

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.331 of 2011

Pramod Golcha, aged about 58 years, S/o J.D. Golcha, R/o Behind
Pujari School, Near Baba Garage, Rajatalab, Raipur

(Defendant)
---- Appellant

Versus

Balashram, Registered Society, Kachari Chowk, Raipur, through its
Secretary Sohanlal Daga, S/o Suraj Ratan Daga, Raipur

(Plaintiff)
---- Respondent

For Appellant/Defendant: Mr. Parag Kotecha, Advocate.
For Respondent/Plaintiff: Mr. Pankaj Singh, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/07/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant herein / defendant.
2. By the impugned judgment, the first appellate Court has dismissed the appeal preferred by the defendant affirming the judgment & decree granting decree of eviction in favour of the plaintiff.
3. Mr. Parag Kotecha, learned counsel appearing for the appellant herein / defendant, would submit that both the Courts below have clearly erred in granting decree of eviction in favour of the plaintiff holding that the suit accommodation is required to the plaintiff Society under Section 20(d) of the Chhattisgarh Accommodation Control Act, 1961 (for short, 'the Act of 1961') for furtherance of its activities by recording a perverse finding. He

would further submit that the suit was not filed by the competent person, therefore, the suit as framed and filed was not maintainable, as such, the appeal involves substantial question of law and it be admitted for hearing.

4. I have considered the submissions raised on behalf of the appellant herein / defendant and went through the record with utmost circumspection.
5. The plaintiff is a registered society registered under the provisions of the M.P. Society Registration Adhiniyam, 1973. The plaintiff institution is claimed to be a public institution within the meaning of Section 20 of the Act of 1961. It is the case of the plaintiff that it is involved in teaching poor, orphan and handicapped students / children free of cost and hostel facility is also being provided for their stay. Out of the house and accommodation, one accommodation has been let-out to the defendant on monthly rent of ₹ 545/- for non-residential purpose, now it is required for furtherance of its activity to orphans and poor children for their hostel facility and for establishing training centre for their self-employment for which notice has been served to the defendant on 4-9-2000 and the tenancy has been terminated with effect from 30th September, 2000, but it has not been vacated leading to filing of suit for eviction which was opposed by the defendant by filing written statement stating inter alia that the suit accommodation is not required bona fide, it is only a pretext of getting the accommodation vacated and for enhancing rent, the suit has been filed.
6. The trial Court after appreciation of oral and documentary evidence available on record, decreed the suit holding that the

plaintiff institution is a registered society under the provisions of the M.P. Society Registrikaran Adhiniyam, 1973 and a public institution within the meaning of Section 20 of the Act of 1961 and the suit accommodation is required bona fide for furtherance of activities within the meaning of section 20(d) of the Act of 1961 which was called in question by the defendant by filing first appeal, but the first appellate Court has also concurred with the same. As such, the two Courts below have categorically recorded a finding that the plaintiff Society is a public institution within the meaning of Section 20 of the Act of 1961 and is involved in welfare of poor, orphan and physically disabled children and therefore it is a public institution within the meaning of Section 20 of the said Act. Such a finding recorded by the two Courts below is a finding of fact based on the evidence available on record.

7. The two Courts below have also recorded a finding that the suit accommodation is required for the plaintiff / public institution for furtherance of its activities like construction of hostel for staying of children belonging to poor admitted for learning and for establishing of training centre for their self-employment and as such, the suit accommodation is required for furtherance of its activities within the meaning of Section 20(d) of the Act of 1961. Such finding is also a finding of fact based on the evidence available on record, recorded concurrently by the two Courts below which cannot be said to be perverse by any stretch of imagination.
8. The next point raised by Mr. Kotecha is that the suit was not properly instituted, therefore, it was not maintainable and it could

not have been tried.

9. Though the defendant has raised such a plea, but neither before the trial Court nor before the first appellate Court any express plea has been raised, therefore, it has not been tried and no finding has been recorded and as such, this Court has no privilege of looking into the said pleading and finding. Therefore, for the first time, new plea cannot be permitted to be raised by the defendant, as plaintiff's witness Anil Kumar Chandrakar (PW-1) has clearly stated that on society being dissolved, it is being managed by the Additional Collector, Raipur and he was authorised to file pleadings and record evidence. As such, this plea cannot stand and accordingly it is rejected.
10. Therefore, the trial Court has rightly dismissed the suit which has rightly been affirmed by the first appellate Court. I do not find any substantial question of law for admission of the appeal and no substantial question of law is involved in this appeal. Accordingly, the second appeal deserves to be and is hereby dismissed in limine without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge