Counsel appearing for the Appellant/Defendant submits that the finding of the Court below holding that the suit premises is needed by the Plaintiff *bona fide* for his alleged non-residential purposes is apparently contrary to law. According to him, before granting a decree of eviction under Section 12(1)(f) of the Act of 1961, it ought to have seen and held that the Plaintiff has failed to establish his ownership over the suit premises, and therefore, in absence of fulfillment of the ingredients required under the said provision, no decree as such, ought to have been granted. It is contended further that the Plaintiff has failed to establish his alleged need *bona fide*, and therefore, he is not entitled to a decree for eviction.

6. On the other hand, learned Counsel appearing for the Respondent/Plaintiff has supported the impugned judgment and decree as passed by the trial Court.

7. I have heard learned Counsel appearing for the parties and perused the entire record carefully.

8. The question which arises for determination in this Appeal is as to “whether the Court below was justified in holding that the Plaintiff was the owner of the suit premises and is entitled to get the decree for eviction of the Defendant on the ground enumerated under Section 12(1)(f) of the Act of 1961 ?”

9. At the outset, it appears that the suit for eviction has been instituted initially by the Plaintiff and his father Mahadev Prasad Kashyap and on account of his sad demise, his name was deleted and the Plaintiff was admittedly one of his heirs, and therefore, it cannot be said that he was not entitled to sue for eviction on the ground under clause-(f) of sub-Section (1) of Section 12 of the Act of 1961, as contended by learned Counsel for the Appellant/Defendant. It is settled principles of law as held in the Full Bench decision of Madhya Pradesh High Court in the matter of Harbans Singh vs. Smt Margrat G. Bhingardive reported in 1990 M.P.L.J 112 that absence of other co-owners will not disentitle the Plaintiff from maintaining a suit for eviction, particularly, when other co-owners have raised no objection for it. Para-9 of it is relevant for the purpose at this juncture, which reads as under:-

“9.....In connection with the first part of the question, it may be stated that some of the decisions of the highest Court of Land provide a complete answer to the problem. In *Sri Ram Pasricha v. Jagannath*, (1974) 4 S.C.C 184 relying on certain precedents and a passage from "Salmond on Jurisprudence" it was observed that under the general law, in a suit between landlord and tenant, the question of title to the leased property is irrelevant and, therefore, it is inconceivable to throw out the suit on account of non-pleading of other co-owners as such. Further, it has been held in the said report that jurisprudentially it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property. This position will change only when partition takes place. This view was accepted and again reiterated by Supreme Court in *Kanta Goel vs. B. P. Pathak*, (1977) 2 S.C.C 814 wherein it was held that a co-owner is as much an owner of the entire property as any sole owner and the absence of other co-owners will not disentitle a co-owner from

maintaining an action for eviction when the other co-owners do not object to the same. This view was followed in a recent decision by the Supreme Court in *Pal Singh vs. Shri Sunder Singh*, (1989) 1 S.V.L.R. (C) 54. This being the position of law, it has to be held that the widow/non-applicant, who is a co-owner/landlady of the premises with some others, can initiate eviction proceedings against the tenant in the absence of other co-owners if they do not object for the same.”

10. Besides, it is not in dispute as evidenced by the admission of the Defendant himself in his cross-examination that a rent agreement was executed by the Plaintiff in his favour on 06.07.2005 and from a bare perusal of the averments made in the Plaint filed by the Plaintiff and his father, it is evident that the Plaintiff was stated to be the owner of the suit premises with the consent of his father. Since the Defendant has admitted the execution of the alleged rent agreement, therefore, he cannot deny his title in view of the provision prescribed under Section 116 of the Indian Evidence Act and the Plaintiff would, therefore, be deemed to be owner of the property in question within the meaning of Section 12(1)(f) of the Act of 1961 as held by the Madhya Pradesh High Court in the matter of *R.P. Tiwari vs. Smt Soluchna Choudhary* reported in 2000(1) M.P.H.T. 481 wherein, it was held at paragraph-8 as under:-

“8.....It is by now well settled that the landlord need not be absolute owner. If he is lessor or landlord and the tenant cannot deny his title in view of Section 116 of the Evidence Act the landlord or the lessor would be deemed to be owner within the meaning of Section 12 (1) (f) of the Act. In *Dadanbai Vs. Arjundas*, (1995) 3 SCC 412, the Supreme Court considered the meaning of 'owner' in Section 23-A(b) of the Act and held that a lessor whose title cannot be disputed by the lessee undoubtedly is owner at whose instance the proceedings for eviction were maintainable. The words used in Section 23-A (b) of the Act are the same as in Section

12 (1) (f) of the Act. The same view has been taken by the Supreme Court in *Anar Devi Vs. Nathuram*, (1994) 4 SCC 250 and *S.R. Sinha Vs. H. Banerjee*, (1991) 4 SCC 572. This Court took the same view in *Asif Ali Vs. Rahandomal*, AIR 1986 M.P. 143. As the defendant has been held to be tenant of Mukund Das on the basis of the material on record it is not necessary to trace the title of Mukund Das. Once the defendant is held to be tenant of Mukund Das he cannot question his title in view of the rule of estoppel in Section 116 of the Evidence Act. The plaintiff is transferee from Mukund Das on the basis of registered sale-deed. She would be 'owner' of the accommodation within the meaning of Section 12 (1) (f) of the Act."

11. In view of the above principles of law, the Plaintiff would certainly be entitled to sue for eviction of the Defendant on the ground enumerated under Section 12(1)(f) of the Act of 1961.

12. In so far as the *bona fide* need of the Plaintiff is concerned, it appears that the same has also been duly proved by him. In his (Mishri Lal Kashyap) evidence at para-5, it is stated by him that the suit premises is required *bona fide*ly by him for carrying out the business of himself and also of his children and an alternative and suitable accommodation for the said purpose is not available with him. It is stated further by him at para-40 that he has no shop available with him at "Shanichari Bazar" when a specific question was put to him in this aspect though he is running a retail vegetable shop there for the last 3-4 years. It appears further from his testimony that he used to sell the vegetables sometimes at "Chantidih" and presently running a retail vegetable shop at "Tifra". It thus, appears that the Plaintiff is running from pillar to post for his livelihood and his need, therefore, appears to be of genuine one and it cannot be said that the alternative accommodation is available with him for carrying out his

business as alleged by the learned Counsel for the Appellant herein. The trial Court has thus, after considering the evidence led by the parties, rightly decreed the suit for eviction under Section 12(1)(f) of the Act of 1961 and I do not find any infirmity in the same.

13. Consequently, the Appeal being devoid of merits, is hereby dismissed. No order as to costs.

14. A decree be drawn accordingly.

Sd/-
(Sanjay S. Agrawal)
JUDGE

Priya